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RAYMOND W. HAMAN, Chairman,
STATUTE LAW COMMITTEE



Title 18

BUSINESSES AND PROFESSIONS

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Chapter 18.04 ACCOUNTANCY

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18.04.015 Purpose. (1) It is the policy of this state and the purpose of this chapter:

(a) To promote the dependability of information which is used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private or governmental; and

(b) To protect the public interest by requiring that:

(i) Persons who hold themselves out to the public as certified public accountants who offer to perform, or perform for clients, professional services, including but not limited to one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "audit

reports," "review reports," or "compilation reports" on financial statements, or one or more kinds of management advisory, or consulting services, the preparation of tax returns, or the furnishing of advice on tax matters, perform such services in a competent and professional manner;

(ii) A public authority be established that is competent to prescribe and assess the qualifications of certified public accountants, including certificate holders who are not licensed for the practice of public accounting;

(iii) Persons other than certified public accountants refrain from using the words "audit," "review," and "compilation" when designating a report customarily prepared by someone knowledgeable in accounting; and

(iv) The use of accounting titles likely to confuse the public be prohibited.

(2) A purpose of chapter 103, Laws of 1992, revising provisions of chapter 234, Laws of 1983, is to clarify the authority of the board of accountancy with respect to the activities of persons holding certificates under this chapter. Furthermore, it is not the intent of chapter 103, Laws of 1992 to in any way restrict or limit the activities of persons not holding certificates under this chapter except as otherwise specifically restricted or limited by chapter 234, Laws of 1983. [1992 c 103 § 1; 1983 c 234 § 2.]

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

(1) "Board" means the board of accountancy created by RCW 18.04.035.

(2) "Certified public accountant" or "CPA" means a person holding a certified public accountant certificate.

(3) "State" includes the states of the United States, the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands.

(4) "Reports on financial statements" means any reports or opinions prepared by certified public accountants, based on services performed in accordance with generally accepted auditing standards, standards for attestation engagements, or standards for accounting and review services as to whether the presentation of information used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private, or governmental, conforms with generally accepted accounting principles or other comprehensive bases of accounting.

(5) The "practice of public accounting" means performing or offering to perform by a person or firm holding itself out to the public as a licensee, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "audit reports," "review reports," or "compilation reports" on financial statements, or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters. The "practice of public accounting" shall not include practices that are permitted under the provisions of RCW 18.04.350(6) by persons or firms not required to be licensed under this chapter.

(6) "Firm" means a sole proprietorship, a corporation, or a partnership.

(7) "CPE" means continuing professional education.

(8) "Certificate" means a certificate as a certified public accountant issued under this chapter, or a corresponding certificate issued by another state or foreign jurisdiction that is recognized in accordance with the reciprocity provisions of RCW 18.04.180 and 18.04.183.

(9) "Licensee" means the holder of a valid license issued under this chapter.

(10) "License" means a biennial license to practice public accountancy issued to an individual or firm under this chapter.

(11) "Quality assurance review" means a process established by and conducted at the direction of the board of study, appraisal, or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy, by a person or persons who hold certificates and who are not affiliated with the person or firm being reviewed.

(12) "Quality review" means a study, appraisal, or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy, by a person or persons who hold certificates and who are not affiliated with the person or firm being reviewed, including a peer review, or any internal review or inspection intended to comply with quality control policies and procedures, but not including the "quality assurance review" under subsection (11) of this section.

(13) "Review committee" means any person carrying out, administering or overseeing a quality review authorized by the reviewee.

(14) "Rule" means any rule adopted by the board under authority of this chapter.

(15) "Holding out" means any representation to the public by the use of restricted titles as set forth in RCW 18.04.345 by a person or firm that the person or firm is a certified public accountant and that the person or firm offers to perform any professional services to the public as a certified public accountant. "Holding out" shall not affect or limit a person not required to hold a certificate under this chapter or a person or firm not required to hold a license under this chapter from engaging in practices identified in RCW 18.04.350(6). [1992 c 103 § 2; 1986 c 295 § 1; 1983 c 234 § 3.]

18.04.035 Board of accountancy—Members—Terms—Vacancies—Removal. (1) There is created a board of accountancy for the state of Washington to be known as the Washington state board of accountancy. The board shall consist of seven members appointed by the governor. Members of the board shall include four persons who hold valid certified public accountant certificates and have been in public practice as certified public accountants in this state continuously for the previous ten years and two persons who have held a valid certified public accountant's certificate in this state for at least ten years. The seventh member shall be the public member and shall be a person who is qualified to judge whether the qualifications, activities, and professional practice of those regulated under this chapter conform with standards to protect the public interest.

(2) The members of the board of accountancy shall be appointed by the governor to a term of three years. Vacan-

cies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of a member's term of office, the member shall continue to serve until a successor has been appointed and has assumed office. The governor shall remove from the board any member whose certificate or license to practice has been revoked or suspended and may, after hearing, remove any member of the board for neglect of duty or other just cause. No person who has served two successive complete terms is eligible for reappointment. Appointment to fill an unexpired term is not considered a complete term. In order to stagger their terms, of the two new appointments made to the board upon June 11, 1992, the first appointed member shall serve a term of two years initially. [1992 c 103 § 3; 1986 c 295 § 2; 1983 c 234 § 4.]

18.04.045 Board—Officers and staff—Powers and duties. (1) The board shall annually elect a chair, a vice-chair, and a secretary from its members.

(2) A majority of the board constitutes a quorum for the transaction of business.

(3) The board shall have a seal which shall be judicially noticed.

(4) The board shall keep records of its proceedings, and of any proceeding in court arising from or founded upon this chapter. Copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of the records.

(5) The governor shall appoint an executive director of the board, who shall serve at the pleasure of the governor. The executive director may employ such personnel as is appropriate for carrying out the purposes of this chapter. The executive director shall hold a Washington CPA certificate. The board may arrange for such volunteer assistance as it requires to perform its duties. Individuals or committees assisting the board constitute volunteers for purposes of chapter 4.92 RCW.

(6) The board shall file an annual report of its activities with the governor. The report shall include, but not be limited to, a statement of all receipts and disbursements. Upon request, the board shall mail a copy of each annual report to any member of the public.

(7) In making investigations concerning alleged violations of the provisions of this chapter and in all proceedings under RCW 18.04.295 or chapter 34.05 RCW, the board chair, or a member of the board, or a board designee acting in the chair's place, may administer oaths or affirmations to witnesses appearing before the board, subpoena witnesses and compel their attendance, take testimony, and require that documentary evidence be submitted.

(8) The board may review the publicly available professional work of licensees on a general and random basis, without any requirement of a formal complaint or suspicion of impropriety on the part of any particular licensee. If as a result of such review the board discovers reasonable grounds for a more specific investigation, the board may proceed under its investigative and disciplinary rules. [1992 c 103 § 4; 1986 c 295 § 3; 1983 c 234 § 5.]

18.04.055 Board—Rules. The board may adopt and amend rules under chapter 34.05 RCW for the orderly

conduct of its affairs. The board shall prescribe rules consistent with this chapter as necessary to implement this chapter. Included may be:

(1) Rules of procedure to govern the conduct of matters before the board;

(2) Rules of professional conduct for all certificate and license holders, in order to establish and maintain high standards of competence and ethics of certified public accountants including rules dealing with independence, integrity, objectivity, and freedom from conflicts of interest;

(3) Rules specifying actions and circumstances deemed to constitute holding oneself out as a licensee in connection with the practice of public accountancy;

(4) Rules specifying the manner and circumstances of the use of the titles "certified public accountant" and "CPA," by holders of certificates who do not also hold licenses under this chapter;

(5) Educational requirements to take the certified public accountant examination or for the issuance of the certificate or license of certified public accountant;

(6) Rules designed to ensure that certified public accountants' "reports on financial statements" meet the definitional requirements for that term as specified in RCW 18.04.025;

(7) Requirements for continuing professional education to maintain or improve the professional competence of certificate and license holders as a condition to maintaining their certificate or license to practice under RCW 18.04.215;

(8) Rules governing sole proprietors, partnerships, and corporations practicing public accounting including, but not limited to, rules concerning their style, name, title, and affiliation with any other organization, and establishing reasonable practice standards to protect the public interest;

(9) The board may by rule implement a quality assurance review program as a means to monitor licensees' quality of practice and compliance with professional standards. The board may exempt from such program, licensees who undergo periodic quality reviews in programs of the American Institute of Certified Public Accountants, National Association of State Boards of Accountancy, or other programs recognized and approved by the board;

(10) The board may by rule require firms to obtain professional liability insurance if in the board's discretion such insurance provides additional and necessary protection for the public; and

(11) Any other rule which the board finds necessary or appropriate to implement this chapter. [1992 c 103 § 5; 1986 c 295 § 4; 1983 c 234 § 6.]

18.04.065 Board—Fees—Disposition. The board shall set its fees at a level adequate to pay the costs of administering this chapter. Beginning in the 1993-95 biennium, all fees for certified public accountants' licenses, certificates, renewals of licenses, renewals of certificates, and delinquent filings received under the authority of this chapter shall be deposited in the certified public accountants' account created by RCW 18.04.105. Appropriation from such account shall be made only for the cost of administering the provisions of this chapter. [1992 c 103 § 6; 1983 c 234 § 24.]

18.04.080 Compensation and travel expenses of members. Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses incurred in the discharge of such duties in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 20; 1983 c 234 § 22; 1975-'76 2nd ex.s. c 34 § 25; 1949 c 226 § 7; Rem. Supp. 1949 § 8269-14.]

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.

18.04.105 Issuance of certificate—Requirements—Examination—Fees—Certified public accountants' account—Prior licensees—Continuing professional education. (1) The certificate of "certified public accountant" shall be granted by the board to any person:

(a) Who is of good character. Good character, for purposes of this section, means lack of a history of dishonest or felonious acts. The board may refuse to grant a certificate on the ground of failure to satisfy this requirement only if there is a substantial connection between the lack of good character of the applicant and the professional responsibilities of a certified public accountant and if the finding by the board of lack of good character is supported by a preponderance of evidence. When an applicant is found to be unqualified for a certificate because of a lack of good character, the board shall furnish the applicant a statement containing the findings of the board and a notice of the applicant's right of appeal;

(b) Who has met the educational standards established by rule as the board determines to be appropriate;

The board may, in its discretion, waive the educational requirements for any person if it is satisfied through review of documentation of successful completion of an equivalency examination that the person's educational qualifications are an acceptable substitute for the requirements of (b) of this subsection; and

(c) Who has passed a written examination.

(2) The examination described in subsection (1)(c) of this section shall be in writing, shall be held twice a year, and shall test the applicant's knowledge of the subjects of accounting and auditing, and other related fields the board may specify by rule. The time for holding the examination is fixed by the board and may be changed from time to time. The board shall prescribe by rule the methods of applying for and taking the examination, including methods for grading papers and determining a passing grade required of an applicant for a certificate. The board shall to the extent possible see to it that the grading of the examination, and the passing grades, are uniform with those applicable to all other states. The board may make use of all or a part of the uniform certified public accountant examination and advisory grading service of the American Institute of Certified Public Accountants and may contract with third parties to perform administrative services with respect to the examination as the board deems appropriate to assist it in performing its duties under this chapter.

(3) An applicant is required to pass all sections of the examination provided for in subsection (2) of this section in order to qualify for a certificate. If at a given sitting of the examination an applicant passes two or more but not all

sections, then the applicant shall be given credit for those sections that he or she passed, and need not take those sections again: PROVIDED, That:

(a) The applicant took all sections of the examination at that sitting;

(b) The applicant attained a minimum grade of fifty on each section not passed at that sitting;

(c) The applicant passes the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were passed;

(d) At each subsequent sitting at which the applicant seeks to pass additional sections, the applicant takes all sections not yet passed; and

(e) In order to receive credit for passing additional sections in a subsequent sitting, the applicant attains a minimum grade of fifty on sections written but not passed on the sitting.

(4) The board may waive or defer any of the requirements of subsection (3) of this section for candidates transferring conditional CPA exam credits from other states or for qualifying reciprocity certification applicants who met the conditioning requirements of the state or foreign jurisdiction issuing their original certificate.

(5) The board shall charge each applicant an examination fee for the initial examination under subsection (1) of this section, or for reexamination under subsection (3) of this section for each subject in which the applicant is reexamined. The applicable fee shall be paid by the person at the time he or she applies for examination, reexamination, or evaluation of educational qualifications. Fees for examination, reexamination, or evaluation of educational qualifications shall be determined by the board under chapter 18.04 RCW. There is established in the state treasury an account to be known as the certified public accountants' account. All fees received from candidates to take any or all sections of the certified public accountant examination shall be used only for costs related to the examination.

(6) Persons who on June 30, 1986, held certified public accountant certificates previously issued under the laws of this state shall not be required to obtain additional certificates under this chapter, but shall otherwise be subject to this chapter. Certificates previously issued shall, for all purposes, be considered certificates issued under this chapter and subject to its provisions.

(7) A certificate of a "certified public accountant" under this chapter is issued on a biennial basis with renewal subject to requirements of continuing professional education and payment of fees, prescribed by the board.

(8) The board shall adopt rules providing for continuing professional education for certified public accountants. The rules shall:

(a) Provide that a certified public accountant shall verify to the board that he or she has completed at least an accumulation of eighty hours of continuing professional education during the last two-year period to maintain the certificate;

(b) Establish continuing professional education requirements;

(c) Establish when newly certificated public accountants shall verify that they have completed the required continuing professional education; and

(d) Provide that failure to furnish verification of the completion of the continuing professional education requirement shall make the certificate invalid and subject to reinstatement, unless the board determines that the failure was due to retirement, reasonable cause, or excusable neglect. [1992 c 103 § 7; 1991 sp.s. c 13 § 20; 1986 c 295 § 6; 1985 c 57 § 3; 1983 c 234 § 7.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: "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 July 1, 1985." [1985 c 57 § 91.]

18.04.180 Reciprocity. The board shall issue a certificate to a holder of a certificate issued by another state, or shall issue a certificate and license to a holder of a certificate/valid license issued by another state that entitles the holder to practice public accountancy, provided that:

(1) Such state makes similar provision to grant reciprocity to a holder of a certificate or certificate and valid license in this state; and

(2) The applicant meets the continuing professional education requirements of RCW 18.04.105(8); and

(3) If the application is for a certificate only:

(a) The applicant passed the examination required for issuance of his or her certificate with grades that would have been passing grades at that time in this state; and

(b) The applicant: Meets all current requirements in this state for issuance of a certificate at the time application is made; or at the time of the issuance of the applicant's certificate in the other state, met all the requirements then applicable in this state; or

(4) If the application is for a certificate and license:

(a) The applicant passed the examination required for issuance of his or her certificate with grades that would have been passing grades at that time in this state; and

(b) The applicant: Meets all current requirements in this state for issuance of a license at the time application is made; or at the time of the issuance of the applicant's license in the other state, met all the requirements then applicable in this state; or has had five years of experience within the ten years immediately preceding application in the practice of public accountancy that meets the requirements prescribed by the board. [1992 c 103 § 8; 1949 c 226 § 17; Rem. Supp. 1949 § 8269-24.]

18.04.183 Accountants from foreign countries. The board shall grant a certificate or license as a certified public accountant to a holder of a permit, license, or certificate issued by a foreign country's board, agency, or institute, provided that:

(1) The foreign country where the foreign permit, license, or certificate was issued is a party to an agreement on trade with the United States that encourages the mutual recognition of licensing and certification requirements for the provision of covered services by the parties under the trade agreement; and

(2) Such foreign country's board, agency, or institute makes similar provision to allow a person who holds a valid certificate issued by this state to obtain such foreign country's comparable permit, license, or certificate; and

(3) The foreign permit, license, or certificate:

(a) Was duly issued by such foreign country's board, agency, or institute that regulates the practice of public accountancy; and

(b) Is in good standing at the time of the application; and

(c) Was issued upon the basis of educational, examination, and ethical requirements substantially equivalent currently or at the time of issuance of the foreign permit, license, or certificate to those in this state; and

(4) The applicant has within the twenty-four months prior to application completed an accumulation of eighty hours of continuing professional education as required under RCW 18.04.105(8); and

(5) If the application is for a certificate:

(a) The applicant's foreign permit, license, or certificate was the type of permit, license, or certificate requiring the most stringent qualifications if, in the foreign country, more than one type of permit, license, or certificate is issued. This state's board shall decide which are the most stringent qualifications; and

(b) The applicant has passed a written examination or its equivalent, approved by the board, that tests knowledge in the areas of United States accounting principles, auditing standards, commercial law, income tax law, and Washington state rules of professional ethics; or

(6) If the application is for a certificate and license:

(a) The requirements of subsections (1) through (5) of this section are satisfied; and

(b) The applicant has within the five years prior to applying for the certificate and license under this section, demonstrated, in accordance with the rules issued by the board, one year of public accounting experience, within the foreign country where the foreign permit, license, or certificate was issued, equivalent to the experience required under RCW 18.04.215(1)(a) or such other experience or employment which the board in its discretion regards as substantially equivalent. [1992 c 103 § 18.]

18.04.185 Nonresidents—Application for certification or biennial license—Secretary of state agent for service of process. (1) Application for certification as certified public accountants by persons who are not residents of this state constitutes appointment of the secretary of state as an agent for service of process in any action or proceeding against the applicants arising from any transaction, activity, or operation connected with or incidental to the practice of public accounting in this state by nonresident holders of certified public accountant certificates.

(2) Application for a biennial license to practice public accounting in this state by a certified public accountant or CPA firm who holds a license or permit to practice issued by another state constitutes the appointment of the secretary of state as an agent for service of process in any action or proceeding against the applicant arising from any transaction or operation connected with or incidental to the practice of public accounting in this state by the holder of the biennial license to practice. [1986 c 295 § 7; 1983 c 234 § 8.]

18.04.195 Biennial license required—Requirements—Application—Fees. (1) A sole proprietor-

ship engaged in this state in the practice of public accounting shall license biennially with the board as a firm.

(a) The principal purpose and business of the firm shall be to furnish services to the public which are consistent with this chapter and the rules of the board.

(b) The person shall be a certified public accountant holding a license to practice under RCW 18.04.215.

(c) Each resident licensee in charge of an office of the sole proprietorship engaged in this state in the practice of public accounting shall be a certified public accountant holding a license to practice under RCW 18.04.215.

(2) A partnership engaged in this state in the practice of public accounting shall license biennially with the board as a partnership of certified public accountants, and shall meet the following requirements:

(a) The principal purpose and business of the partnership shall be to furnish services to the public which are consistent with this chapter and the rules of the board;

(b) At least one general partner of the partnership shall be a certified public accountant holding a license to practice under RCW 18.04.215;

(c) Each resident licensee in charge of an office of the partnership in this state and each resident partner personally engaged within this state in the practice of public accounting shall be a certified public accountant holding a license to practice under RCW 18.04.215.

(3) A corporation organized for the practice of public accounting and engaged in this state in the practice of public accounting shall license biennially with the board as a corporation of certified public accountants and shall meet the following requirements:

(a) The principal purpose and business of the corporation shall be to furnish services to the public which are consistent with this chapter and the rules of the board; and

(b) Each shareholder of the corporation shall be a certified public accountant of some state holding a license to practice and shall be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal officer of the corporation and any officer or director having authority over the practice of public accounting by the corporation shall be a certified public accountant of some state holding a license to practice;

(c) At least one shareholder of the corporation shall be a certified public accountant holding a license to practice under RCW 18.04.215;

(d) Each resident licensee in charge of an office of the corporation in this state and each shareholder or director personally engaged within this state in the practice of public accounting shall be a certified public accountant holding a license to practice under RCW 18.04.215;

(e) A written agreement shall bind the corporation or its shareholders to purchase any shares offered for sale by, or not under the ownership or effective control of, a qualified shareholder, and bind any holder not a qualified shareholder to sell the shares to the corporation or its qualified shareholders. The agreement shall be noted on each certificate of corporate stock. The corporation may purchase any amount of its stock for this purpose, notwithstanding any impairment of capital, as long as one share remains outstanding; and

(f) The corporation shall comply with any other rules pertaining to corporations practicing public accounting in this state as the board may prescribe.

(4) Application for a license as a firm shall be made upon the affidavit of the proprietor or person designated as managing partner or shareholder for Washington. This person shall be a certified public accountant holding a license to practice under RCW 18.04.215. The board shall determine in each case whether the applicant is eligible for a license. A partnership or corporation which is licensed to practice under RCW 18.04.215 may use the designation "certified public accountants" or "CPAs" in connection with its partnership or corporate name. The board shall be given notification within ninety days after the admission or withdrawal of a partner or shareholder engaged in this state in the practice of public accounting from any partnership or corporation so licensed.

(5) Fees for the license as a firm and for notification of the board of the admission or withdrawal of a partner or shareholder shall be determined by the board. Fees shall be paid by the firm at the time the license application form or notice of admission or withdrawal of a partner or shareholder is filed with the board. [1986 c 295 § 8; 1983 c 234 § 9.]

18.04.205 Registration of offices—Requirements—Rules—Fees. (1) Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant, or a partnership or corporation of certified public accountants, shall register with the board under this chapter biennially.

(2) Each office shall be under the direct supervision of a resident licensee holding a license under RCW 18.04.215 who may be a sole proprietor, partner, principal shareholder, or a staff employee.

(3) The board shall by rule prescribe the procedure to be followed to register and maintain offices established in this state for the practice of public accounting.

(4) Fees for the registration of offices shall be determined by the board. Fees shall be paid by the applicant at the time the registration form is filed with the board. [1992 c 103 § 9; 1986 c 295 § 9; 1983 c 234 § 10.]

18.04.215 Biennial license—Issuance—Renewal—Continuing professional education. (1) Biennial licenses shall be issued by the board:

(a) To holders of certificates as certified public accountants who have demonstrated, in accordance with rules issued by the board, one year of public accounting experience, or such other experience or employment which the board in its discretion regards as substantially equivalent and who, if their certificate was issued more than forty-eight months prior to application under this section, submit to the board satisfactory proof of having completed an accumulation of eighty hours of continuing professional education during the twenty-four months preceding the application;

(b) To firms under RCW 18.04.195, if all offices of the firm in this state are maintained and registered as required under RCW 18.04.205.

(2) The board shall, by rule, provide for a system of certificate and license renewal. Applicants for issuance or renewal of certificates or licenses shall, at the time of filing

their applications, list with the board all states and foreign jurisdictions in which they hold or have applied for certificates, permits or licenses to practice.

(3) A certified public accountant who holds a permit or license issued by another state, and applies for a license in this state, may practice in this state from the date of filing a completed application with the board, until the board has acted upon the application provided the application is made prior to holding out as a certified public accountant in this state and no sanctions or investigations, deemed by the board to be pertinent to public accountancy, by other jurisdictions or agencies are in process.

(4) A certified public accountant shall submit to the board satisfactory proof of having completed an accumulation of eighty hours of continuing education recognized and approved by the board during the preceding two years. Failure to furnish this evidence as required shall make the certificate invalid and subject to reinstatement procedures, unless the board determines the failure to have been due to retirement, reasonable cause, or excusable neglect.

The board in its discretion may renew a certificate or license despite failure to furnish evidence of compliance with requirements of continuing professional education upon condition that the applicant follow a particular program of continuing professional education. In issuing rules and individual orders with respect to continuing professional education requirements, the board, among other considerations, may rely upon guidelines and pronouncements of recognized educational and professional associations, may prescribe course content, duration, and organization, and may take into account the accessibility of continuing education to applicants and instances of individual hardship.

(5) Fees for issuance or renewal of certificates and licenses in this state shall be determined by the board under chapter 18.04 RCW. Fees shall be paid by the applicant at the time the application form is filed with the board. The board, by rule, may provide for proration of fees for certificates and licenses issued between normal renewal dates. [1992 c 103 § 10; 1986 c 295 § 10; 1983 c 234 § 11.]

18.04.295 Revocation, suspension, or refusal to renew CPA license. The board of accountancy shall have the power to revoke, suspend, [or] refuse to renew a certificate or license, and may impose a fine in an amount not to exceed one thousand dollars plus the board's investigative and legal costs in bringing charges against a certified public accountant, or impose conditions precedent to renewal of the certificate or license of any certified public accountant for any of the following causes:

(1) Fraud or deceit in obtaining a certificate as a certified public accountant, or in obtaining a license;

(2) Dishonesty, fraud, or negligence while representing oneself as a CPA;

(3) A violation of any provision of this chapter;

(4) A violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter;

(5) Conviction of a crime or an act constituting a crime under:

(a) The laws of this state;

(b) The laws of another state, and which, if committed within this state, would have constituted a crime under the laws of this state; or

(c) Federal law;

(6) Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant by any other state for any cause other than failure to pay a fee or to meet the requirements of continuing education in the other state;

(7) Suspension or revocation of the right to practice matters relating to public accounting before any state or federal agency;

For purposes of subsections (6) and (7) of this section, a certified copy of such revocation, suspension, or refusal to renew shall be prima facie evidence;

(8) Failure to maintain compliance with the requirements for issuance, renewal, or reinstatement of the certificate or license, or to report changes to the board;

(9) Failure to cooperate with the board by:

(a) Failure to furnish any papers or documents requested or ordered by the board;

(b) Failure to furnish in writing a full and complete explanation covering the matter contained in the complaint filed with the board or the inquiry of the board;

(c) Failure to respond to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding. [1992 c 103 § 11; 1986 c 295 § 11; 1983 c 234 § 12.]

18.04.305 Revocation, suspension, or refusal to renew firm license. The board of accountancy may revoke, suspend, or refuse to renew the license issued to a firm if at any time the firm does not meet the requirements of this chapter for licensing, or for any of the causes enumerated in RCW 18.04.295, or for any of the following additional causes:

(1) The revocation or suspension of the certificate as a certified public accountant or the revocation or suspension or refusal to renew the certificate or license of any partner or shareholder; or

(2) The revocation, suspension, or refusal to renew the license or permit of the firm, or any partner or shareholder thereof, to practice public accounting in any other state or foreign jurisdiction for any cause other than failure to pay a fee or to meet the requirements of continuing professional education in the other state or foreign jurisdiction. [1992 c 103 § 12; 1986 c 295 § 12; 1983 c 234 § 13.]

18.04.320 Proceedings for refusal, revocation, or suspension of certificate or license. In the case of the refusal, revocation, or suspension of a certificate or a license by the board under the provisions of this chapter, such proceedings and any appeal therefrom shall be taken in accordance with the administrative procedure act, chapter 34.05 RCW. [1986 c 295 § 13; 1983 c 234 § 14; 1949 c 226 § 31; Rem. Supp. 1949 § 8269-38.]

18.04.335 Reissuance or modification of suspension of license or certificate. Upon application in writing and after hearing pursuant to notice, the board may:

(1) Modify the suspension of, or reissue a certificate or license to, an individual whose certificate has been revoked or suspended; or

(2) Modify the suspension of, or reissue a license to a firm whose license has been revoked, suspended, or which the board has refused to renew. [1992 c 103 § 13; 1986 c 295 § 14; 1983 c 234 § 15.]

18.04.345 Prohibited practices. (1) No person may assume or use the designation "certified public accountant" or "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant or CPA unless the person holds a valid certificate as a certified public accountant.

(2) No person may hold himself or herself out to the public and assume or use the designation "certified public accountant" or "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or devise [device] tending to indicate that the person is a certified public accountant or CPA unless the person holds a valid certificate as a certified public accountant and holds a valid license to practice under RCW 18.04.215.

(3) No firm may hold itself out to the public, or assume or use the designation "certified public accountant" or "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants or CPAs, unless the firm is licensed under RCW 18.04.195, holds a valid license to practice under RCW 18.04.215, and all offices of the firm in this state for the practice of public accounting are maintained and registered under RCW 18.04.205.

(4) No person, partnership, or corporation may hold himself, herself, or itself out to the public, or assume or use along, or in connection with his, hers, or its name, or any other name the title or designation "certified accountant," "chartered accountant," "licensed accountant," "licensed public accountant," "public accountant," or any other title or designation likely to be confused with "certified public accountant" or any of the abbreviations "CA," "LA," "LPA," or "PA," or similar abbreviations likely to be confused with "CPA." However, nothing in this chapter prohibits use of the title "accountant" by any person regardless of whether the person has been granted a certificate or holds a license under this chapter.

(5) No person may sign, affix, or associate his or her name or any trade or assumed name used by the person in his or her business to any report designated as an "audit," "review," or "compilation," unless the person holds a biennial license to practice under RCW 18.04.215 and all of the person's offices in this state for the practice of public accounting are maintained and licensed under RCW 18.04.205.

(6) No person may sign, affix, or associate a firm name to any report designated as an "audit," "review," or "compilation," unless the firm is licensed under RCW 18.04.195 and 18.04.215, and all of its offices in this state for the practice of public accounting are maintained and registered under RCW 18.04.205.

(7) No person, partnership, or corporation not holding a license to practice under RCW 18.04.215 may hold

himself, herself, or itself out to the public as an "auditor" with or without any other description or designation by use of such word on any sign, card, letterhead, or in any advertisement or directory.

(8) No person may assume or use the designation "certified public accountant" or "CPA" in conjunction with names indicating or implying that there is a partnership or corporation, if there is in fact no bona fide partnership or corporation registered under RCW 18.04.195.

(9) No person, partnership, or corporation holding a license under RCW 18.04.215 may hold himself, herself, or itself out to the public in conjunction with the designation "and Associates" or "and Assoc." unless he or she has in fact a partner or employee who holds a license under RCW 18.04.215. [1992 c 103 § 14; 1986 c 295 § 15; 1983 c 234 § 16.]

18.04.350 Practices not prohibited. (1) Nothing in this chapter prohibits any person not a certified public accountant from serving as an employee of, or as assistant to, a certified public accountant or partnership composed of certified public accountants or corporation of certified public accountants holding a valid license under RCW 18.04.215. However, the employee or assistant shall not issue any accounting or financial statement over his or her name.

(2) Nothing in this chapter prohibits a certified public accountant registered in another state, or any accountant of a foreign country holding a certificate, degree or license which permits him to practice therein from temporarily practicing in this state on professional business incident to his regular practice.

(3) Nothing in this chapter prohibits a certified public accountant, a partnership, or corporation of certified public accountants, or any of their employees from disclosing any data in confidence to other certified public accountants, quality or peer review teams, partnerships, or corporations of public accountants or to the board or any of its employees engaged in conducting quality, quality assurance, or peer reviews, or any one of their employees in connection with quality or peer reviews of that accountant's accounting and auditing practice conducted under the auspices of recognized professional associations.

(4) Nothing in this chapter prohibits a certified public accountant, a partnership, or corporation of certified public accountants, or any of their employees from disclosing any data in confidence to any employee, representative, officer, or committee member of a recognized professional association, or to the board of accountancy, or any of its employees or committees in connection with a professional investigation held under the auspices of recognized professional associations or the board of accountancy.

(5) Nothing in this chapter prohibits any officer, employee, partner, or principal of any organization:

(a) From affixing his or her signature to any statement or report in reference to the affairs of the organization with any wording designating the position, title, or office which he or she holds in the organization; or

(b) From describing himself or herself by the position, title, or office he or she holds in such organization.

(6) Nothing in this chapter prohibits any person, or partnership or corporation composed of persons not holding

a license under RCW 18.04.215 from offering or rendering to the public bookkeeping, accounting, tax services, the devising and installing of financial information systems, management advisory, or consulting services, the preparation of tax returns, or the furnishing of advice on tax matters, the preparation of financial statements, written statements describing how such financial statements were prepared, or similar services, provided that persons, partnerships, or corporations not holding a license under RCW 18.04.215 who offer or render these services do not designate any written statement as an "audit report," "review report," or "compilation report," do not issue any written statement which purports to express or disclaim an opinion on financial statements which have been audited, and do not issue any written statement which expresses assurance on financial statements which have been reviewed.

(7) Nothing in this chapter prohibits any act of or the use of any words by a public official or a public employee in the performance of his or her duties.

(8) Nothing contained in this chapter prohibits any person who holds only a valid certified public accountant certificate from assuming or using the designation "certified public accountant" or "CPA" or any other title, designation, words, letters, sign, card, or device tending to indicate the person is a certified public accountant, provided, that such person shall not hold himself or herself out to the public as engaged in the practice of public accounting unless that person holds a valid license in addition to the certificate under RCW 18.04.215. [1992 c 103 § 15; 1986 c 295 § 16; 1983 c 234 § 17; 1969 c 114 § 7; 1949 c 226 § 34; Rem. Supp. 1949 § 8269-41.]

18.04.360 Practices may be enjoined. If, in the judgment of the board any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of this chapter, the board may make application to the appropriate court for an order enjoining such acts or practices and upon a showing by the board that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate may be granted by such court. [1983 c 234 § 18; 1949 c 226 § 35; Rem. Supp. 1949 § 8269-42.]

Injunctions: Chapter 7.40 RCW.

18.04.370 Penalty. Any person who violates any provision of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than one thousand dollars, or to imprisonment for not more than six months, or to both such fine and imprisonment. Whenever the board has reason to believe that any person is violating the provisions of this chapter it shall certify the facts to the prosecuting attorney of the county in which such person resides or may be apprehended and the prosecuting attorney shall cause appropriate proceedings to be brought against such person. Nothing herein contained shall be held to in any way affect the power of the courts to grant injunctive or other relief as above provided. [1983 c 234 § 19; 1949 c 226 § 36; Rem. Supp. 1949 § 8269-43.]

18.04.380 Advertising falsely—Effect. The display or presentation by a person of a card, sign, advertisement, or other printed, engraved or written instrument or device, bearing a person's name in conjunction with the words "certified public accountant" or any abbreviation thereof, or "licensed public accountant" or any abbreviation thereof, or "public accountant" or any abbreviation thereof, shall be prima facie evidence in any action brought under this chapter that the person whose name is so displayed, caused or procured the display or presentation of the card, sign, advertisement, or other printed, engraved, or written instrument or device, and that the person is holding himself or herself out to be a certified public accountant or a public accountant holding a license to practice under this chapter. In any such action, evidence of the commission of a single act prohibited by this chapter is sufficient to justify an injunction or a conviction without evidence of a general course of conduct. [1986 c 295 § 17; 1983 c 234 § 20; 1949 c 226 § 37; Rem. Supp. 1949 § 8269-44.]

False advertising: Chapter 9.04 RCW.

18.04.390 Papers, records, schedules, etc., property of the accountant—Prohibited practices—Rights of client.

(1) In the absence of an express agreement between the certified public accountant and the client to the contrary, all statements, records, schedules, working papers, and memoranda made by a certified public accountant incident to or in the course of professional service to clients, except reports submitted by a certified public accountant to a client, are the property of the certified public accountant.

(2) No statement, record, schedule, working paper, or memorandum may be sold, transferred, or bequeathed without the consent of the client or his or her personal representative or assignee, to anyone other than one or more surviving partners, shareholders, or new partners or new shareholders of the accountant or corporation, or any combined or merged partnership or corporation, or successor in interest.

(3) A licensee shall furnish to the board or to his or her client or former client, upon request and reasonable notice:

(a) A copy of the licensee's working papers, to the extent that such working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client; and

(b) Any accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received for the client's account; the licensee may make and retain copies of such documents of the client when they form the basis for work done by him or her.

(4) Nothing in this section shall require a licensee to keep any work paper beyond the period prescribed in any other applicable statute. [1992 c 103 § 16; 1986 c 295 § 18; 1983 c 234 § 21; 1949 c 226 § 38; Rem. Supp. 1949 § 8269-45.]

18.04.405 Confidential information—Disclosure, when—Subpoenas. (1) A certified public accountant, a partnership or corporation of certified public accountants, or any of their employees shall not disclose any confidential information obtained in the course of a professional transac-

tion except with the consent of the client or former client or as disclosure may be required by law, legal process, the standards of the profession, or as disclosure of confidential information is permitted by RCW 18.04.350 (3) and (4), 18.04.295(8), 18.04.390, and this section in connection with quality, quality assurance, or peer reviews, investigations, and any proceeding under chapter 34.05 RCW.

(2) This section shall not be construed as limiting the authority of this state or of the United States or an agency of this state, the board, or of the United States to subpoena and use such information in connection with any investigation, public hearing, or other proceeding, nor shall this section be construed as prohibiting a certified public accountant whose professional competence has been challenged in a court of law or before an administrative agency from disclosing confidential information as a part of a defense to the court action or administrative proceeding.

(3) The proceedings, records, and work papers of a review committee shall be privileged and shall not be subject to discovery, subpoena, or other means of legal process or introduction into evidence in any civil action, arbitration, administrative proceeding, or state accountancy board proceeding and no member of the review committee or person who was involved in the quality review process shall be permitted or required to testify in any such civil action, arbitration, administrative proceeding, or state accountancy board proceeding as to any matter produced, presented, disclosed, or discussed during or in connection with the quality review process, or as to any findings, recommendations, evaluations, opinions, or other actions of such committees, or any members thereof. Information, documents, or records that are publicly available are not to be construed as immune from discovery or use in any civil action, arbitration, administrative proceeding, or state accountancy board proceeding merely because they were presented or considered in connection with the quality review process. [1992 c 103 § 17; 1986 c 295 § 19; 1983 c 234 § 23.]

18.04.901 Severability. 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. [1986 c 295 § 20; 1983 c 234 § 34.]

18.04.910 Effective date—1983 c 234. 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, 1983. [1983 c 234 § 35.]

18.04.911 Effective date—1986 c 295. 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, 1986, except as provided in this section. *Section 5 of this act shall not become effective if sections 90(1) and 4 of Engrossed Substitute House Bill No. 1758 become law. [1986 c 295 § 24.]

*Reviser's note: Section 5 of this act was vetoed by the governor.

18.04.920 Short title. This chapter may be cited as the public accountancy act. [1986 c 295 § 22; 1983 c 234 § 1.]

Chapter 18.06 ACUPUNCTURE

Sections

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Performance of acupuncture by physician assistants and osteopathic physicians' assistants: RCW 18.57A.070.

18.06.010 Definitions. The following terms in this chapter shall have the meanings set forth in this section unless the context clearly indicates otherwise:

(1) "Acupuncture" means a health care service based on a traditional Oriental system of medical theory utilizing Oriental diagnosis and treatment to promote health and treat organic or functional disorders by treating specific acupuncture points or meridians. Acupuncture includes but is not necessarily limited to the following techniques:

- (a) Use of acupuncture needles to stimulate acupuncture points and meridians;
- (b) Use of electrical, mechanical, or magnetic devices to stimulate acupuncture points and meridians;
- (c) Moxibustion;
- (d) Acupressure;
- (e) Cupping;
- (f) Dermal friction technique;
- (g) Infra-red;
- (h) Sonopuncture;
- (i) Laserpuncture;
- (j) Dietary advice based on traditional Oriental medical theory; and
- (k) Point injection therapy (aquapuncture).

(2) "Acupuncturist" means a person certified under this chapter.

(3) "Department" means the department of health.

(4) "Secretary" means the secretary of health or the secretary's designee. [1992 c 110 § 1; 1991 c 3 § 4; 1985 c 326 § 1.]

18.06.020 Practice without certification unlawful.

(1) No one may hold themselves out to the public as an

acupuncturist or certified acupuncturist or any derivative thereof which is intended to or is likely to lead the public to believe such a person is an acupuncturist or certified acupuncturist unless certified as provided for in this chapter.

(2) No one may use any configuration of letters after their name (including Ac.) which indicates a degree or formal training in acupuncture unless certified as provided for in this chapter.

(3) The secretary may by rule proscribe or regulate advertising and other forms of patient solicitation which are likely to mislead or deceive the public as to whether someone is certified under this chapter. [1991 c 3 § 5; 1985 c 326 § 2.]

18.06.045 Exemptions from chapter. Nothing in this chapter shall be construed to prohibit or restrict:

(1) The practice [by an individual] licensed, certified, or registered under the laws of this state and performing services within such individual's authorized scope of practice;

(2) The practice by an individual employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States;

(3) The practice by a person who is a regular student in an educational program approved by the secretary, and whose performance of services is pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor;

(4) The practice of acupuncture by any person licensed or certified to perform acupuncture in any other jurisdiction where such person is doing so in the course of regular instruction of a school of acupuncture approved by the secretary or in an educational seminar by a professional organization of acupuncture, provided that in the latter case, the practice is supervised directly by a person certified pursuant to this chapter or licensed under any other healing art whose scope of practice includes acupuncture. [1992 c 110 § 2.]

18.06.050 Applications for examination—Qualifications. Any person seeking to be examined shall present to the secretary at least forty-five days before the commencement of the examination:

(1) A written application on a form or forms provided by the secretary setting forth under affidavit such information as the secretary may require; and

(2) Proof that the candidate has:

(a) Successfully completed a course, approved by the secretary, of didactic training in basic sciences and acupuncture over a minimum period of two academic years. The training shall include such subjects as anatomy, physiology, bacteriology, biochemistry, pathology, hygiene, and a survey of western clinical sciences. The basic science classes must be equivalent to those offered at the collegiate level. However, if the applicant is a licensed chiropractor under chapter 18.25 RCW or a naturopath licensed under chapter 18.36A RCW, the requirements of this subsection relating to basic sciences may be reduced by up to one year depending upon the extent of the candidate's qualifications as determined under rules adopted by the secretary;

(b) Successfully completed a course, approved by the secretary, of clinical training in acupuncture over a minimum period of one academic year. The training shall include a minimum of: (i) Twenty-nine quarter credits of supervised practice, consisting of at least four hundred separate patient treatments involving a minimum of one hundred different patients, and (ii) one hundred hours or nine quarter credits of observation which shall include case presentation and discussion. [1991 c 3 § 7; 1987 c 447 § 15; 1985 c 326 § 5.]

Severability—1987 c 447: See RCW 18.36A.901.

18.06.060 Approval of educational programs. The department shall consider for approval any school, program, apprenticeship, or tutorial which meets the requirements outlined in this chapter and provides the training required under RCW 18.06.050. Clinical and didactic training may be approved as separate programs or as a joint program. The process for approval shall be established by the secretary by rule. [1991 c 3 § 8; 1985 c 326 § 6.]

18.06.070 Approval of applications—Examination fee. No applicant may be permitted to take an examination under this chapter until the secretary has approved his or her application and the applicant has paid an examination fee as prescribed under RCW 43.70.250. The examination fee shall accompany the application. [1991 c 3 § 9; 1985 c 326 § 7.]

18.06.080 Authority of secretary—Examination—Contents. (1) The secretary is hereby authorized and empowered to execute the provisions of this chapter and shall offer examinations in acupuncture at least twice a year at such times and places as the secretary may select. The examination shall be a written examination and may include a practical examination.

(2) The secretary shall develop or approve a certification examination in the subjects that the secretary determines are within the scope of and commensurate with the work performed by certified acupuncturists and shall include but not necessarily be limited to anatomy, physiology, microbiology, biochemistry, pathology, hygiene, and acupuncture. All application papers shall be deposited with the secretary and there retained for at least one year, when they may be destroyed.

(3) If the examination is successfully passed, the secretary shall confer on such candidate the title of Certified Acupuncturist. [1992 c 110 § 3; 1991 c 3 § 10; 1985 c 326 § 8.]

18.06.090 Fluency in English required. Before certification, each applicant shall demonstrate sufficient fluency in reading, speaking, and understanding the English language to enable the applicant to communicate with other health care providers and patients concerning health care problems and treatment. [1985 c 326 § 9.]

18.06.100 Investigation of applicant's background. Each applicant shall, as part of his or her application, furnish written consent to an investigation of his or her personal background, professional training, and experience by the

department or any person acting on its behalf. [1985 c 326 § 10.]

18.06.110 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs uncertified practice, the issuance and denial of certificates, and the disciplining of certificate holders under this chapter. The secretary shall be the disciplining authority under this chapter. [1991 c 3 § 11; 1987 c 150 § 9; 1985 c 326 § 11.]

Severability—1987 c 150: See RCW 18.122.901.

18.06.120 Annual registration—Renewal—Fee—Lapse. (1) Every person certified in acupuncture shall register with the secretary annually and pay an annual renewal registration fee determined by the secretary as provided in RCW 43.70.250 on or before the certificate holder's birth anniversary date. The certificate of the person shall be renewed for a period of one year or longer in the discretion of the secretary. A person whose practice is exclusively out-of-state or who is on sabbatical shall be granted an inactive certification status and pay a reduced registration fee. The reduced fee shall be set by the secretary under RCW 43.70.250.

(2) Any failure to register and pay the annual renewal registration fee shall render the certificate invalid. The certificate shall be reinstated upon: (a) Written application to the secretary; (b) payment to the state of a penalty fee determined by the secretary as provided in RCW 43.70.250; and (c) payment to the state of all delinquent annual certification renewal fees.

(3) Any person who fails to renew his or her certification for a period of three years shall not be entitled to renew such certification under this section. Such person, in order to obtain a certification in acupuncture in this state, shall file a new application under this chapter, along with the required fee, and shall meet examination or continuing education requirements as the secretary, by rule, provides.

(4) All fees collected under this section and RCW 18.06.070 shall be credited to the health professions account as required under RCW 43.70.320. [1992 c 110 § 4; 1991 c 3 § 12; 1985 c 326 § 12.]

18.06.130 Patient information form. The secretary shall develop a form to be used by an acupuncturist to inform the patient of the acupuncturist's scope of practice and qualifications. All certificate holders shall bring the form to the attention of the patients in whatever manner the secretary, by rule, provides. [1991 c 3 § 13; 1985 c 326 § 13.]

18.06.140 Consultation and referral to other health care practitioners. Every certified acupuncturist shall develop a written plan for consultation, emergency transfer, and referral to other health care practitioners operating within the scope of their authorized practices. The written plan shall be submitted with the initial application for certification as well as annually thereafter with the certificate renewal fee to the department. The department may withhold certification or renewal of certification if the plan fails to meet the standards contained in rules promulgated by the secretary.

When the acupuncturist sees patients with potentially serious disorders such as cardiac conditions, acute abdominal symptoms, and such other conditions, the acupuncturist shall immediately request a consultation or recent written diagnosis from a physician licensed under chapter 18.71 or 18.57 RCW. In the event that the patient with the disorder refuses to authorize such consultation or provide a recent diagnosis from such physician, acupuncture treatment shall not be continued. [1991 c 3 § 14; 1985 c 326 § 14.]

18.06.150 Violations of RCW 18.06.130 or 18.06.140—Penalty. Any person violating the provisions of RCW 18.06.130 or 18.06.140 shall be guilty of a misdemeanor and shall be punished as provided in RCW 9.92.030. [1985 c 326 § 15.]

18.06.160 Adoption of rules. The secretary shall adopt rules in the manner provided by chapter 34.05 RCW as are necessary to carry out the purposes of this chapter. [1991 c 3 § 15; 1985 c 326 § 16.]

18.06.170 Acupuncture advisory committee. (1) The acupuncture advisory committee is created. The committee shall be composed of one physician licensed under chapter 18.71 or 18.57 RCW, three acupuncturists certified under this chapter, and one public member, who does not have any financial interest in the rendering of health services.

(2) The secretary shall appoint members to staggered terms so as to provide continuity in membership. Members shall serve at the pleasure of the secretary but may not serve more than five years total. Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(3) Each member of the committee shall receive fifty dollars for each day the member attends an official meeting of the group or performs statutorily prescribed duties approved by the secretary.

(4) The committee shall meet only on the request of the secretary and consider only those matters referred to it by the secretary. [1991 c 3 § 16; 1985 c 326 § 17.]

18.06.180 Application of chapter to previously registered acupuncture assistants. All persons registered as acupuncture assistants pursuant to chapter 18.71A or 18.57A RCW on July 28, 1985, shall be certified under this chapter by the secretary without examination if they otherwise would qualify for certification under this chapter and apply for certification within one hundred twenty days of July 28, 1985. [1991 c 3 § 17; 1985 c 326 § 18.]

18.06.190 Licensure by endorsement. The secretary may certify a person without examination if such person is licensed or certified as an acupuncturist in another jurisdiction if, in the secretary's judgment, the requirements of that jurisdiction are equivalent to or greater than those of Washington state. [1991 c 3 § 18; 1985 c 326 § 19.]

18.06.200 Health care insurance benefits not mandatory. Nothing in this chapter may be construed to require that individual or group policies or contracts of an

insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person registered or certified under this chapter. [1985 c 326 § 20.]

18.06.210 Prescription of drugs and practice of medicine not authorized. This chapter shall not be construed as permitting the administration or prescription of drugs or in any way infringing upon the practice of medicine and surgery as defined in chapter 18.71 or 18.57 RCW, except as authorized in this chapter. [1985 c 326 § 21.]

Chapter 18.08 ARCHITECTS

Sections

- 18.08.150 Application for examination—Fee.
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- 18.08.220 Reinstatement of certificate—Replacement of lost or destroyed certificate, charge.
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- 18.08.900 Severability—1985 c 37.

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Safety requirements as to doors, public buildings, and places of entertainment: RCW 70.54.070.

18.08.150 Application for examination—Fee.

Reviser's note: RCW 18.08.150 was both amended and repealed during the 1985 legislative sessions, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.08.190 Expiration of certificate—Renewal—Fee—Withdrawal of registrant.

Reviser's note: RCW 18.08.190 was both amended and repealed during the 1985 legislative sessions, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.08.220 Reinstatement of certificate—Replacement of lost or destroyed certificate, charge.

Reviser's note: RCW 18.08.220 was both amended and repealed during the 1985 legislative sessions, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.08.235 Legislative findings—1985 c 37. The legislature finds that in order to safeguard life, health, and property and to promote the public welfare, it is necessary to regulate the practice of architecture. [1985 c 37 § 1.]

18.08.240 Architects' license account. There is established in the state treasury the architects' license account, into which all fees paid pursuant to this chapter shall be paid. [1991 sp.s. c 13 § 2; 1985 c 57 § 4; 1959 c 323 § 15.]

Effective dates—1991 sp.s. c 13: "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.

(1) On or before June 30, 1991, the balances remaining in the local jail improvement and construction account, the 1979 handicapped facilities construction account, the salmon enhancement construction account, the community college capital improvements accounts, and the fisheries capital projects account shall be transferred to the state building construction account and the balance remaining in the Washington State University construction account shall be transferred to the Washington State University building account.

(2) Except for subsection (1) of this section, sections 1 through 47, 49 through 64, 66 through 108, and 110 through 122 of this act shall take effect July 1, 1991, but shall not be effective for earnings on balances prior to July 1, 1991, regardless of when a distribution is made.

(3) Sections 48 and 109 of this act shall take effect September 1, 1991.

(4) Section 65 of this act shall take effect January 1, 1992.

(5) *Sections 123 through 139 of this act shall take effect July 1, 1993, and shall be effective for earnings on balances beginning July 1, 1993, regardless of when a distribution is made." [1991 sp.s. c 13 § 141.]

*Reviser's note: "Sections 123 through 139 of this act" [1991 sp.s. c 13] were vetoed by the governor.

Severability—1991 sp.s. c 13: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 13 § 140.]

Effective date—1985 c 57: See note following RCW 18.04.105.

18.08.310 Registration or authorization to practice required. It is unlawful for any person to practice or offer to practice in this state, architecture, or to use in connection with his or her name or otherwise assume, use, or advertise any title or description including the word "architect," "architecture," "architectural," or language tending to imply that he or she is an architect, unless the person is registered or authorized to practice in the state of Washington under this chapter. The provisions of this section shall not affect the use of the words "architect," "architecture," or "architectural" where a person does not practice or offer to practice architecture. [1985 c 37 § 2.]

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

(1) "Administration of the construction contract" means the periodic observation of materials and work to observe the general compliance with the construction contract documents, and does not include responsibility for supervising construction methods and processes, site conditions, equipment operations, personnel, or safety on the work site.

(2) "Architect" means an individual who is registered under this chapter to practice architecture.

(3) "Board" means the state board of registration for architects.

(4) "Certificate of authorization" means a certificate issued by the director to a corporation or partnership that authorizes the entity to practice architecture.

(5) "Certificate of registration" means the certificate issued by the director to newly registered architects.

(6) "Department" means the department of licensing.

(7) "Director" means the director of licensing.

(8) "Engineer" means an individual who is registered as an engineer under chapter 18.43 RCW.

(9) "Person" means any individual, partnership, professional service corporation, corporation, joint stock association, joint venture, or any other entity authorized to do business in the state.

(10) "Practice of architecture" means the rendering of services in connection with the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction of alterations or additions to the structures, including but not specifically limited to schematic design, design development, preparation of construction contract documents, and administration of the construction contract.

(11) "Registered" means holding a currently valid certificate of registration or certificate of authorization issued by the director authorizing the practice of architecture.

(12) "Structure" means any construction consisting of load-bearing members such as the foundation, roof, floors, walls, columns, girders, and beams or a combination of any number of these parts, with or without other parts or appurtenances. [1985 c 37 § 3.]

18.08.330 Board of registration—Appointment, terms, vacancies, removal—Officers—Travel expenses. There is hereby created a state board of registration for architects consisting of seven members who shall be appointed by the governor. Six members shall be registered architects who are residents of the state and have at least eight years' experience in the practice of architecture as registered architects in responsible charge of architectural work or responsible charge of architectural teaching. One member shall be a public member, who is not and has never been a registered architect and who does not employ and is not employed by or professionally or financially associated with an architect.

The terms of each newly appointed member shall be six years. The members of the board of registration for architects serving on July 28, 1985, shall serve out the remainders of their existing five-year terms. The term of the public member shall coincide with the term of an architect.

Every member of the board shall receive a certificate of appointment from the governor. On the expiration of the term of each member, the governor shall appoint a successor to serve for a term of six years or until the next successor has been appointed.

The governor may remove any member of the board for cause. Vacancies in the board for any reason shall be filled by appointment for the unexpired term.

The board shall elect a chairman, a vice-chairman, and a secretary. The secretary may delegate his or her authority to the executive secretary.

Members of the board 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. [1985 c 37 § 4.]

18.08.340 Board of registration—Rules—Executive secretary—Staff support—Investigations—Subpoenas.

(1) The board may adopt such rules under chapter 34.05 RCW as are necessary for the proper performance of its duties under this chapter.

(2) The director shall employ an executive secretary subject to approval by the board. The director shall provide such secretarial and administrative support as may be required to carry out the purposes of this chapter.

(3) The board or the director may conduct investigations concerning alleged violations of this chapter. In making such investigations and in all proceedings of the board under this chapter, the chairman or any member of the board acting in place of the chairman may administer oaths or affirmations to witnesses appearing before the board, subpoena witnesses and compel their attendance, and require the production of books, records, papers, and documents. If any person refuses to obey a subpoena so issued, or refuses to testify or produce any books, records, papers, or documents so required to be produced, the board may present its petition in the superior court of Thurston county or the county in which the person resides, setting forth the facts, and thereupon the court shall, in a proper case, enter a suitable order compelling compliance with this chapter and imposing such other terms and conditions as the court finds equitable. [1985 c 37 § 5.]

18.08.350 Certificate of registration—Application—Qualifications.

(1) A certificate of registration shall be granted by the director to all qualified applicants who are certified by the board as having passed the required examination and as having given satisfactory proof of completion of the required experience.

(2) Applications for examination shall be filed as the board prescribes by rule. The application and examination fees shall be determined by the director under RCW 43.24.086.

(3) An applicant for registration as an architect shall be of a good moral character, at least eighteen years of age, and shall:

(a) Have an accredited architectural degree and three years' practical architectural work experience approved by the board. At least two years' work experience must be under the direct supervision of an architect; or

(b) Have eight years' practical architectural work experience approved by the board. Each year spent in an accredited architectural program approved by the board shall be considered one year of practical experience. At least four years' practical work experience shall be under the direct supervision of an architect; or

(c) Be a person who has been designing buildings as a principal activity for eight years, or has an equivalent combination of education and experience, but who was not registered under chapter 323, Laws of 1959, as amended, as it existed before July 28, 1985, provided that application is made within four years after July 28, 1985. Nothing in this

chapter prevents such a person from designing buildings for four years after July 28, 1985, or the five-year period allowed for completion of the examination process, after that person has applied for registration. A person who has been designing buildings and is qualified under this subsection shall, upon application to the board of registration for architects, be allowed to take the examination for architect registration on an equal basis with other applicants. [1985 c 37 § 6.]

18.08.360 Examinations. (1) The examination for an architect's certificate of registration shall be held at least annually at such time and place as the board determines.

(2) The board shall determine the content, scope, and grading process of the examination. The board may adopt an appropriate national examination and grading procedure.

(3) Applicants who fail to pass any section of the examination shall be permitted to retake the parts failed as prescribed by the board. If the entire examination is not successfully completed within five years, a retake of the entire examination shall be required. [1985 c 37 § 7.]

18.08.370 Issuance of certificates of registration—

Seal, use. (1) The director shall issue a certificate of registration to any applicant who has, to the satisfaction of the board, met all the requirements for registration upon payment of the registration fee as provided in this chapter. All certificates of registration shall show the full name of the registrant, have the registration number, and shall be signed by the chairman of the board and by the director. The issuance of a certificate of registration by the director is prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered architect.

(2) Each registrant shall obtain a seal of the design authorized by the board bearing the architect's name, registration number, the legend "Registered Architect," and the name of this state. Drawings prepared by the registrant shall be sealed and signed by the registrant when filed with public authorities. It is unlawful to seal and sign a document after a registrant's certificate of registration or authorization has expired, been revoked, or is suspended. [1985 c 37 § 8.]

18.08.380 Reinstatement of revoked certificates of registration—Replacement of lost, destroyed, or mutilated certificates.

(1) The director may reinstate a certificate of registration to any person or a certificate of authorization to any corporation or joint stock association whose certificate has been revoked, if a majority of the board vote in favor of such reissuance, if the board finds that the circumstances or conditions that brought about the revocation are not likely to recur and that the person, corporation, or joint stockholders' association is then sufficiently trustworthy and reliable at the time reinstatement is sought, and that the best interests of the public will be served by reinstatement of the registration.

(2) A new certificate of registration or certificate of authorization to replace any certificate lost, destroyed, or mutilated may be issued by the director. A charge, determined as provided in RCW 43.24.086, shall be made for such issuance. [1985 c 37 § 9.]

18.08.390 Registration of prior registrants. All persons registered as architects under chapter 205, Laws of 1919, or registered as architects under chapter 323, Laws of 1959, as amended, before July 28, 1985, shall be registered as architects without examination. [1985 c 37 § 10.]

18.08.400 Registration of out-of-state registrants. The director may, upon receipt of the current registration fee, grant a certificate of registration to an applicant who is a registered architect in another state or territory of the United States, the District of Columbia, or another country, if that individual's qualifications and experience are determined by the board to be equivalent to the qualifications and experience required of a person registered under RCW 18.08.350. [1985 c 37 § 11.]

18.08.410 Application of chapter. This chapter shall not affect or prevent:

(1) The practice of naval architecture, landscape architecture, engineering, space planning, interior design, or any legally recognized profession or trade by persons not registered as architects;

(2) Drafters, clerks, project managers, superintendents, and other employees of architects, engineers, naval architects, or landscape architects from acting under the instructions, control, or supervision of their employers;

(3) The construction, alteration, or supervision of construction of buildings or structures by contractors or superintendents employed by contractors or the preparation of shop drawings in connection therewith;

(4) Owners or contractors from engaging persons who are not architects to observe and supervise construction of a project;

(5) Any person from doing design work including preparing construction contract documents and administration of the construction contract for the erection, enlargement, repair, or alteration of a structure or any appurtenance to a structure, if the structure is to be used for a residential building of up to and including four dwelling units or a farm building or is a structure used in connection with or auxiliary to such residential building or farm building such as a garage, barn, shed, or shelter for animals or machinery;

(6) Any person from doing design work including preparing construction contract documents and administering the contract for construction, erection, enlargement, alteration, or repairs of or to a building of any occupancy up to four thousand square feet of construction;

(7) Design-build construction by registered general contractors if the structural design services are performed by a registered engineer;

(8) Any person from designing buildings or doing other design work for any structure prior to the time of filing for a building permit; or

(9) Any person from designing buildings or doing other design work for structures larger than those exempted under subsections (5) and (6) of this section, if the plans, which may include such design work, are stamped by a registered engineer or architect. [1985 c 37 § 12.]

18.08.420 Organization as corporation or joint stock association—Procedure—Requirements. (1) An

architect or architects may organize a corporation formed either as a business corporation under the provisions of Title 23B RCW or as a professional corporation under the provisions of chapter 18.100 RCW. For an architect or architects to practice architecture through a corporation or joint stock association organized by any person under Title 23B RCW, the corporation or joint stock association shall file with the board:

(a) The application for certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether the corporation is qualified under this chapter to practice architecture in this state;

(b) Its notices of incorporation and bylaws and a certified copy of a resolution of the board of directors of the corporation that designates individuals registered under this chapter as responsible for the practice of architecture by the corporation in this state and that provides that full authority to make all final architectural decisions on behalf of the corporation with respect to work performed by the corporation in this state shall be granted and delegated by the board of directors to the individuals designated in the resolution. The filing of the resolution shall not relieve the corporation of any responsibility or liability imposed upon it by law or by contract; and

(c) A designation in writing setting forth the name or names of the person or persons registered under this chapter who are responsible for the architecture of the firm. If there is a change in the person or persons responsible for the architecture of the firm, the changes shall be designated in writing and filed with the board within thirty days after the effective date of the changes.

(2) Upon the filing with the board of the application for certificate of authorization, the certified copy of the resolution, and the information specified in subsection (1) of this section, the board shall authorize the director to issue to the corporation a certificate of authorization to practice architecture in this state upon a determination by the board that:

(a) The bylaws of the corporation contain provisions that all architectural decisions pertaining to any project or architectural activities in this state shall be made by the specified architects responsible for the project or architectural activities, or other responsible architects under the direction or supervision of the architects responsible for the project or architectural activities;

(b) The applicant corporation has the ability to provide, through qualified personnel, professional services or creative work requiring architectural experience, and with respect to the architectural services that the corporation undertakes or offers to undertake, the personnel have the ability to apply special knowledge to the professional services or creative work such as consultation, investigation, evaluation, planning, design, and administration of the construction contract in connection with any public or private structures, buildings, equipment, processes, works, or projects;

(c) The application for certificate of authorization contains the professional records of the designated person or persons who are responsible;

(d) The application for certificate of authorization states the experience of the corporation, if any, in furnishing architectural services during the preceding five-year period;

(e) The applicant corporation meets such other requirements related to professional competence in the furnishing of architectural services as may be established and promulgated by the board in furtherance of the purposes of this chapter; and

(f) The applicant corporation is possessed of the ability and competence to furnish architectural services in the public interest.

(3) Upon recommendation of the board, the director shall refuse to issue or may suspend or revoke a certificate of authorization to a corporation if the board finds that any of the officers, directors, incorporators, or the stockholders holding a majority of stock of the corporation have committed an act prohibited under RCW 18.08.440 or have been found personally responsible for misconduct under subsection (6) or (7) of this section.

(4) In the event a corporation, organized solely by a group of architects each registered under this chapter, applies for a certificate of authorization, the board may, in its discretion, grant a certificate of authorization to that corporation based on a review of the professional records of such incorporators, in lieu of the required qualifications set forth in subsections (1) and (2) of this section. In the event the ownership of such corporation is altered, the corporation shall apply for a revised certificate of authorization, based upon the professional records of the owners if exclusively architects, under the qualifications required by subsections (1) and (2) of this section.

(5) Any corporation authorized to practice architecture under this chapter, together with its directors and officers for their own individual acts, are responsible to the same degree as an individual registered architect and shall conduct their business without misconduct or malpractice in the practice of architecture as defined in this chapter.

(6) Any corporation that has been certified under this chapter and has engaged in the practice of architecture shall have its certificate of authorization either suspended or revoked by the board if, after a proper hearing, the board finds that the corporation has committed misconduct or malpractice under RCW 18.08.440. In such a case, any individual architect registered under this chapter who is involved in such misconduct is also subject to disciplinary measures provided in this chapter.

(7) All plans, specifications, designs, and reports when issued in connection with work performed by a corporation under its certificate of authorization shall be prepared by or under the direction of the designated architects and shall be signed by and stamped with the official seal of the designated architects in the corporation authorized under this chapter.

(8) For each certificate of authorization issued under this section there shall be paid a certification fee and an annual certification renewal fee as prescribed by the director under RCW 43.24.086.

(9) This chapter shall not affect the practice of architecture as a professional service corporation under chapter 18.100 RCW. [1991 c 72 § 2; 1985 c 37 § 13.]

18.08.430 Renewal of certificates of registration—Withdrawal. (1) The renewal date for certificates of registration shall be set by the director in accordance with RCW 43.24.086. Registrants who fail to pay the renewal fee

within thirty days of the due date shall pay all delinquent fees plus a penalty fee equal to one-third of the renewal fee. A registrant who fails to pay a renewal fee for a period of five years may be reinstated under such circumstances as the board determines. The renewal and penalty fees and the frequency of renewal assessment shall be authorized under this chapter. Renewal date for certificates of authorization shall be the anniversary of the date of authorization.

(2) Any registrant in good standing may withdraw from the practice of architecture by giving written notice to the director, and may within five years thereafter resume active practice upon payment of the then-current renewal fee. A registrant may be reinstated after a withdrawal of more than five years under such circumstances as the board determines. [1985 c 37 § 14.]

18.08.440 Suspension, revocation, or refusal to issue or renew certificate—Grounds—Penalties. The board shall have the power to impose fines on any person practicing architecture in an amount not to exceed one thousand dollars for each offense and may reprimand a registrant and may suspend, revoke, or refuse to issue or renew a certificate of registration or authorization to practice architecture in this state upon the following grounds:

(1) Offering to pay, paying, or accepting, either directly or indirectly, any substantial gift, bribe, or other consideration to influence the award of professional work;

(2) Being wilfully untruthful or deceptive in any professional report, statement, or testimony;

(3) Having conviction in any court of any offense involving moral turpitude or fraud;

(4) Having a financial interest in the bidding for or the performance of a contract to supply labor or materials for or to construct a project for which employed or retained as an architect except with the consent of the client or employer after disclosure of such facts; or allowing an interest in any business to affect a decision regarding architectural work for which retained, employed, or called upon to perform;

(5) Signing or permitting a seal to be affixed to any drawings or specifications that were not prepared or reviewed by the architect or under the architect's personal supervision by persons subject to the architect's direction and control;

(6) Aiding or abetting any person not authorized to practice architecture under this chapter;

(7) Wilfully evading or trying to evade any law, ordinance, code, or regulation governing construction of buildings; or

(8) Violating any provision of this chapter or any regulation adopted under it. [1985 c 37 § 15.]

18.08.450 Revocation or suspension of certificate—Discipline—Board's authority—Procedure. (1) The board may revoke or suspend a certificate of registration or a certificate of authorization to practice architecture in this state, or otherwise discipline a registrant or person authorized to practice architecture, as provided in this chapter.

(2) Proceedings for the revocation, suspension, refusal to issue, or imposition of a monetary fine may be initiated by the board on its own motion based on the complaint of any person. A copy of the charge or charges, along with a

notice of the time and place of the hearing before the board shall be served on the registrant as provided for in chapter 34.05 RCW.

(3) All procedures related to hearings on such charges shall be in accordance with provisions relating to adjudicative proceedings in chapter 34.05 RCW, the Administrative Procedure Act.

(4) If, after such hearing, the majority of the board vote in favor of finding the registrant guilty, the board shall take such disciplinary action as it deems appropriate under this chapter.

(5) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law. [1989 c 175 § 59; 1985 c 37 § 16.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.08.460 Violation of chapter—Penalties—Enforcement—Injunctions—Persons who may initiate proceedings. Any person who violates any provision of this chapter or any rule promulgated under it is guilty of a misdemeanor and may also be subject to a civil penalty in an amount not to exceed one thousand dollars for each offense.

(1) It shall be the duty of all officers in the state or any political subdivision thereof to enforce this chapter. Any public officer may initiate an action before the board to enforce the provisions of this chapter.

(2) The board may apply for relief by injunction without bond to restrain a person from committing any act that is prohibited by this chapter. In such proceedings, it is not necessary to allege or prove either that an adequate remedy at law does not exist or that substantial irreparable damage would result from the continued violation thereof. The members of the board shall not be personally liable for their actions in any such proceeding or in any other proceeding instituted by the board under this chapter. The board in any proper case shall cause prosecution to be instituted in any county or counties where any violation of this chapter occurs, and shall aid the prosecution of the violator.

(3) No person practicing architecture is entitled to maintain a proceeding in any court of this state relating to services in the practice of architecture unless it is alleged and proved that the person was registered or authorized under this chapter to practice or offer to practice architecture at the time the architecture services were offered or provided. [1985 c 37 § 17.]

18.08.900 Severability—1985 c 37. 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 37 § 20.]

Chapter 18.09

ATTORNEYS AT LAW

See chapter 2.44 RCW, attorneys at law.

Chapter 18.11 AUCTIONEERS

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- 18.11.903 Effective date—1986 c 324.
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*Limitations on power of cities and towns to regulate auctioneers: RCW 35.21.690.
counties to regulate auctioneers: RCW 36.71.070.*

Mock auctions: RCW 9.45.070.

Motor vehicle auction companies, place of business: RCW 46.70.023.

Pawnbrokers and second-hand dealers: Chapter 19.60 RCW.

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

(1) "Auctioneer" means an individual who calls bids at an auction.

(2) "Auction" means a transaction conducted by means of exchanges between an auctioneer and the members of his or her audience, constituting a series of invitations for offers for the purchase of goods or real property made by the auctioneer, offers by members of the audience, and the acceptance of the highest or most favorable offer.

(3) "Auction mart" means any fixed or established place designed, intended, or used for the conduct of auctions.

(4) "Auction company" means a sole proprietorship, partnership, corporation, or other legal or commercial entity that sells or offers to sell goods or real estate at auction or arranges, sponsors, or manages auctions. The term "auction company" shall exclude any sole proprietorship owned by an auctioneer licensed under this chapter whose gross annual sales do not exceed twenty-five thousand dollars.

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

(6) "Director" means the director of licensing.

(7) "Person" means an individual, partnership, association, corporation, or any other form of business enterprise.

(8) "Goods" mean wares, chattels, merchandise, or personal property owned or consigned, which may be lawfully kept or offered for sale.

(9) "License" means state authority to operate as an auctioneer or auction company, which authority is conferred by issuance of a certificate of registration subject to annual renewal.

(10) "Licensee" means an auctioneer or auction company registered under this chapter. [1986 c 324 § 2; 1982 c 205 § 5.]

18.11.060 Administration of chapter—Fees. This chapter shall be administered under chapter 43.24 RCW. The director shall set registration and renewal fees in accordance with RCW 43.24.086. If an auctioneer or auction company does not renew a license before it expires, the renewal shall be subject to payment of a penalty fee. [1986 c 324 § 3; 1982 c 205 § 2.]

18.11.070 License required—Exceptions. (1) It is unlawful for any person to act as an auctioneer or for an auction company to engage in any business in this state without a license.

(2) This chapter does not apply to:

(a) An auction of goods conducted by an individual who personally owns those goods and who did not acquire those goods for resale;

(b) An auction conducted by or under the direction of a public authority;

(c) An auction held under judicial order in the settlement of a decedent's estate;

(d) An auction which is required by law to be at auction;

(e) An auction conducted by or on behalf of a political organization or a charitable corporation or association if the person conducting the sale receives no compensation;

(f) An auction of livestock or agricultural products which is conducted under chapter 16.65 or 20.01 RCW. Auctions not regulated under chapter 16.65 or 20.01 RCW shall be fully subject to the provisions of this chapter;

(g) An auction held under chapter 19.150 RCW; or

(h) An auction of fur pelts conducted by any cooperative association organized under chapter 23.86 RCW or its wholly owned subsidiary. In order to qualify for this exemption, the fur pelts must be from members of the association. However, the association, without loss of the exemption, may auction pelts that it purchased from non-members for the purpose of completing lots or orders, so long as the purchased pelts do not exceed fifteen percent of the total pelts auctioned. [1989 c 307 § 43; 1988 c 240 § 19; 1986 c 324 § 4; 1982 c 205 § 6.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Application—1989 c 307: See RCW 23.86.900.

Severability—1988 c 240: See RCW 19.150.904.

18.11.085 Auctioneer certificate of registration—Requirements. Every individual, before acting as an auctioneer, shall obtain an auctioneer certificate of registration. To be licensed as an auctioneer, an individual shall meet all of the following requirements:

(1) Be at least eighteen years of age or sponsored by a licensed auctioneer.

(2) File with the department a completed application on a form prescribed by the director.

(3) Show that the proper tax registration certificate required by RCW 82.32.030 has been obtained from the department of revenue.

(4) Pay the auctioneer registration fee required under the agency rules adopted pursuant to this chapter.

(5) Except as otherwise provided under RCW 18.11.121, file with the department an auctioneer surety bond in the amount and form required by RCW 18.11.121 and the agency rules adopted pursuant to this chapter.

(6) Have no disqualifications under RCW 18.11.160. [1987 c 336 § 1; 1986 c 324 § 5.]

18.11.095 Auction company certificate of registration—Requirements. Every person, before operating an auction company as defined in RCW 18.11.050, shall obtain an auction company certificate of registration.

(1) Except as provided in subsection (2) of this section, to be licensed as an auction company, a person shall meet all of the following requirements:

(a) File with the department a completed application on a form prescribed by the director.

(b) Sign a notarized statement included on the application form that all auctioneers hired by the auction company to do business in the state shall be properly registered under this chapter.

(c) Show that the proper tax registration certificate required by RCW 82.32.030 has been obtained from the department of revenue.

(d) Pay the auction company registration fee required under the agency rules adopted pursuant to this chapter.

(e) File with the department an auction company surety bond in the amount and form required by RCW 18.11.121 and the agency rules adopted pursuant to this chapter.

(f) Have no disqualifications under RCW 18.11.160.

(2) An auction company shall not be charged a license fee if it is a sole proprietorship or a partnership owned by an auctioneer or auctioneers, each of whom is licensed under this chapter, and if it has in effect a surety bond or bonds or other security approved by the director in the amount that would otherwise be required for an auction company to be granted or to retain a license under RCW 18.11.121. [1987 c 336 § 5; 1986 c 324 § 6.]

18.11.100 Nonresident auctioneers and auction companies. (1) Nonresident auctioneers and auction companies are required to comply with the provisions of this chapter and the rules of the department as a condition of conducting business in the state.

(2) The application of a nonresident under this chapter shall constitute the appointment of the secretary of state as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of a transaction or operation connected with or incidental to the business of an auctioneer or an auction company. [1986 c 324 § 7; 1985 c 7 § 9; 1982 c 205 § 8.]

18.11.121 Surety bond or security required. (1) Except as provided in this section, each auctioneer and each auction company shall as a condition to the granting and

retention of a license have on file with the department an approved surety bond or other security in lieu of a bond. However, if an auction company is a sole proprietorship or a partnership and has on file with the department a surety bond or other security approved by the director in the amount that would otherwise be required for an auction company to be granted or to retain a license under this section, then no separate bond or bonds shall be required for the sole proprietor or any individual partner to act as an auctioneer for the sole proprietorship or partnership. The bond or other security of an auctioneer shall be in the amount of five thousand dollars.

(2) The bond or other security of an auction company shall be in an amount not less than five thousand dollars and not more than twenty-five thousand dollars. The amount shall be based on the value of the goods and real estate sold at auctions conducted, supervised, arranged, sponsored, or managed by the auction company during the previous calendar year or, for a new auction company, the estimated value of the goods and real estate to be sold at auction during the current calendar year. The director shall establish by rule the procedures to be used for determining the amount of auction company bonds or other security.

(3) In lieu of a surety bond, an auctioneer or auction company may deposit with the department any of the following:

- (a) Savings accounts assigned to the director;
- (b) Certificates of deposit payable to the director;
- (c) Investment certificates or share accounts assigned to the director; or
- (d) Any other security acceptable to the director.

All obligations and remedies relating to surety bonds authorized by this section shall apply to deposits filed with the director.

(4) Each bond shall comply with all of the following:

- (a) Be executed by the person seeking the license as principal and by a corporate surety licensed to do business in the state;
- (b) Be payable to the state;
- (c) Be conditioned on compliance with all provisions of this chapter and the agency rules adopted pursuant to this chapter, including payment of any administrative fines assessed against the licensee; and
- (d) Remain in effect for one year after expiration, revocation, or suspension of the license.

(5) If any licensee fails or is alleged to have failed to comply with the provisions of this chapter or the agency rules adopted pursuant to this chapter, the director may hold a hearing in accordance with chapter 34.05 RCW, determine those persons who are proven claimants under the bond, and, if appropriate, distribute the bond proceeds to the proven claimants. The state or an injured person may also bring an action against the bond in superior court. The liability of the surety shall be only for actual damages and shall not exceed the amount of the bond.

(6) Damages that exceed the amount of the bond may be remedied by actions against the auctioneer or the auction company under RCW 18.11.260 or other available remedies at law. [1987 c 336 § 2; 1986 c 324 § 8.]

18.11.130 Written contract required—Penalty. No goods or real estate shall be sold at auction until the auctioneer or auction company has entered into a written contract or agreement with the owner or consignor in duplicate which contains the terms and conditions upon which the licensee receives or accepts the property for sale at auction.

A person who violates this section shall be subject to an administrative fine in a sum not exceeding five hundred dollars for each violation. [1986 c 324 § 9; 1982 c 205 § 11.]

18.11.140 Written records required—Penalty. Every person engaged in the business of selling goods or real estate at auction shall keep written records for a period of three years available for inspection which indicate clearly the name and address of the owner or consignor of the goods or real estate, the terms of acceptance and sale, and a copy of the signed written contract required by RCW 18.11.130. A person who violates this section shall be subject to an administrative fine in a sum not exceeding five hundred dollars for each violation. [1986 c 324 § 10; 1982 c 205 § 12.]

18.11.150 Display of certificate of registration or renewal card required—Penalty. All auctioneers and auction companies shall have their certificates of registration prominently displayed in their offices and the current renewal card or a facsimile available on demand at all auctions conducted or supervised by the licensee.

A person who violates this section shall be subject to an administrative fine in a sum not exceeding one hundred dollars for each violation. [1986 c 324 § 11; 1982 c 205 § 13.]

18.11.160 Denial, suspension, or revocation of license—Grounds. (1) No license shall be issued by the department to any person who has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy, fraud, theft, receiving stolen goods, unlawful issuance of checks or drafts, or other similar offense, or to any partnership of which the person is a member, or to any association or corporation of which the person is an officer or in which as a stockholder the person has or exercises a controlling interest either directly or indirectly.

(2) The following shall be grounds for denial, suspension, or revocation of a license, or imposition of an administrative fine by the department:

- (a) Misrepresentation or concealment of material facts in obtaining a license;
- (b) Underreporting to the department of sales figures so that the auctioneer or auction company surety bond is in a lower amount than required by law;
- (c) Revocation of a license by another state;
- (d) Misleading or false advertising;
- (e) A pattern of substantial misrepresentations related to auctioneering or auction company business;
- (f) Failure to cooperate with the department in any investigation or disciplinary action;
- (g) Nonpayment of an administrative fine prior to renewal of a license;

(h) Aiding an unlicensed person to practice as an auctioneer or as an auction company; and

(i) Any other violations of this chapter. [1986 c 324 § 12; 1982 c 205 § 14.]

18.11.170 Unauthorized practice—Penalties. Any auctioneer and any auction company that conducts business within this state without a license or after the suspension or revocation of his or her license shall be fined by the department five hundred dollars for the first offense and one thousand dollars for the second or subsequent offense. [1986 c 324 § 13; 1982 c 205 § 15.]

18.11.180 Compensation of nonlicensed person by licensee grounds for license suspension or revocation—Penalty. It shall be unlawful for a licensed auctioneer or licensed auction company to pay compensation in money or otherwise to anyone not licensed under this chapter to render any service or to do any act forbidden under this chapter to be rendered or performed except by licensees. The department shall fine any person who violates this section five hundred dollars for the first offense and one thousand dollars for the second or subsequent offense. Furthermore, the violation of this section by any licensee shall be, in the discretion of the department, sufficient cause for license suspension or revocation. [1986 c 324 § 14; 1982 c 205 § 16.]

18.11.190 Actions for compensation for services. No action or suit may be instituted in any court of this state by any person, partnership, association, or corporation not licensed as an auctioneer and as an auction company to recover compensation for an act done or service rendered which is prohibited under this chapter. [1986 c 324 § 15; 1982 c 205 § 17.]

18.11.200 Director—Authority to adopt rules. The director shall adopt rules for the purpose of carrying out and developing this chapter, including rules governing the conduct of investigations and inspections and the imposition of administrative penalties. [1986 c 324 § 16; 1982 c 205 § 18.]

18.11.205 Director—Authority to impose administrative fines. The director shall impose and collect the administrative fines authorized by this chapter. Any administrative fine imposed under this chapter or the agency rules adopted pursuant to this chapter may be appealed under chapter 34.05 RCW, the administrative procedure act. Assessment of an administrative fine shall not preclude the initiation of any disciplinary, civil, or criminal action for the same or similar violations. [1986 c 324 § 17.]

18.11.210 Newspaper advertisements—Auctioneer's or auction company's name and license number required—Penalty. All newspaper advertising regarding auctions that is purchased by an auctioneer or an auction company licensed under this chapter shall include the auctioneer's or auction company's name and license number. Any auctioneer or auction company that violates this section

is subject to an administrative fine of one hundred dollars per violation. [1986 c 324 § 19; 1984 c 189 § 1.]

18.11.220 Rights of clients. The client of an auctioneer or auction company has a right to (1) an accounting for any money that the auctioneer or auction company receives from the sale of the client's goods, (2) payment of all money due to the client within twenty-one calendar days unless the parties have mutually agreed in writing to another time of payment, and (3) bring an action against the surety bond or other security filed in lieu of the surety bond for any violation of this chapter or the rules adopted pursuant to this chapter. [1987 c 336 § 3; 1986 c 324 § 20.]

18.11.230 Trust account required for client funds. Auction proceeds due to a client that are received by the auctioneer or auction company and not paid to the client within twenty-four hours of the sale shall be deposited no later than the next business day by the auctioneer or auction company in a trust account for clients in a bank, savings and loan association, mutual savings bank, or licensed escrow agent located in the state. The auctioneer or auction company shall draw on the trust account only to pay proceeds to clients, or such other persons who are legally entitled to such proceeds, and to obtain the sums due to the auctioneer or auction company for services as set out in the written contract required under RCW 18.11.130. Funds in the trust account shall not be subject to the debt of the auctioneer or auction company and shall not be used for personal reasons or other business reasons. [1987 c 336 § 4; 1986 c 324 § 21.]

18.11.240 Bidding—Prohibited practices—Penalty. The following requirements shall apply to bidding at auctions:

(1) An auctioneer conducting an auction and an auction company where an auction is being held shall not bid on or offer to buy any goods or real property at the auction unless the auctioneer or the auction company discloses the name of the person on whose behalf the bid or offer is being made.

(2) An auctioneer and an auction company shall not use any method of bidding at an auction that will allow goods or real property to be purchased in an undisclosed manner on behalf of the auctioneer or auction company.

(3) At a public auction conducted or supervised by an auctioneer or auction company, the auctioneer or auction company shall not fictitiously raise any bid, knowingly permit any person to make a fictitious bid, or employ or use another person to act as a bidder or buyer.

(4) All goods or real property offered for sale at an auction shall be subject to a reserve or a confirmation from the owner or consignor unless otherwise indicated by the auctioneer or auction company. Except as provided in this subsection, an auctioneer or auction company shall not use any method of bidding at an auction that allows the auctioneer or auction company to avoid selling any property offered for sale at auction.

(5) A licensee who violates any provision of this section shall be subject to an administrative fine in a sum not exceeding five hundred dollars for each violation. [1986 c 324 § 22.]

18.11.250 Limitation on real estate auctions.

Auctioneers and auction companies may call for bids on real estate but only persons licensed under chapter 18.85 RCW may perform activities regulated under that chapter. [1986 c 324 § 23.]

18.11.260 Application of consumer protection act.

A violation of this chapter is hereby declared to affect the public interest and to offend public policy. Any violation, act, or practice by an auctioneer or auction company which is unfair or deceptive, shall constitute an unfair or deceptive act or practice in violation of RCW 19.86.020. The remedies and sanctions provided in this section shall not preclude application of other available remedies and sanctions. [1986 c 324 § 25.]

18.11.901 Short title. This chapter may be known and cited as the "auctioneer registration act." [1986 c 324 § 1.]

18.11.902 Severability—1986 c 324. 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. [1986 c 324 § 27.]

18.11.903 Effective date—1986 c 324. This act shall take effect on July 1, 1986. [1986 c 324 § 29.]

18.11.920 Severability—1982 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. [1982 c 205 § 20.]

Chapter 18.16**COSMETOLOGISTS, BARBERS, AND MANICURISTS**

Sections

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18.16.907	Effective date—1984 c 208.
18.16.910	Severability—1991 c 324.

18.16.010 Intent. The legislature recognizes that the practice of cosmetology involves the use of tools and chemicals which may be dangerous when mixed or applied improperly, and therefore finds it necessary in the interest of the public health, safety, and welfare to regulate the practice of cosmetology in this state. [1984 c 208 § 1.]

18.16.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Board" means the cosmetology, barbering, esthetics, and manicuring advisory board.

(2) "Director" means the director of the department of licensing or the director's designee.

(3) "The practice of cosmetology" means the practice of cutting, trimming, styling, shampooing, permanent waving, chemical relaxing or straightening, bleaching, or coloring of the hair of the face, neck, and scalp and manicuring and esthetics.

(4) "Cosmetologist" means a person licensed under this chapter to engage in the practice of cosmetology and who has completed sixteen hundred hours of instruction at a school licensed under this chapter.

(5) "The practice of barbering" means the cutting, trimming, arranging, dressing, curling, waving and shampooing hair of the face, neck and scalp.

(6) "Barber" means a person licensed under this chapter to engage in the practice of barbering.

(7) "Practice of manicuring" means the cleaning, shaping, or polishing of the nails of the hands or feet, and the application and removal of artificial nails.

(8) "Manicurist" means a person licensed under this chapter to engage in the practice of manicuring.

(9) "Practice of esthetics" means skin care of the face, neck, and hands involving hot compresses, massage, or the use of approved electrical appliances or nonabrasive chemical compounds formulated for professional application only, and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliance on another person.

(10) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

(11) "Instructor-trainee" means a person who is currently licensed in this state as a cosmetologist, barber, manicurist, or esthetician, and is enrolled in an approved instructor-trainee program in a school licensed under this chapter.

(12) "School" means any establishment offering instruction in the practice of cosmetology, or barbering, or esthetics, or manicuring, or instructor-trainee to students and licensed under this chapter.

(13) "Student" means a person sixteen years of age or older who is enrolled in a school licensed under this chapter and receives any phase of cosmetology, barbering, esthetics

or manicuring instruction with or without tuition, fee, or cost, and who does not receive any wage or commission.

(14) "Instructor-operator-cosmetology" means a person who gives instruction in the practice of cosmetology and instructor-training in a school and who has the same qualifications as a cosmetologist, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed an examination prepared or selected by the board and administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution and who is otherwise qualified shall upon application be licensed as an instructor-operator with a cosmetology endorsement.

(15) "Instructor-operator-barber" means a person who gives instruction in the practice of barbering and instructor training in a school, has the same qualifications as a barber, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed an examination prepared or selected by the board and administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution and who is otherwise qualified shall upon application be licensed as an instructor-operator with a barber endorsement.

(16) "Instructor-operator-manicure" means a person who gives instruction in the practice of manicuring and instructor training in a school, has the same qualifications as a manicurist, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed an examination prepared or selected by the board and administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution and who is otherwise qualified shall upon application be licensed as an instructor-operator with a manicurist endorsement.

(17) "Instructor-operator-esthetics" means a person who gives instruction in the practice of esthetics and instructor training in a school, has the same qualifications as an esthetician, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed an examination prepared or selected by the board and administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution and who is otherwise qualified shall upon application be licensed as an instructor-operator with an esthetics endorsement.

(18) "Vocational student" is a person who in cooperation with any senior high, vocational technical institute, community college, or prep school, attends a cosmetology school and participates in its student course of instruction and has the same rights and duties as a student as defined in this chapter. The person must have academically completed the eleventh grade of high school. Every such vocational student shall receive credit for all creditable hours of the approved course of instruction received in the school of cosmetology upon graduation from high school. Hours shall be credited to a vocational student if the student graduates from an accredited high school or receives a certificate of educational competence.

(19) "Booth renter" means a person who performs cosmetology, barbering, esthetics, or manicuring services where the use of the salon/shop facilities is contingent upon

compensation to the owner of the salon/shop facilities and the person receives no compensation or other consideration from the owner for the services performed.

(20) "Person" means any individual, partnership, professional service corporation, joint stock association, joint venture, or any other entity authorized to do business in this state.

(21) "Salon/shop" means any building, structure, or motor home or any part thereof, other than a school, where the commercial practice of cosmetology, barbering, esthetics, or manicuring is conducted.

(22) "Crossover training" means training approved by the director as training hours that may be credited to current licensees for similar training received in another profession licensed under this chapter.

(23) "Approved security" means surety bond, savings assignment, or irrevocable letter of credit.

(24) "Mobile operator" means any person possessing a valid cosmetology, barbering, manicuring, or esthetician's license that provides services in a mobile salon/shop.

(25) "Personal service operator" means any person possessing a valid cosmetology, barbering, manicuring, or esthetician's license that provides services for clients in the client's home, office, or other location that is convenient for the client. [1991 c 324 § 1; 1984 c 208 § 2.]

18.16.030 Director—Powers and duties. In addition to any other duties imposed by law, the director shall have the following powers and duties:

(1) To set all license, examination, and renewal fees in accordance with RCW 43.24.086;

(2) To adopt rules necessary to implement this chapter;

(3) To investigate alleged violations of this chapter and consumer complaints involving the practice of cosmetology, barbering, esthetics, or manicuring, schools offering training in these areas, and salons/shops and booth renters offering these services;

(4) To issue subpoenas, statements of charges, statements of intent, final orders, stipulated agreements, and any other legal remedies necessary to enforce this chapter;

(5) To issue cease and desist letters and letters of warning for infractions of this chapter;

(6) To conduct all disciplinary proceedings, impose sanctions, and assess fines for violations of this chapter or any rules adopted under it;

(7) To prepare and administer or approve the preparation and administration of licensing examinations;

(8) To establish minimum safety and sanitation standards for schools, cosmetologists, barbers, manicurists, estheticians, and salons/shops;

(9) To establish minimum instruction guidelines for the training of students;

(10) To maintain the official department record of applicants and licensees;

(11) To delegate in writing to a designee the authority to issue subpoenas, statements of charges, and any other documents necessary to enforce this chapter;

(12) To establish by rule the procedures for an appeal of an examination failure;

(13) To employ such administrative, investigative, and clerical staff as needed to implement this chapter;

(14) To set license expiration dates and renewal periods for all licenses consistent with this chapter; and

(15) To make information available to the department of revenue to assist in collecting taxes from persons required to be licensed under this chapter. [1991 c 324 § 2; 1984 c 208 § 7.]

18.16.050 Advisory board—Members—Compensation. There is created a state cosmetology, barbering, esthetics, and manicuring advisory board consisting of five members appointed by the governor who shall advise the director concerning the administration of this chapter. Four members of the board shall include a minimum of two instructors with the balance made up of currently practicing licensees who have been engaged in the practice of manicuring, esthetics, barbering, or cosmetology for at least three years. One member of the board shall be a consumer who is unaffiliated with the cosmetology, barbering, esthetics, or manicuring industry. The term of office for board members is three years. Any board member may be removed for just cause. The director may appoint a new member to fill any vacancy on the committee for the remainder of the unexpired term. No board member may serve more than two consecutive terms, whether full or partial.

Board members shall be entitled to compensation pursuant to RCW 43.03.240 for each day spent conducting official business and to reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. [1991 c 324 § 3; 1984 c 208 § 9.]

18.16.060 Licenses required—Penalty—Exemptions. (1) The director shall impose a fine of one thousand dollars on any person who does any of the following without first obtaining the license required by this chapter:

(a) Except as provided in subsection (2) of this section, commercial practice of cosmetology, barbering, esthetics, manicuring, or instructing;

(b) Instructs in a school;

(c) Operates a school; or

(d) Operates a salon/shop. Each booth renter shall be considered to be operating an independent salon/shop and shall obtain a separate salon/shop license.

(2) A person licensed as a cosmetology instructor-operator may engage in the commercial practice of cosmetology without maintaining a cosmetologist license. A person licensed as a barbering instructor-operator may engage in the commercial practice of barbering without maintaining a barber license. A person licensed as a manicuring instructor-operator may engage in the commercial practice of manicuring without maintaining a manicurist license. A person licensed as an esthetician instructor-operator may engage in the commercial practice of esthetics without maintaining an esthetician license. [1991 c 324 § 4; 1984 c 208 § 3.]

18.16.070 Licensing—Persons to whom chapter inapplicable. This chapter shall not apply to persons licensed under other laws of this state who are performing services within their authorized scope of practice and shall not be construed to require a license for students enrolled in a school. [1984 c 208 § 4.]

18.16.080 Licensing—Other persons to whom chapter inapplicable. Nothing in this chapter prohibits any person authorized under the laws of this state from performing any service for which the person may be licensed, nor prohibits any person from performing services as an electrologist if that person has been otherwise certified, registered, or trained as an electrologist.

This chapter does not apply to persons employed in the care or treatment of patients in hospitals or employed in the care of residents of nursing homes and similar residential care facilities. [1984 c 208 § 19.]

18.16.090 Examinations. Examinations for licensure under this chapter shall be conducted monthly at such times and places as the director determines appropriate. Examinations shall consist of tests designed to reasonably measure the applicant's knowledge of safe and sanitary practice. The director shall establish by rule the minimum passing score for all examinations and the requirements for reexamination of applicants who fail the examination or examinations.

The director shall take steps to ensure that after completion of the required course, applicants may promptly take the examination and receive the results of the examination. [1991 c 324 § 5; 1984 c 208 § 10.]

18.16.100 Issuance of licenses—Requirements. (1) Upon payment of the proper fee, the director shall issue the appropriate license to any person who:

(a) Is at least seventeen years of age or older;

(b) Has completed and graduated from a course approved by the director of sixteen hundred hours of training in cosmetology, one thousand hours of training in barbering, five hundred hours of training in manicuring, five hundred hours of training in esthetics, and/or five hundred hours of training as an instructor-trainee; and

(c) Has received a passing grade on the appropriate licensing examination approved or administered by the director.

(2) A person currently licensed under this chapter may qualify for examination and licensure, after the required examination is passed, in another category if he or she has completed the crossover training course approved by the director.

(3) Upon payment of the proper fee, the director shall issue a salon/shop license to the operator of a salon/shop if the salon/shop meets the other requirements of this chapter as demonstrated by information submitted by the operator.

(4) The director may consult with the state board of health and the department of labor and industries in establishing training and examination requirements. [1991 c 324 § 6; 1984 c 208 § 5.]

18.16.110 Issuance of licenses—Renewals—Duplicates. (1) The director shall issue the appropriate license to any applicant who meets the requirements as outlined in this chapter. Failure to renew a license before its expiration date subjects the holder to a penalty fee and payment of each year's renewal fee, at the current rate, up to a maximum of four years as established by the director in accordance with RCW 43.24.086. A person whose license has not been renewed for four years shall be required to

submit an application, fee, meet current licensing requirements, and pass the applicable examination or examinations before the license may be reinstated: PROVIDED, That the director may waive this requirement for good cause shown. To renew a salon/shop license, the licensee shall provide proof of insurance as required by RCW 18.16.175(1)(h).

(2) Upon request and payment of an additional fee to be established by the director, the director shall issue a duplicate license to an applicant. [1991 c 324 § 7; 1984 c 208 § 12.]

18.16.130 Issuance of licenses—Persons licensed in other jurisdictions. Any person who is properly licensed in any state, territory, or possession of the United States, or foreign country shall be eligible for examination if the applicant submits the approved application and fee and provides proof to the director that he or she is currently licensed in good standing as a cosmetologist, barber, manicurist, esthetician, instructor, or the equivalent in that jurisdiction. Upon passage of the required examinations the appropriate license will be issued. [1991 c 324 § 10; 1984 c 208 § 11.]

18.16.140 School licenses—Application—Approved security—Issuance—Changes in application information—Changes in controlling interest. (1) Any person wishing to operate a school shall, before opening such a school, file with the director for approval a license application and fee containing the following information:

(a) The names and addresses of all owners, managers, and instructors;

(b) A copy of the school's curriculum satisfying the training guidelines established by the director;

(c) A sample copy of the school's catalog, brochure, enrollment contract, and cancellation and refund policies that will be used or distributed by the school to students and the public;

(d) A description and floor plan of the school's physical equipment and facilities;

(e) A surety bond, irrevocable letter of credit, or savings assignment in an amount not less than ten thousand dollars, or ten percent of the annual gross tuition collected by the school, whichever is greater. The approved security shall not exceed fifty thousand dollars and shall run to the state of Washington for the protection of unearned prepaid student tuition. The school shall attest to its gross tuition at least annually on forms provided by the department. When a new school license is being applied for, the applicant will estimate its annual gross tuition to establish a bond amount. This subsection shall not apply to community colleges and vocational technical schools.

Upon approval of the application and documents, the director shall issue a license to operate a school with the appropriate certification or certifications.

(2) Changes to the information provided by schools shall be submitted to the department within fifteen days of the implementation date.

(3) A change involving the controlling interest of the school requires a new license application and fee. The new application shall include all required documentation, proof of

ownership change, and be approved prior to a license being issued. [1991 c 324 § 11; 1987 c 445 § 1; 1984 c 208 § 6.]

18.16.150 Schools—Compliance with chapter. From time to time as deemed necessary by the director, schools may be audited for compliance with this chapter. If the director determines that a licensed school is not maintaining the standards required according to this chapter, written notice thereof shall be given to the school. A school which fails to correct these conditions to the satisfaction of the director within a reasonable time shall be subject to penalties imposed under RCW 18.16.210. [1991 c 324 § 12; 1984 c 208 § 8.]

18.16.160 Schools—Claims against—Procedure. In addition to any other legal remedy, any student or instructor-trainee having a claim against a school may bring suit upon the approved security required in RCW 18.16.140(1)(e) in the superior or district court of Thurston county or the county in which the educational services were offered by the school. Action upon the approved security shall be commenced by filing the complaint with the clerk of the appropriate superior or district court within one year from the date of the cancellation of the approved security: PROVIDED, That no action shall be maintained upon the approved security for any claim which has been barred by any nonclaim statute or statute of limitations of this state. Service of process in an action upon the approved security shall be exclusively by service upon the director. Two copies of the complaint shall be served by registered or certified mail upon the director at the time the suit is started. Such service shall constitute service on the approved security and the school. The director shall transmit the complaint or a copy thereof to the school at the address listed in the director's records and to the surety within forty-eight hours after it has been received. The approved security shall not be liable in an aggregate amount in excess of the amount named in the approved security. In any action on an approved security, the prevailing party is entitled to reasonable attorney's fees and costs.

The director shall maintain a record, available for public inspection, of all suits commenced under this chapter upon approved security. [1991 c 324 § 13; 1984 c 208 § 16.]

18.16.165 Renewal of licenses issued before January 1, 1992—Examinations for students enrolled as of January 1, 1992—School curricula deadlines. (1) All licenses issued prior to January 1, 1992, shall remain in effect until renewal or January 1, 1993, whichever is earlier.

(a) On or before renewal of each individual's license the licensee will be allowed to designate the license to be issued. A licensed cosmetologist may request licenses in cosmetology, barbering, manicuring, and esthetics. A manicurist may request licenses in manicuring and esthetics. An instructor may request endorsements in cosmetology, barbering, manicuring, and esthetics.

(b) A renewal fee is required for each license type requested. A licensed cosmetologist requesting all four licenses shall pay four renewal fees. An instructor shall be issued one license with endorsements for the multiple areas that they teach with only one renewal fee required.

(c) After January 1, 1993, any licensee wishing to obtain additional licenses or endorsements to their licenses shall meet the training and examination requirements of this chapter.

(2) Students currently enrolled in a licensed school in an approved course as of January 1, 1992, may apply for the examination or examinations in any type or any combination of types of licenses when they complete the appropriate course.

(3) Schools must update their curricula to comply with this chapter by July 1, 1992. No students may be enrolled in the programs under the previous law if they cannot complete their training prior to January 1, 1993, to allow them to apply for examination under subsection (2) of this section. [1991 c 324 § 8.]

18.16.170 Expiration of licenses. (1) Subject to subsection (2) of this section, licenses issued under this chapter expire as follows:

(a) A salon/shop license expires one year from issuance or when the insurance required by RCW 18.16.175(1)(h) expires, whichever occurs first;

(b) A school license expires one year from issuance; and

(c) Cosmetologist, barber, manicurist, and instructor licenses expire two years from issuance.

(2) The director may provide for expiration dates other than those set forth in subsection (1) of this section for the purpose of establishing staggered renewal periods. [1991 c 324 § 9.]

18.16.175 Salon/shop requirements—Complaints—Registration—Use of motor homes. (1) A salon/shop shall meet the following minimum requirements:

(a) Maintain an outside entrance separate from any rooms used for sleeping or residential purposes;

(b) Provide and maintain for the use of its customers adequate toilet facilities located within or adjacent to the salon/shop;

(c) Be operated under the direct supervision of a licensed cosmetologist except that a salon/shop that is limited to barbering may be directly supervised by a barber, a salon/shop that is limited to manicuring may be directly supervised by a manicurist, and a salon/shop that is limited to esthetics may be directly supervised by an esthetician;

(d) Any room used wholly or in part as a salon/shop shall not be used for residential purposes, except that toilet facilities may be used jointly for residential and business purposes;

(e) Meet the zoning requirements of the county, city, or town, as appropriate;

(f) Provide for safe storage and labeling of chemicals used in the practice of cosmetology;

(g) Meet all applicable local and state fire codes;

(h) Provide proof that the salon/shop is covered by a public liability insurance policy in an amount not less than one hundred thousand dollars for combined bodily injury and property damage liability; and

(i) Other requirements which the director determines are necessary for safety and sanitation of salons/shops. The director may consult with the state board of health and the

department of labor and industries in establishing minimum salon/shop safety requirements.

(2) A salon/shop shall post the notice to customers described in RCW 18.16.180.

(3) Upon receipt of a written complaint that a salon/shop has violated any provisions of this chapter or the rules adopted under this chapter, the director shall inspect the salon/shop. If the director determines that any salon/shop is not in compliance with this chapter, the director shall send written notice to the salon/shop. A salon/shop which fails to correct the conditions to the satisfaction of the director within a reasonable time shall, upon due notice, be subject to the penalties imposed by the director under RCW 18.16.210. The director may enter any salon/shop during business hours for the purpose of inspection. The director may contract with health authorities of local governments to conduct the inspections under this subsection.

(4) A salon/shop, including a salon/shop operated by a booth renter, shall obtain a certificate of registration from the department of revenue.

(5) This section does not prohibit the use of motor homes as mobile salon/shops if the motor home meets the health and safety standards of this section. [1991 c 324 § 15.]

18.16.180 Salon/shop—Notice required. The director shall prepare and provide to all licensed salons/shops a notice to consumers. At a minimum, the notice shall state that cosmetology, barber, esthetics, and manicure salons/shops are required to be licensed, that salons/shops are required to maintain minimum safety and sanitation standards, that customer complaints regarding salons/shops may be reported to the department, and a telephone number and address where complaints may be made. [1991 c 324 § 16.]

18.16.190 Location of practice—Penalty—Placebound clients. It is a violation of this chapter for any person to engage in the commercial practice of cosmetology, barbering, esthetics, or manicuring, except in a licensed salon/shop or the home, office, or other location selected by the client for obtaining the services of a personal service operator, or with the appropriate individual license when delivering services to placebound clients. Placebound clients are defined as persons who are ill, disabled, or otherwise unable to travel to a salon/shop. [1991 c 324 § 20.]

18.16.200 Disciplinary action—Grounds. Any applicant or licensee under this chapter may be subject to disciplinary action by the director if the licensee or applicant:

(1) Has been found guilty of a crime related to the practice of cosmetology, barbering, esthetics, manicuring, or instructing;

(2) Has made a material misstatement or omission in connection with an original application or renewal;

(3) Has engaged in false or misleading advertising;

(4) Has performed services in an unsafe or unsanitary manner;

(5) Has aided and abetted unlicensed activity;

(6) Has engaged in the commercial practice of cosmetology, barbering, manicuring, esthetics, or instructed in or

operated a school without first obtaining the license required by this chapter;

(7) Has engaged in the commercial practice of cosmetology in a school;

(8) Has not provided a safe, sanitary, and good moral environment for students and public;

(9) Has not provided records as required by this chapter;

(10) Has not cooperated with the department in supplying records or assisting in an investigation or disciplinary procedure; or

(11) Has violated any provision of this chapter or any rule adopted under it. [1991 c 324 § 14; 1984 c 208 § 13.]

18.16.210 Violations—Penalties. If, following a hearing, the director finds that an applicant or licensee has violated any provision of this chapter or any rule adopted under it, the director may impose one or more of the following penalties:

(1) Denial of a license or renewal;

(2) Revocation or suspension of a license;

(3) A fine of not more than five hundred dollars per violation;

(4) Issuance of a reprimand or letter of censure;

(5) Placement of the licensee on probation for a fixed period of time;

(6) Restriction of the licensee's authorized scope of practice;

(7) Requiring the licensee to make restitution or a refund as determined by the director to any individual injured by the violation; or

(8) Requiring the licensee to obtain additional training or instruction. [1984 c 208 § 14.]

18.16.220 Appeal—Procedure. Any person aggrieved by the refusal of the director to issue any license provided for in this chapter, or to renew the same, or by the revocation or suspension of any license issued under this chapter or by the application of any penalty under RCW 18.16.210, shall have the right to appeal the decision of the director to the superior court of the county in which the person maintains his or her place of business. Such appeal shall be filed within thirty days of the director's decision. [1984 c 208 § 15.]

18.16.900 Short title—1984 c 208. This act shall be known and may be cited as the "Washington cosmetologists, barbers, and manicurists act". [1984 c 208 § 20.]

18.16.905 Severability—1984 c 208. 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 208 § 22.]

18.16.907 Effective date—1984 c 208. This act shall take effect July 1, 1984. [1984 c 208 § 23.]

18.16.910 Severability—1991 c 324. 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 324 § 22.]

Chapter 18.19 COUNSELORS

Sections

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18.19.910	Regulation of counselors, social workers, mental health counselors, and marriage and family counselors—Termination.
18.19.911	Regulation of counselors, social workers, mental health counselors, and marriage and family counselors—Repeal.

18.19.010 Legislative findings—Insurance benefits not mandated. (Effective until June 30, 1995.) The qualifications and practices of counselors in this state are virtually unknown to potential clients. Beyond the regulated practices of psychiatry and psychology, there are a considerable variety of disciplines, theories, and techniques employed by other counselors under a number of differing titles. The legislature recognizes the right of all counselors to practice their skills freely, consistent with the requirements of the public health and safety, as well as the right of individuals to choose which counselors best suit their needs and purposes. This chapter shall not be construed to require or prohibit that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person registered or certified under this chapter. [1987 c 512 § 1.]

18.19.020 Definitions. (Effective until June 30, 1995.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Certified marriage and family therapist" means a person certified to practice marriage and family therapy pursuant to RCW 18.19.130.

(2) "Certified mental health counselor" means a person certified to practice mental health counseling pursuant to RCW 18.19.120.

(3) "Certified social worker" means a person certified to practice social work pursuant to RCW 18.19.110.

(4) "Client" means an individual who receives or participates in counseling or group counseling.

(5) "Counseling" means employing any therapeutic techniques, including but not limited to social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee that offer, assist or attempt to assist an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential. For the purposes of this chapter, nothing may be construed to imply that the practice of hypnotherapy is necessarily limited to counseling.

(6) "Counselor" means an individual, practitioner, therapist, or analyst who engages in the practice of counseling to the public for a fee, including for the purposes of this chapter, hypnotherapists.

(7) "Department" means the department of health.

(8) "Secretary" means the secretary of the department or the secretary's designee. [1991 c 3 § 19; 1987 c 512 § 3.]

18.19.030 Registration or certification required. (Effective until June 30, 1995.) No person may, for a fee or as a part of his or her position as an employee of a state agency, practice counseling without being registered to practice by the department under this chapter unless exempt under RCW 18.19.040. No person may represent himself or herself as a certified social worker, certified mental health counselor, or certified marriage and family therapist without being so certified by the department under this chapter. [1991 c 3 § 20; 1987 c 512 § 2.]

18.19.040 Exemptions. (Effective until June 30, 1995.) Nothing in this chapter may be construed to prohibit or restrict:

(1) The practice of a profession by a person who is either registered, certified, licensed, or similarly regulated under the laws of this state and who is performing services within the person's authorized scope of practice, including any attorney admitted to practice law in this state when providing counseling incidental to and in the course of providing legal counsel;

(2) The practice of counseling by an employee or trainee of any federal agency, or the practice of counseling by a student of a college or university, if the employee, trainee, or student is practicing solely under the supervision of and accountable to the agency, college, or university, through which he or she performs such functions as part of his or her position for no additional fee other than ordinary compensation;

(3) The practice of counseling by a person without a mandatory charge;

(4) The practice of counseling by persons offering services for public and private nonprofit organizations or charities not primarily engaged in counseling for a fee when approved by the organizations or agencies for whom they render their services;

(5) Evaluation, consultation, planning, policy-making, research, or related services conducted by social scientists for private corporations or public agencies;

(6) The practice of counseling by a person under the auspices of a religious denomination, church, or organization, or the practice of religion itself;

(7) Counselors whose residency is not Washington state from providing up to ten days per quarter of training or workshops in the state, as long as they don't hold themselves out to be registered or certified in Washington state. [1987 c 512 § 4.]

18.19.050 Powers of secretary—Application of uniform disciplinary act—Public education program. (Effective until June 30, 1995.) (1) In addition to any other authority provided by law, the secretary has the following authority:

(a) To adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;

(b) To set all certification, registration, and renewal fees in accordance with RCW 43.70.250 and to collect and deposit all such fees in the health professions account established under RCW 43.70.320;

(c) To establish forms and procedures necessary to administer this chapter;

(d) To hire clerical, administrative, and investigative staff as needed to implement this chapter;

(e) To issue a registration to any applicant who has met the requirements for registration;

(f) To set educational, ethical, and professional standards of practice for certification;

(g) To prepare and administer or cause to be prepared and administered an examination for all qualified applicants for certification;

(h) To establish criteria for evaluating the ability and qualifications of persons applying for a certificate, including standards for passing the examination and standards of qualification for certification to practice;

(i) To evaluate and designate those schools from which graduation will be accepted as proof of an applicant's eligibility to receive a certificate and to establish standards and procedures for accepting alternative training in lieu of such graduation;

(j) To issue a certificate to any applicant who has met the education, training, and conduct requirements for certification;

(k) To set competence requirements for maintaining certification; and

(l) To develop a dictionary of recognized professions and occupations providing counseling services to the public included under this chapter.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of certifications and registrations and the discipline of certified practitioners and registrants under this chapter. The secretary shall be the disciplining authority under this chapter. The absence of educational or training requirements for counselors registered under this chapter or the counselor's use of nontraditional nonabusive therapeutic techniques shall not, in and of itself, give the secretary authority to unilaterally determine the

training and competence or to define or restrict the scope of practice of such individuals.

(3) The department shall publish and disseminate information in order to educate the public about the responsibilities of counselors and the rights and responsibilities of clients established under this chapter. Solely for the purposes of administering this education requirement, the secretary shall assess an additional fee for each registration and certification application and renewal, equal to five percent of the fee. The revenue collected from the assessment fee may be appropriated by the legislature for the department's use in educating consumers pursuant to this section. The authority to charge the assessment fee shall terminate on June 30, 1994. [1991 c 3 § 21; 1987 c 512 § 5.]

18.19.060 Information disclosure to clients. (Effective until June 30, 1995.) Persons registered or certified under this chapter shall provide clients at the commencement of any program of treatment with accurate disclosure information concerning their practice, in accordance with guidelines developed by the department, that will inform clients of the purposes of and resources available under this chapter, including the right of clients to refuse treatment, the responsibility of clients for choosing the provider and treatment modality which best suits their needs, and the extent of confidentiality provided by this chapter. The disclosure information provided by the counselor, the receipt of which shall be acknowledged in writing by the counselor and client, shall include any relevant education and training, the therapeutic orientation of the practice, the proposed course of treatment where known, any financial requirements, and such other information as the department may require by rule. The disclosure information shall also include a statement that registration of an individual under this chapter does not include a recognition of any practice standards, nor necessarily imply the effectiveness of any treatment. [1987 c 512 § 6.]

18.19.070 Advisory committees. (Effective until June 30, 1995.) (1) Within sixty days of July 26, 1987, the secretary shall have authority to appoint advisory committees to further the purposes of this chapter. Each such committee shall be composed of five members, one member initially appointed for a term of one year, two for terms of two years, and two for terms of three years. No person may serve as a member of the committee for more than two consecutive terms.

The secretary may remove any member of the advisory committees for cause as specified by rule. In the case of a vacancy, the secretary shall appoint a person to serve for the remainder of the unexpired term.

(2) The advisory committees shall each meet at the times and places designated by the secretary and shall hold meetings during the year as necessary to provide advice to the secretary.

Each member of an advisory committee shall be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060. In addition, members of the committees shall be compensated in accordance with RCW 43.03.240 when engaged in the authorized business of their committee.

(3) Members of an advisory committee shall be residents of this state. Each committee shall be composed of four individuals registered or certified in the category designated by the committee title, and one member who is a member of the public. [1991 c 3 § 22; 1987 c 512 § 7.]

18.19.080 Official records. (Effective until June 30, 1995.) The secretary shall keep an official record of all proceedings, a part of which record shall consist of a register of all applicants for registration or certification under this chapter, with the result of each application. [1991 c 3 § 23; 1987 c 512 § 8.]

18.19.090 Registration of counselors and hypnotherapists. (Effective until June 30, 1995.) The secretary shall issue a registration to any applicant who submits, on forms provided by the secretary, the applicant's name, address, occupational title, name and location of business, and other information as determined by the secretary, including information necessary to determine whether there are grounds for denial of registration or issuance of a conditional registration under this chapter or chapter 18.130 RCW. Applicants for registration shall register as counselors or may register as hypnotherapists if employing hypnosis as a modality. Applicants shall, in addition, provide in their titles a description of their therapeutic orientation, discipline, theory, or technique. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250, which shall accompany the application. [1991 c 3 § 24; 1987 c 512 § 9.]

18.19.100 Registration renewal. (Effective until June 30, 1995.) The secretary shall establish by rule the procedural requirements and fees for renewal of registrations. Failure to renew shall invalidate the registration and all privileges granted by the registration. Subsequent registration will require application and payment of a fee as determined by the secretary under RCW 43.70.250. [1991 c 3 § 25; 1987 c 512 § 10.]

18.19.110 Certification of social workers. (Effective until June 30, 1995.) (1) The department shall issue a certified social worker certificate to any applicant meeting the following requirements:

(a) A minimum of a master's degree from an accredited graduate school of social work approved by the secretary;

(b) A minimum of two years of post-master's degree social work practice under the supervision of a social worker certified under this chapter or a person deemed acceptable to the secretary, such experience consisting of at least thirty hours per week for two years or at least twenty hours per week for three years; and

(c) Successful completion of the examination in RCW 18.19.150, unless the applicant qualified under an exemption pursuant to subsection (2) of this section or RCW 18.19.160.

Applicants shall be subject to the grounds for denial or issuance of a conditional certificate in chapter 18.130 RCW.

(2) Except as provided in RCW 18.19.160, an applicant is exempt from the examination provisions of this chapter under the following conditions if application for exemption is made within twelve months after July 26, 1987:

(a) The applicant shall establish to the satisfaction of the secretary that he or she has been engaged in the practice of social work as defined in this chapter for two of the previous four years; and

(b) The applicant has the following academic qualifications: (i) A doctorate or master's degree in social work from an accredited graduate school of social work or comparable and equivalent educational attainment as determined by the secretary in consultation with the advisory committee; and (ii) two years of postgraduate social work experience under the supervision of a social worker who qualifies for certification under this chapter or under the supervision of any other professional deemed appropriate by the secretary.

(3) Certified social work practice is that aspect of counseling that involves the professional application of social work values, principles, and methods by individuals trained in accredited social work graduate programs and requires knowledge of human development and behavior, knowledge of social systems and social resources, an adherence to the social work code of ethics, and knowledge of and sensitivity to ethnic minority populations. It includes, but is not limited to, evaluation, assessment, treatment of psychopathology, consultation, psychotherapy and counseling, prevention and educational services, administration, policy-making, research, and education directed toward client services. [1991 c 3 § 26; 1987 c 512 § 12.]

18.19.120 Certification of mental health counselors—Practice defined. (Effective until June 30, 1995.)

(1) The department shall issue a certified mental health counselor certificate to any applicant meeting the following requirements:

(a) A master's or doctoral degree in mental health counseling or a related field from an approved school, or completion of at least thirty graduate semester hours or forty-five graduate quarter hours in the field of mental health counseling or the substantial equivalent in both subject content and extent of training;

(b) Postgraduate supervised mental health counseling practice that meets standards established by the secretary;

(c) Qualification by an examination, submission of all necessary documents, and payment of required fees; and

(d) Twenty-four months of postgraduate professional experience working in a mental health counseling setting that meets the requirements established by the secretary.

(2) No applicant may come before the secretary for examination without the initial educational and supervisory credentials as required by this chapter, except that applicants completing a master's or doctoral degree program in mental health counseling or a related field from an approved graduate school before or within eighteen months of July 26, 1987, may qualify for the examination.

(3) For one year beginning on July 26, 1987, a person may apply for certification without examination. However, if the applicant's credentials are not adequate to establish competence to the secretary's satisfaction, the secretary may require an examination of the applicant during the initial certification period. For the initial certification period, an applicant shall:

(a) Submit a completed application as required by the secretary, who may require that the statements on the application be made under oath, accompanied by the application fee set by the secretary in accordance with RCW 43.70.250;

(b) Have a master's or doctoral degree in counseling or a related field from an approved school; and

(c) Have submitted a completed application as required by the secretary accompanied by the application fee set by the secretary and a request for waiver from the requirements of (b) of this subsection, with documentation to show that the applicant has alternative training and experience equivalent to formal education and supervised experience required for certification.

(4) Certified mental health practice is that aspect of counseling that involves the rendering to individuals, groups, organizations, corporations, institutions, government agencies, or the general public a mental health counseling service emphasizing a wellness model rather than an illness model in the application of therapeutic principles, methods, or procedures of mental health counseling to assist the client in achieving effective personal, organizational, institutional, social, educational, and vocational development and adjustment and to assist the client in achieving independence and autonomy in the helping relationship. [1991 c 3 § 27; 1987 c 512 § 13.]

18.19.130 Certification of marriage and family therapists—Practice defined. (Effective until June 30, 1995.) (1) The department shall issue a certified marriage and family therapist certificate to any applicant meeting the following requirements:

(a)(i) A master's or doctoral degree in marriage and family therapy or its equivalent from an approved school that shows evidence of the following course work: (A) Marriage and family systems, (B) marriage and family therapy, (C) individual development, (D) assessment of psychopathology, (E) human sexuality, (F) research methods, (G) professional ethics and laws, and (H) a minimum of one year in the practice of marriage and family therapy under the supervision of a qualified marriage and family therapist;

(ii) Two years of postgraduate practice of marriage and family therapy under the supervision of a qualified marriage and family therapist; and

(iii) Passing scores on both written and oral examinations administered by the department for marriage and family therapists; or

(b) In the alternative, an applicant completing a master's or doctoral degree program in marriage and family therapy or its equivalent from an approved graduate school before or within eighteen months of July 26, 1987, may qualify for the examination.

(2) Except as provided in RCW 18.19.160, an applicant is exempt from the examination provisions of this section under the following conditions if application for exemption is made within twelve months after July 26, 1987:

(a) The applicant shall establish to the satisfaction of the secretary that he or she has been engaged in the practice of marriage and family therapy as defined in this chapter for two of the previous four years; and

(b) The applicant has the following academic qualifications: (i) A doctorate or master's degree in marriage and family therapy or its equivalent from an approved graduate school; and (ii) two years of postgraduate experience under the supervision of a marriage and family therapist who qualifies for certification under this chapter or under the supervision of any other professional deemed appropriate by the secretary.

(3) The practice of marriage and family therapy is that aspect of counseling that involves the assessment and treatment of impaired marriage or family relationships including, but not limited to, premarital and postdivorce relationships and the enhancement of marital and family relationships via use of educational, sociological, and psychotherapeutic theories and techniques. [1991 c 3 § 28; 1987 c 512 § 14.]

18.19.140 Applications for certification. (Effective until June 30, 1995.) Applications for certification shall be submitted on forms provided by the secretary. The secretary may require any information and documentation which reasonably relates to the need to determine whether the applicant meets the criteria for certification provided for in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250, which shall accompany the application. The department shall not knowingly permit access to or use of its mailing list of certificate holders for commercial purposes. [1991 c 3 § 29; 1987 c 512 § 17.]

18.19.150 Examination of applicants for certification. (Effective until June 30, 1995.) (1) The date and location of the examinations required under this chapter shall be established by the secretary. Applicants who have been found by the secretary to meet the other requirements for certification will be scheduled for the next examination following the filing of the application. However, the applicant will not be scheduled for any examination taking place sooner than sixty days after the application is filed.

(2) The secretary shall examine each applicant, by means determined most effective, on subjects appropriate to the scope of practice. The examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) The examination papers, all grading thereon, and the grading of any practical work shall be preserved for a period of not less than one year after the secretary has published the results. All examinations shall be conducted by the secretary by means of fair and wholly impartial methods.

(4) Any applicant who fails to make the required grade in the first examination is entitled to take up to three subsequent examinations as the applicant desires upon the prepayment of a fee determined by the secretary as provided in RCW 43.70.250 for each subsequent examination. Upon failure of four examinations, the secretary may invalidate the original application and require remedial education prior to admittance to future examinations.

(5) The secretary may approve an examination prepared or administered, or both, by a private testing agency or association of licensing agencies for use by an applicant in

meeting the licensing requirement. [1991 c 3 § 30; 1987 c 512 § 16.]

18.19.160 Certification of persons credentialed out-of-state—Temporary retirement of certified persons. (Effective until June 30, 1995.) (1) Upon receiving a written application, evidence of qualification and the required fee, the department shall issue a certificate for certification without examination to an applicant who is currently credentialed under the laws of another jurisdiction, if the requirements of the other jurisdiction are substantially equal to the requirements of this chapter.

(2) A person certified under this chapter who is or desires to be temporarily retired from practice in this state shall send written notice to the secretary. Upon receipt of the notice, the person shall be placed upon the nonpracticing list. While on the list, the person is not required to pay the renewal fees and shall not engage in any such practice. In order to resume practice, application for renewal shall be made in the ordinary course with the renewal fee for the current period. Persons in a nonpracticing status for a period exceeding five years shall provide evidence of current knowledge or skill, by examination, as the secretary may require. [1991 c 3 § 31; 1987 c 512 § 19.]

18.19.170 Renewal of certificates. (Effective until June 30, 1995.) A certificate issued under this chapter shall be renewed as determined by the secretary who may establish rules governing continuing competence requirements. An additional fee may be set by the secretary as a renewal requirement when certification has lapsed due to failure to renew prior to the expiration date. [1991 c 3 § 32; 1987 c 512 § 15.]

18.19.180 Confidential communications. (Effective until June 30, 1995.) An individual registered or certified under this chapter shall not disclose the written acknowledgment of the disclosure statement pursuant to RCW 18.19.060 nor any information acquired from persons consulting the individual in a professional capacity when that information was necessary to enable the individual to render professional services to those persons except:

(1) With the written consent of that person or, in the case of death or disability, the person's personal representative, other person authorized to sue, or the beneficiary of an insurance policy on the person's life, health, or physical condition;

(2) That a person registered or certified under this chapter is not required to treat as confidential a communication that reveals the contemplation or commission of a crime or harmful act;

(3) If the person is a minor, and the information acquired by the person registered or certified under this chapter indicates that the minor was the victim or subject of a crime, the person registered or certified may testify fully upon any examination, trial, or other proceeding in which the commission of the crime is the subject of the inquiry;

(4) If the person waives the privilege by bringing charges against the person registered or certified under this chapter;

(5) In response to a subpoena from a court of law or the secretary. The secretary may subpoena only records related to a complaint or report under chapter 18.130 RCW; or

(6) As required under chapter 26.44 RCW. [1991 c 3 § 33; 1987 c 512 § 11.]

18.19.190 Other professions not affected. (Effective until June 30, 1995.) This chapter shall not be construed as permitting the administration or prescription of drugs or in any way infringing upon the practice of medicine and surgery as defined in chapter 18.71 RCW, or in any way infringing upon the practice of psychology as defined in chapter 18.83 RCW, or restricting the scope of the practice of counseling for those registered or certified under this chapter. [1987 c 512 § 18.]

18.19.900 Short title. (Effective until June 30, 1995.) This chapter shall be known as the omnibus credentialing act for counselors. [1987 c 512 § 20.]

18.19.901 Severability—1987 c 512. 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 512 § 28.]

18.19.910 Regulation of counselors, social workers, mental health counselors, and marriage and family counselors—Termination. The regulation of counselors, social workers, mental health counselors, and marriage and family counselors under chapter 18.19 RCW shall be terminated on June 30, 1994, as provided in RCW 18.19.911. [1990 c 297 § 13; 1987 c 512 § 25. Formerly RCW 43.131.357.]

Severability—1987 c 512: See RCW 18.19.901.

18.19.911 Regulation of counselors, social workers, mental health counselors, and marriage and family counselors—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1995:

(1) Section 1, chapter 512, Laws of 1987 and RCW 18.19.010;

(2) Section 2, chapter 512, Laws of 1987 and RCW 18.19.030;

(3) Section 3, chapter 512, Laws of 1987 and RCW 18.19.020;

(4) Section 4, chapter 512, Laws of 1987 and RCW 18.19.040;

(5) Section 5, chapter 512, Laws of 1987 and RCW 18.19.050;

(6) Section 6, chapter 512, Laws of 1987 and RCW 18.19.060;

(7) Section 7, chapter 512, Laws of 1987 and RCW 18.19.070;

(8) Section 8, chapter 512, Laws of 1987 and RCW 18.19.080;

(9) Section 9, chapter 512, Laws of 1987 and RCW 18.19.090;

(10) Section 10, chapter 512, Laws of 1987 and RCW 18.19.100;

(11) Section 11, chapter 512, Laws of 1987 and RCW 18.19.180;

(12) Section 12, chapter 512, Laws of 1987 and RCW 18.19.110;

(13) Section 13, chapter 512, Laws of 1987 and RCW 18.19.120;

(14) Section 14, chapter 512, Laws of 1987 and RCW 18.19.130;

(15) Section 15, chapter 512, Laws of 1987 and RCW 18.19.170;

(16) Section 16, chapter 512, Laws of 1987 and RCW 18.19.150;

(17) Section 17, chapter 512, Laws of 1987 and RCW 18.19.140;

(18) Section 18, chapter 512, Laws of 1987 and RCW 18.19.190;

(19) Section 19, chapter 512, Laws of 1987 and RCW 18.19.160; and

(20) Section 20, chapter 512, Laws of 1987 and RCW 18.19.900. [1990 c 297 § 14; 1987 c 512 § 26. Formerly RCW 43.131.358.]

Severability—1987 c 512: See RCW 18.19.901.

Chapter 18.20 BOARDING HOMES

Sections

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18.20.140	Operating without license—Penalty.
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18.20.160	Persons requiring medical or nursing care.
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18.20.900	Severability—1957 c 253.

18.20.010 Purpose. The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of boarding homes, which, in the light of advancing knowledge, will promote safe and adequate care of the individuals therein. It is further the intent of the legislature that boarding homes be available to meet the needs of those for whom they care by recognizing the capabilities of individuals to direct their self-medication or to use supervised self-medication techniques when ordered and approved by a physician licensed under chapter 18.57 or 18.71 RCW or a *podiatrist licensed under chapter 18.22 RCW. [1985 c 297 § 1; 1957 c 253 § 1.]

***Reviser's note:** The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

18.20.020 Definitions. As used in this chapter:

(1) "Aged person" means a person of the age sixty-five years or more, or a person of less than sixty-five years who by reason of infirmity requires domiciliary care.

(2) "Boarding home" means any home or other institution, however named, which is advertised, announced or maintained for the express or implied purpose of providing board and domiciliary care to three or more aged persons not related by blood or marriage to the operator. It shall not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the department of housing and urban development.

(3) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(4) "Secretary" means the secretary of health.

(5) "Department" means the state department of health.

(6) "Authorized department" means any city, county, city-county health department or health district authorized by the secretary of health to carry out the provisions of this chapter. [1991 c 3 § 34; 1989 c 329 § 1; 1985 c 213 § 4; 1979 c 141 § 25; 1957 c 253 § 2.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

18.20.030 License required. After January 1, 1958, no person shall operate or maintain a boarding home as defined in this chapter within this state without a license under this chapter. [1957 c 253 § 3.]

18.20.040 Application for license. An application for a license shall be made to the department or authorized department upon forms provided by either of said departments and shall contain such information as the department reasonably requires, which shall include affirmative evidence of ability to comply with such rules and regulations as are lawfully promulgated by the board. [1957 c 253 § 4.]

18.20.050 Licenses—Issuance—Renewal—Provisional licenses—Fees—Display. Upon receipt of an application for license, if the applicant and the boarding home facilities meet the requirements established under this chapter, the department or the department and the authorized health department jointly, shall issue a license. If there is a failure to comply with the provisions of this chapter or the standards, rules, and regulations promulgated pursuant thereto, the department, or the department and authorized health department, may in its discretion issue to an applicant for a license, or for the renewal of a license, a provisional license which will permit the operation of the boarding home for a period to be determined by the department, or the

department and authorized health department, but not to exceed twelve months, which provisional license shall not be subject to renewal. At the time of the application for or renewal of a license or provisional license the licensee shall pay a license fee as established by the department under RCW 43.20B.110. When the license or provisional license is issued jointly by the department and authorized health department, the license fee shall be paid to the authorized health department. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department, but no license issued pursuant to this chapter shall exceed twelve months in duration: PROVIDED, That when the annual license renewal date of a previously licensed boarding home is set by the department on a date less than twelve months prior to the expiration date of a license in effect at the time of reissuance, the license fee shall be prorated on a monthly basis and a credit be allowed at the first renewal of a license for any period of one month or more covered by the previous license. All applications for renewal of license shall be made not later than thirty days prior to the date of expiration of the license. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises. [1987 c 75 § 3; 1982 c 201 § 4; 1971 ex.s. c 247 § 1; 1957 c 253 § 5.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

18.20.060 Denial, suspension, revocation of license. The department or the department and authorized department jointly, as the case may be, may deny, suspend, or revoke a license in any case in which it finds there has been a failure or refusal to comply with the requirements established under this chapter or the rules adopted under it. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1991 c 3 § 35; 1989 c 175 § 60; 1985 c 213 § 5; 1957 c 253 § 6.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

18.20.090 Rules, regulations, and standards. The department shall adopt, amend, and promulgate such rules, regulations, and standards with respect to all boarding homes and operators thereof to be licensed hereunder as may be designed to further the accomplishment of the purposes of this chapter in promoting safe and adequate care of individuals in boarding homes and the sanitary, hygienic and safe conditions of the boarding home in the interest of public health, safety, and welfare. [1985 c 213 § 6; 1971 ex.s. c 189 § 3; 1957 c 253 § 9.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

18.20.100 Enforcement by local authorities—Authorization. Where it is determined by the secretary together with the jurisdictional health officer, that a city, county, city-county health department or health district is qualified to carry out the provisions of this chapter, he shall

authorize such political subdivision or agency to administer and enforce this chapter, and the rules and regulations promulgated hereunder.

Any such authorization may be withdrawn by the secretary after thirty days' notice in writing to the authorized department should the secretary determine that the authorized department is unwilling or unable to carry out the duties and responsibilities hereunder. [1979 c 141 § 26; 1957 c 253 § 10.]

18.20.110 Inspection of boarding homes—Approval of changes or new facilities. The department or authorized health department shall make or cause to be made at least a yearly inspection and investigation of all boarding homes. Every inspection may include an inspection of every part of the premises and an examination of all records (other than financial records), methods of administration, the general and special dietary and the stores and methods of supply. Following such inspection or inspections, written notice of any violation of this law or the rules and regulations promulgated hereunder, shall be given the applicant or licensee and the department. The department may prescribe by regulations that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, submit plans and specifications therefor to the department or to the authorized department for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. [1985 c 213 § 7; 1957 c 253 § 11.]

Savings—Effective date—1985 c 213: See notes following RCW 48.20.050.

18.20.120 Information confidential. All information received by the department or authorized health department through filed reports, inspections, or as otherwise authorized under this chapter, shall not be disclosed publicly in any manner as to identify individuals or boarding homes, except in a proceeding involving the question of licensure. [1957 c 253 § 12.]

18.20.130 Fire protection—Duties of director of community development. Standards for fire protection and the enforcement thereof, with respect to all boarding homes to be licensed hereunder, shall be the responsibility of the director of community development, through the director of fire protection, who shall adopt such recognized standards as may be applicable to boarding homes for the protection of life against the cause and spread of fire and fire hazards. The department upon receipt of an application for a license, shall submit to the director of community development, through the director of fire protection, in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the director of community development, through the director of fire protection, or his or her deputy, shall make an inspection of the boarding home to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the director of community development,

through the director of fire protection, he or she shall promptly make a written report to the boarding home and the department or authorized department as to the manner and time allowed in which the premises must qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department, authorized department, applicant or licensee shall notify the director of community development, through the director of fire protection, upon completion of any requirements made by him or her, and the director of community development, through the director of fire protection, or his or her deputy, shall make a reinspection of such premises. Whenever the boarding home to be licensed meets with the approval of the director of community development, through the director of fire protection, he or she shall submit to the department or authorized department, a written report approving same with respect to fire protection before a full license can be issued. The director of community development, through the director of fire protection, shall make or cause to be made inspections of such homes at least annually.

In cities which have in force a comprehensive building code, the provisions of which are determined by the director of community development, through the director of fire protection, to be equal to the minimum standards of the code for boarding homes adopted by the director of community development, through the director of fire protection, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the director of community development, through the director of fire protection, or his or her deputy and they shall jointly approve the premises before a full license can be issued. [1986 c 266 § 81; 1957 c 253 § 13.]

Severability—1986 c 266: See note following RCW 38.52.005.
State fire protection: Chapter 48.48 RCW.

18.20.140 Operating without license—Penalty. Any person operating or maintaining any boarding home without a license under this chapter shall be guilty of a misdemeanor and each day of a continuing violation shall be considered a separate offense. [1957 c 253 § 14.]

18.20.150 Operating without license—Injunction. Notwithstanding the existence or use of any other remedy, the department, may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the operation or maintenance of a boarding home without a license under this chapter. [1957 c 253 § 15.]

18.20.160 Persons requiring medical or nursing care. No person operating a boarding home licensed under this chapter shall admit to or retain in the boarding home any aged person requiring nursing or medical care of a type provided by institutions licensed under chapters 18.51, 70.41 or 71.12 RCW, except that when registered nurses are available, and upon a doctor's order that a supervised medication service is needed, it may be provided. Supervised medication services, as defined by the department, may include an approved program of self-medication or self-

directed medication. Such medication service shall be provided only to boarders who otherwise meet all requirements for residency in a boarding home. [1985 c 297 § 2; 1975 1st ex.s. c 43 § 1; 1957 c 253 § 16.]

18.20.170 Application of chapter to homes operated by religious organizations. Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents in any boarding home conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. [1957 c 253 § 17.]

18.20.900 Severability—1957 c 253. 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 herein, if any such remaining part can then be administered for the purpose of establishing and maintaining standards for boarding homes. [1957 c 253 § 20.]

Chapter 18.22

PODIATRIC MEDICINE AND SURGERY

(Formerly: Podiatry)

Sections

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Actions for negligence against, evidence and proof required to prevail: RCW 4.24.290.

Health care assistants: Chapter 18.135 RCW.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Rebating by practitioners of healing professions prohibited: Chapter 19.68 RCW.

18.22.003 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.22.005 Legislative finding—Purpose. The legislature finds that the conduct of podiatric physicians and surgeons licensed to practice in this state plays a vital role in preserving the public health and well-being. The purpose of this chapter is to establish an effective public agency to regulate the practice of podiatric medicine and surgery for the protection and promotion of the public health, safety, and welfare and to act as a disciplinary body for the licensed podiatric physicians and surgeons of this state and to ensure that only individuals who meet and maintain minimum standards of competence and conduct may obtain a license to provide podiatric services to the public. [1990 c 147 § 1; 1982 c 21 § 1.]

18.22.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Podiatric physician and surgeon" means an individual licensed under this chapter.

(2) "Board" means the Washington state podiatric medical board.

(3) "Department" means the department of health.

(4) "Secretary" means the secretary of health or the secretary's designee.

(5) "Approved school of podiatric medicine and surgery" means a school approved by the board, which may consider official recognition of the Council of Education of the American Podiatric Medical Association in determining the approval of schools of podiatric medicine and surgery. [1990 c 147 § 2; 1982 c 21 § 2; 1973 c 77 § 1; 1955 c 149 § 1; 1941 c 31 § 1; 1921 c 120 § 1; 1917 c 38 § 1; Rem. Supp. 1941 § 10074.]

18.22.013 Podiatric medical board—Membership. There is created the Washington state podiatric medical board consisting of five members to be appointed by the governor. All members shall be residents of the state. One member shall be a consumer whose occupation does not include the administration of health activities or the providing of health services and who has no material financial interest in providing health care services. Four members shall be podiatric physicians and surgeons who at the time of appointment have been licensed under the laws of this state for at least five consecutive years immediately preceding appointment and shall at all times during their terms remain licensed podiatric physicians and surgeons.

Board members shall serve five-year terms. No person may serve more than two consecutive terms on the board. Each member shall take the usual oath of a state officer, which shall be filed with the secretary of state, and each member shall hold office for the term of appointment and until a successor is appointed and sworn.

Each member is subject to removal at the pleasure of the governor. If a vacancy on the board occurs from any cause, the governor shall appoint a successor for the unexpired term. [1990 c 147 § 3; 1982 c 21 § 8.]

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.22.014 Board—Meetings—Chairperson, vice-chairperson, secretary—Members' compensation and travel expenses. The board shall meet at the places and times it determines and as often as necessary to discharge its duties. The board shall elect a chairperson, vice-chairperson, and secretary from among its members. Members shall be compensated in accordance with RCW 43.03.240 in addition to travel expenses provided by RCW 43.03.050 and 43.03.060. A simple majority of the board members currently serving constitutes a quorum of the board. [1990 c 147 § 4; 1984 c 287 § 26; 1982 c 21 § 9.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

18.22.015 Board—Duties—Rules. The board shall:

- (1) Administer all laws placed under its jurisdiction;
- (2) Prepare, grade, and administer or determine the nature, grading, and administration of examinations for applicants for podiatric physician and surgeon licenses;
- (3) Examine and investigate all applicants for podiatric physician and surgeon licenses and certify to the secretary all applicants it judges to be properly qualified;
- (4) Adopt any rules which it considers necessary or proper to carry out the purposes of this chapter;
- (5) Determine which schools of podiatric medicine and surgery will be approved. [1990 c 147 § 5; 1986 c 259 § 18; 1982 c 21 § 10.]

Severability—1986 c 259: See note following RCW 18.130.010.

Director of licensing or director's designee ex officio member of health professional licensure and disciplinary boards: RCW 43.24.015.

18.22.018 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 10; 1986 c 259 § 17.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.22.021 License required. It is a violation of RCW 18.130.190 for any person to practice podiatry in this state unless the person first has obtained a license therefor. [1987 c 150 § 11.]

Severability—1987 c 150: See RCW 18.122.901.

18.22.025 License required to practice podiatric medicine and surgery. No person may practice or represent himself or herself as a podiatric physician and surgeon without first applying for and receiving a license under this chapter to practice podiatric medicine and surgery. [1990 c 147 § 7.]

18.22.035 Practice of podiatric medicine and surgery—Quality—Definition—Prescriptions—Limitations. (1) A podiatric physician and surgeon is responsible for the quality of podiatric care.

(2) The practice of podiatric medicine and surgery is the diagnosis and the medical, surgical, mechanical, manipulative, and electrical treatments of ailments of the human foot.

(3) Podiatric physicians and surgeons may issue prescriptions valid at any pharmacy for any drug, including narcotics, necessary in the practice of podiatry.

(4) Podiatrists shall not:

- (a) Amputate the foot;
- (b) Administer spinal anesthetic or any anesthetic that renders the patient unconscious; or
- (c) Treat systemic conditions. [1990 c 147 § 6.]

18.22.040 Applicants—Fee—Eligibility. Before any person may take an examination for the issuance of a podiatric physician and surgeon license, the applicant shall submit a completed application and a fee determined by the secretary as provided in RCW 43.70.250. The applicant shall also furnish the secretary and the board with satisfactory proof that:

(1) The applicant has not engaged in unprofessional conduct as defined in chapter 18.130 RCW and is not unable to practice with reasonable skill and safety as a result of a physical or mental impairment;

(2) The applicant has satisfactorily completed a course in an approved school of podiatric medicine and surgery. [1990 c 147 § 8; 1982 c 21 § 5; 1979 c 158 § 18; 1973 c 77 § 4; 1971 ex.s. c 292 § 19; 1955 c 149 § 2; 1935 c 48 § 3; 1921 c 120 § 3; 1917 c 38 § 6; RRS § 10079.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

18.22.060 Examination—Date, location, and application—Reexamination. (1) The date and location of the examination shall be established by the board. Applicants who have met the requirements for examination under RCW 18.22.040 will be scheduled for the next examination after the filing of the complete application. The board shall establish by rule the examination application deadline.

(2) An applicant who fails to pass an examination satisfactorily is entitled to reexamination upon the payment of a fee for each reexamination determined by the secretary as provided in RCW 43.70.250. [1990 c 147 § 9; 1985 c 7 § 11; 1982 c 21 § 7; 1975 1st ex.s. c 30 § 16; 1973 c 77 § 6; 1965 c 97 § 1; 1957 c 52 § 14. Prior: (i) 1921 c 120 § 5; 1917 c 38 § 9; RRS § 10082. (ii) 1921 c 120 § 4; 1917 c 38 § 7; RRS § 10080.]

18.22.082 License—Reciprocity. An applicant holding a license to practice podiatric medicine and surgery in another state may be licensed without examination if the secretary determines that the other state's licensing standards are substantively equivalent to the standards in this state. [1990 c 147 § 10.]

18.22.083 License—Examination to determine professional qualifications. Before being issued a license to practice podiatric medicine and surgery, applicants must successfully pass the examinations administered by the national board of podiatry examiners and an examination administered or approved by the board to determine their professional qualifications. The examination administered by the board shall include the subject areas as the board may require by rule.

The board may approve an examination prepared or administered, or both, by a private testing agency, other licensing authority, or association of licensing authorities.

The board may by rule establish the passing grade for the examination. [1990 c 147 § 11; 1982 c 21 § 13.]

18.22.110 License—Display. Every holder of a podiatric physician and surgeon license shall keep the license on exhibition in a conspicuous place in the holder's office or place of business. [1990 c 147 § 12; 1973 c 77 § 9; 1957 c 52 § 15. Prior: 1917 c 38 § 2, part; RRS § 10075, part.]

18.22.120 License renewal. The board shall establish by rule the requirements for renewal of licenses. The secretary shall establish a renewal and late renewal penalty fee as provided in RCW 43.70.250, and the term for renewal of a license under RCW 43.70.280. Failure to renew invalidates the license and all privileges granted by it. The board shall determine by rule when a license shall be canceled for failure to renew and shall establish prerequisites for relicensing. [1990 c 147 § 13; 1985 c 7 § 13; 1982 c 21 § 14; 1975 1st ex.s. c 30 § 18; 1973 c 77 § 10; 1971 ex.s. c 266 § 4; 1965 c 97 § 2; 1955 c 149 § 6. Prior: (i) 1921 c 120 § 5, part; 1917 c 38 § 9, part; RRS § 10082, part. (ii) 1921 c 120 § 9; RRS § 10096.]

18.22.125 License—Inactive status. (1) An individual may place his or her license on inactive status. The holder of an inactive license shall not practice podiatric medicine and surgery in this state without first activating the license.

(2) The inactive renewal fee shall be established by the secretary under RCW 43.70.250, but may not exceed twenty-five percent of the active license renewal fee. Failure to renew an inactive license results in cancellation in the same manner as an active license.

(3) An inactive license may be placed in an active status upon compliance with the rules established by the board.

(4) The provisions of this chapter relating to the denial, suspension, and revocation of a license are applicable to an inactive license, except that when proceedings to suspend or revoke an inactive license have been initiated, the license remains inactive until the proceedings have been completed. [1990 c 147 § 14.]

18.22.191 Rules and regulations. The secretary shall have the power and duty to formulate and prescribe such rules and regulations as may be reasonable in the proper administration of this chapter. In addition to any other authority provided by law, the secretary may:

(1) Set all fees required in this chapter in accordance with RCW 43.70.250;

(2) Establish forms necessary to administer this chapter;

(3) Maintain the official department record of all applicants and licensees. [1990 c 147 § 15; 1955 c 149 § 13.]

18.22.210 Unlawful practice—Evidence of. It is prima facie evidence of the practice of podiatric medicine and surgery or of holding oneself out as a practitioner of podiatric medicine and surgery within the meaning of this (1992 Ed.)

chapter for any person to treat in any manner ailments of the human foot by medical, surgical, or mechanical means or appliances, or to use the title "podiatrist," "podiatric physician and surgeon," or any other words or letters which designate or tend to designate to the public that the person so treating or holding himself or herself out to treat, is a podiatric physician and surgeon. [1990 c 147 § 16; 1982 c 21 § 17; 1973 c 77 § 17; 1935 c 48 § 4; 1921 c 120 § 6; 1917 c 38 § 10; RRS § 10083.]

18.22.220 Violations—Penalty. Every person violating, or failing to comply with, the provisions of this chapter shall be guilty of a gross misdemeanor. [1955 c 149 § 10; 1917 c 38 § 21; RRS § 10094.]

18.22.230 Exemptions. The following practices, acts, and operations are excepted from the operation of the provisions of this chapter:

(1) The practice of podiatric medicine and surgery by an individual employed by the government of the United States while the individual is engaged in the performance of duties prescribed by the laws and regulations of the United States;

(2) The practice of podiatric medicine and surgery by students enrolled in a school approved by the board. The performance of services must be pursuant to a course of instruction or assignments from an instructor and under the supervision of the instructor;

(3) The practice of podiatric medicine and surgery by licensed podiatric physicians and surgeons of other states or countries while appearing at educational seminars;

(4) The use of roentgen and other rays for making radiograms or similar records of the feet or portions thereof, under the supervision of a licensed podiatric physician and surgeon or a physician;

(5) The practice of podiatric medicine and surgery by externs, interns, and residents in training programs approved by the American Podiatric Medical Association;

(6) The performing of podiatric services by persons not licensed under this chapter when performed under the supervision of a licensed podiatrist if those services are authorized by board rule or other law to be so performed;

(7) The treatment of ailments of the feet by physicians licensed under chapter 18.57 or 18.71 RCW, or other licensed health professionals practicing within the scope of their licenses;

(8) The domestic administration of family remedies or treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denomination. [1990 c 147 § 17; 1982 c 21 § 19; 1973 c 77 § 19; 1955 c 149 § 12.]

18.22.900 Severability—1917 c 38. If any provision of this act shall be held void or unconstitutional, all other provisions and all other sections of the act which are not expressly held to be void or unconstitutional shall continue in full force and effect. [1917 c 38 § 19.]

18.22.910 Severability—1955 c 149. 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 applications, and to this end the provisions of this act are declared to be severable. [1955 c 149 § 16.]

18.22.911 Severability—1982 c 21. 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 21 § 20.]

18.22.950 Short title. This chapter shall be known as the Podiatric Physician and Surgeon Practice Act. [1990 c 147 § 19.]

Chapter 18.25 CHIROPRACTIC

Sections

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18.25.003 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.25.005 "Chiropractic" defined. (1) Chiropractic is the practice of health care that deals with the diagnosis or analysis and care or treatment of the vertebral subluxation complex and its effects, articular dysfunction, and musculoskeletal disorders, all for the restoration and maintenance of health and recognizing the recuperative powers of the body.

(2) Chiropractic treatment or care includes the use of procedures involving spinal adjustments, and extremity manipulation insofar as any such procedure is complementary or preparatory to a chiropractic spinal adjustment. Chiropractic treatment also includes the use of heat, cold, water, exercise, massage, trigger point therapy, dietary advice and recommendation of nutritional supplementation except for medicines of herbal, animal, or botanical origin, the normal regimen and rehabilitation of the patient, first aid, and counseling on hygiene, sanitation, and preventive measures. Chiropractic care also includes such physiological therapeutic procedures as traction and light, but does not include procedures involving the application of sound, diathermy, or electricity.

(3) As part of a chiropractic differential diagnosis, a chiropractor shall perform a physical examination, which may include diagnostic x-rays, to determine the appropriateness of chiropractic care or the need for referral to other health care providers. The chiropractic disciplinary board shall provide by rule for the type and use of diagnostic and analytical devices and procedures consistent with this chapter.

(4) Chiropractic care shall not include the prescription or dispensing of any medicine or drug, the practice of obstetrics or surgery, the use of x-rays or any other form of radiation for therapeutic purposes, colonic irrigation, or any form of venipuncture.

(5) Nothing in this chapter prohibits or restricts any other practitioner of a "health profession" defined in RCW 18.120.020(4) from performing any functions or procedures the practitioner is licensed or permitted to perform, and the term "chiropractic" as defined in this chapter shall not prohibit a practitioner licensed under chapter 18.71 RCW from performing medical procedures, except such procedures shall not include the adjustment by hand of any articulation of the spine. [1992 c 241 § 2; 1974 ex.s. c 97 § 7.]

Intent—1992 c 241: "This act is intended to expand the scope of practice of chiropractic only with regard to adjustment of extremities in connection with a spinal adjustment." [1992 c 241 § 1.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.120.

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

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of the department of health or the secretary's designee.

(3) "Chiropractor" means an individual licensed under this chapter.

(4) "Board" means the Washington state board of chiropractic examiners.

(5) "Vertebral subluxation complex" means a functional defect or alteration of the biomechanical and physiological dynamics in a joint that may cause neuronal disturbances, with or without displacement detectable by x-ray. The effects of the vertebral subluxation complex may include, but are not limited to, any of the following: Fixation, hypomobility, hypermobility, periarticular muscle spasm, edema, or inflammation.

(6) "Articular dysfunction" means an alteration of the biomechanical and physiological dynamics of a joint of the axial or appendicular skeleton.

(7) "Musculoskeletal disorders" means abnormalities of the muscles, bones, and connective tissue.

(8) "Chiropractic differential diagnosis" means a diagnosis to determine the existence of a vertebral subluxation complex, articular dysfunction, or musculoskeletal disorder, and the appropriateness of chiropractic care or the need for referral to other health care providers.

(9) "Chiropractic adjustment" means chiropractic care of a vertebral subluxation complex, articular dysfunction, or musculoskeletal disorder. Such care includes manual or mechanical adjustment of any vertebral articulation and contiguous articulations beyond the normal passive physiological range of motion.

(10) "Extremity manipulation" means a corrective thrust or maneuver applied to a joint of the appendicular skeleton. The use of extremity manipulation shall be complementary and preparatory to a chiropractic spinal adjustment to support correction of a vertebral subluxation complex and is considered a part of a spinal adjustment and shall not be billed separately from or in addition to a spinal adjustment. [1992 c 241 § 3; 1991 c 3 § 36; 1989 c 258 § 12.]

Intent—1992 c 241: See note following RCW 18.25.005.

18.25.011 License required. It is a violation of RCW 18.130.190 for any person to practice chiropractic in this state unless the person has obtained a license as provided in this chapter. [1987 c 150 § 14.]

Severability—1987 c 150: See RCW 18.122.901.

18.25.015 Board created—Composition—Terms. There is hereby created a state board of chiropractic examiners consisting of five practicing chiropractors and one consumer member to conduct examinations and perform duties as provided in this chapter.

Members of the board shall be appointed by the governor, who may consider such persons who are recommended for appointment by chiropractic associations of this state. For at least five years preceding the time of their appointment, and during their tenure of office, the members of the board must be actual residents of Washington and must be citizens of the United States. In addition, the doctors of chiropractic shall have been engaged in the active licensed practice of chiropractic in this state for a minimum of five years.

Appointments shall be for a term of five years. Vacancies of members shall be filled by the governor as in the case of original appointment, such appointee to hold office

for the remainder of the unexpired term. No board member shall serve more than two consecutive full terms.

A simple majority of the board members shall constitute a quorum of the board. [1989 c 258 § 1; 1984 c 279 § 49; 1980 c 51 § 1; 1965 ex.s. c 50 § 1; 1959 c 53 § 1.]

Severability—1984 c 279: See RCW 18.130.901.

Severability—1980 c 51: "If any provision of this 1980 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 51 § 6.]

18.25.016 Removal of board member. Any member of the board may be removed by the governor for neglect of duty, misconduct, or malfeasance or misfeasance in office, after being given a written statement of the charges against him or her and sufficient opportunity to be heard thereon. [1989 c 258 § 13.]

18.25.017 Board—Organization, meetings, rules, compensation, travel expenses. The board shall meet as soon as practicable after appointment, and shall elect a chairman and a secretary from its members. Meetings shall be held at least once a year at such place as the secretary shall determine, and at such other times and places as he or she deems necessary.

The board may make such rules, not inconsistent with this chapter, as it deems necessary to carry out the provisions of this chapter.

Each member 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, all to be paid out of the general fund on vouchers approved by the secretary, but not to exceed in the aggregate the amount of fees collected as provided in this chapter. [1991 c 3 § 37; 1986 c 259 § 23; 1984 c 287 § 27; 1975-'76 2nd ex.s. c 34 § 32; 1974 ex.s. c 97 § 8; 1959 c 53 § 2.]

Severability—1986 c 259: See note following RCW 18.130.010.

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.

Severability—1974 ex.s. c 97: See note following RCW 18.25.120.

18.25.019 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice and the issuance and denial of licenses under this chapter. [1987 c 150 § 12; 1986 c 259 § 21.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.25.020 Applications—Qualifications—Fees. (1) Any person not now licensed to practice chiropractic in this state and who desires to practice chiropractic in this state, before it shall be lawful for him or her to do so, shall make application therefor to the secretary, upon such form and in such manner as may be adopted and directed by the secretary. Each applicant who matriculates to a chiropractic college after January 1, 1975, shall have completed not less than one-half of the requirements for a baccalaureate degree at an accredited and approved college or university and shall be a graduate of a chiropractic school or college accredited

and approved by the board of chiropractic examiners and shall show satisfactory evidence of completion by each applicant of a resident course of study of not less than four thousand classroom hours of instruction in such school or college. Applications shall be in writing and shall be signed by the applicant in his or her own handwriting and shall be sworn to before some officer authorized to administer oaths, and shall recite the history of the applicant as to his or her educational advantages, his or her experience in matters pertaining to a knowledge of the care of the sick, how long he or she has studied chiropractic, under what teachers, what collateral branches, if any, he or she has studied, the length of time he or she has engaged in clinical practice; accompanying the same by reference therein, with any proof thereof in the shape of diplomas, certificates, and shall accompany said application with satisfactory evidence of good character and reputation.

(2) There shall be paid to the secretary by each applicant for a license, a fee determined by the secretary as provided in RCW 43.70.250 which shall accompany application and a fee determined by the secretary as provided in RCW 43.70.250, which shall be paid upon issuance of license. Like fees shall be paid for any subsequent examination and application. [1991 c 3 § 38; 1989 c 258 § 3; 1985 c 7 § 14; 1975 1st ex.s. c 30 § 19; 1974 ex.s. c 97 § 9; 1959 c 53 § 3; 1919 c 5 § 5; RRS § 10100.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.120.

18.25.025 Board accreditation of chiropractic schools and colleges—Standards—Assistants for examinations authorized. The board shall have authority to grant accreditation to chiropractic schools and colleges.

The board shall have authority to adopt educational standards which may include standards of any accreditation agency recognized by the office of education of the department of health and human services or its successor agency, or any portion of such standards, as the board's standards: PROVIDED, That such standards, so adopted, shall contain, as a minimum of on-campus instruction in chiropractic, the following: Principles of chiropractic, two hundred hours; adjustive technique, four hundred hours; spinal roentgenology, one hundred seventy-five hours; symptomatology and diagnosis, four hundred twenty-five hours; clinic, six hundred twenty-five hours: PROVIDED FURTHER, That such standards shall not mandate, as a requirement for either graduation or accreditation, or include in the computation of hours of chiropractic instruction required by this section, instruction in the following: Mechanotherapy, physiotherapy, acupuncture, acupressure, or any other therapy.

The board shall approve and accredit chiropractic colleges and schools which apply for board accreditation and approval and which meet to the board's satisfaction the educational standards adopted by the board. It shall be the responsibility of the college to apply for accreditation and approval, and of a student to ascertain whether a college or school has been accredited or approved by the board.

The board shall have authority to engage assistants in the giving of examinations called for under this chapter. [1980 c 51 § 3.]

Severability—1980 c 51: See note following RCW 18.25.015.

18.25.030 Examinations—Subjects—Grades.

Examinations for license to practice chiropractic shall be made by the board of chiropractic examiners according to the method deemed by it to be the most practicable and expeditious to test the applicant's qualifications. Such application shall be designated by a number instead of his or her name, so that the identity shall not be discovered or disclosed to the members of the examining committee until after the examination papers are graded.

All examinations shall be in whole or in part in writing, the subject of which shall be as follows: Anatomy, physiology, spinal anatomy, microbiology-public health, general diagnosis, neuromuscularskeletal diagnosis, x-ray, principles of chiropractic and adjusting, as taught by chiropractic schools and colleges. The board shall administer a practical examination to applicants which shall consist of diagnosis, principles and practice, x-ray, and adjustive technique consistent with chapter 18.25 RCW. A license shall be granted to all applicants whose score over each subject tested is seventy-five percent. The board may enact additional requirements for testing administered by the national board of chiropractic examiners. [1989 c 258 § 4; 1974 ex.s. c 97 § 10; 1959 c 53 § 4; 1919 c 5 § 6; RRS § 10101.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.120.
Hiring assistants for examinations: RCW 18.25.025.

18.25.035 Waiver of examination. The board may, in its discretion, waive any examination required by this chapter of persons applying for a license to practice chiropractic if, in its opinion, the applicant has successfully passed an examination conducted by the national board of chiropractic examiners of the United States that is of equal or greater difficulty than the examination being waived by the board. [1971 ex.s. c 227 § 5.]

18.25.040 Licensure by endorsement. Persons licensed to practice chiropractic under the laws of any other state, territory of the United States, the District of Columbia, Puerto Rico, or province of Canada, having qualifications substantially equivalent to those required by this chapter, may, in the discretion of the board of chiropractic examiners, and after such examination as may be required by rule of the board, be issued a license to practice in this state without further examination, upon payment of a fee determined by the secretary as provided in RCW 43.70.250. [1991 c 320 § 8; 1991 c 3 § 39; 1985 c 7 § 15; 1975 1st ex.s. c 30 § 20; 1971 ex.s. c 227 § 6; 1919 c 5 § 14; RRS § 10108.]

18.25.050 Revocation or refusal of licenses—Hearing—Restoration.

Reviser's note: RCW 18.25.050 was repealed during the 1986 legislative session without reference to its amendment during the 1985 legislative session. It has been decodified for publication purposes pursuant to RCW 1.12.025. See Table of Disposition of Former RCW Sections.

18.25.070 Annual renewal of license—Continuing education—Fees—Forfeiture—Penalties—Reexamination. (1) Every person practicing chiropractic shall, as a prerequisite to annual renewal of license, submit to the secretary at the time of application therefor, satisfactory proof showing attendance of at least twenty-five hours during the preceding

twelve-month period, at one or more chiropractic symposia which are recognized and approved by the board of chiropractic examiners: PROVIDED, That the board may, for good cause shown, waive said attendance. The following guidelines for such symposia shall apply:

(a) The board shall set criteria for the course content of educational symposia concerning matters which are recognized by the state of Washington chiropractic licensing laws; it shall be the licensee's responsibility to determine whether the course content meets these criteria;

(b) The board shall adopt standards for distribution of annual continuing education credit requirements;

(c) Rules shall be adopted by the board for licensees practicing and residing outside the state who shall meet all requirements established by the board by rules and regulations.

(2) Every person practicing chiropractic within this state shall pay on or before his or her birth anniversary date, after a license is issued to him or her as herein provided, to said secretary a renewal license fee to be determined by the secretary as provided in RCW 43.70.250. The secretary shall, thirty days or more before the birth anniversary date of each chiropractor in the state, mail to that chiropractor a notice of the fact that the renewal fee will be due on or before his or her birth anniversary date. Nothing in this chapter shall be construed so as to require that the receipts shall be recorded as original licenses are required to be recorded.

The failure of any licensed chiropractor to pay his or her annual license renewal fee within thirty days of license expiration shall work a forfeiture of his or her license. It shall not be reinstated except upon evidence that continuing educational requirements have been fulfilled and the payment of a penalty to be determined by the secretary as provided in RCW 43.70.250, together with all annual license renewal fees delinquent at the time of the forfeiture, and those for each year thereafter up to the time of reinstatement. Should the licentiate allow his or her license to elapse for more than three years, he or she may be reexamined as provided for in RCW 18.25.040 at the discretion of the board. [1991 c 3 § 40; 1989 c 258 § 5; 1985 c 7 § 17; 1980 c 51 § 2; 1975 1st ex.s. c 30 § 22; 1974 ex.s. c 97 § 11; 1971 ex.s. c 266 § 5; 1959 c 53 § 5; 1919 c 5 § 10; RRS § 10105.]

Severability—1980 c 51: See note following RCW 18.25.015.

Severability—1974 ex.s. c 97: See note following RCW 18.25.120.

18.25.075 Inactive status. (1) An individual may place his or her license on inactive status. The holder of an inactive license shall not practice chiropractic in this state without first activating the license.

(2) The inactive renewal fee shall be established by the secretary pursuant to RCW 43.70.250. Failure to renew an inactive license shall result in cancellation in the same manner as an active license.

(3) An inactive license may be placed in an active status upon compliance with the rules established by the board.

(4) The provisions relating to the denial, suspension, and revocation of a license shall be applicable to an inactive license, except that when proceedings to suspend or revoke an inactive license have been initiated, the license shall

remain inactive until the proceedings have been completed. [1991 c 3 § 41; 1989 c 258 § 14.]

18.25.080 Health regulations. Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death certificates and any and all matters pertaining to public health, reporting to the proper health officers the same as other practitioners. [1919 c 5 § 12; RRS § 10107.]

18.25.090 Use of credentials in written materials—Chapter not applicable to treatment by prayer. On all cards, books, papers, signs or other written or printed means of giving information to the public, used by those licensed by this chapter to practice chiropractic, the practitioner shall use after or below his or her name the term chiropractor, chiropractic physician, D.C., or D.C.Ph.C., designating his or her line of drugless practice, and shall not use the letters M.D. or D.O.: PROVIDED, That the word doctor or "Dr." or physician may be used only in conjunction with the word "chiropractic" or "chiropractor". Nothing in this chapter shall be held to apply to or to regulate any kind of treatment by prayer. [1991 c 320 § 9; 1989 c 258 § 6; 1986 c 259 § 24; 1981 c 277 § 3; 1971 ex.s. c 227 § 7; 1919 c 5 § 15; RRS § 10109.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.25.100 Prosecutions for violations. It shall be the duty of the several prosecuting attorneys of this state to prosecute all persons charged with the violation of any of the provisions of this chapter. It shall be the duty of the secretary to aid said attorneys of this state in the enforcement of this chapter. [1991 c 3 § 42; 1919 c 5 § 16; RRS § 10110.]

18.25.110 "Unprofessional conduct." See RCW 18.26.030.

18.25.120 Discrimination—Legislative finding and declaration. The legislature finds and declares that the costs of health care to the people are rising disproportionately to other costs and that there is a paramount concern that the right of the people to obtain access to health care in all its facets is being impaired thereby. For this reason, the reliance on the mechanism of health care service contractors, whether profit or nonprofit, is the only effective manner in which the large majority of the people can attain access to quality health care, and it is therefore declared to be in the public interest that health care service contractors be regulated to assure that all the people have access to health care to the greatest extent possible. *This 1974 amendatory act, prohibiting discrimination against the legally recognized and licensed profession of chiropractic, is necessary in the interest of the public health, welfare, and safety. [1974 ex.s. c 97 § 1.]

***Reviser's note:** "This 1974 amendatory act" [1974 ex.s. c 97] consists of RCW 18.25.005, 18.25.120 through 18.25.170, 18.26.035 and amendments to RCW 18.25.017, 18.25.020, 18.25.030, 18.25.070, 18.26.030, 18.26.040, and 18.26.070.

Severability—1974 ex.s. c 97: "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 97 § 16.]

18.25.130 Discrimination—Acceptance of services of chiropractors by state and political subdivisions required. Notwithstanding any other provision of law, the state and its political subdivisions shall accept the services of licensed chiropractors for any service covered by their licenses with relation to any person receiving benefits, salaries, wages, or any other type of compensation from the state, its agencies or subdivisions. [1974 ex.s. c 97 § 2.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.120.

18.25.140 Discrimination—State and political subdivisions prohibited from discriminating against chiropractors in performing and receiving compensation. The state and its political subdivisions, and all officials, agents, employees, or representatives thereof, are prohibited from in any way discriminating against licensed chiropractors in performing and receiving compensation for services covered by their licenses. [1974 ex.s. c 97 § 3.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.120.

18.25.150 Discrimination—State and political subdivisions—Entering into agreements or contracts which discriminate prohibited. Notwithstanding any other provision of law, the state and its political subdivisions, and all officials, agents, employees, or representatives thereof, are prohibited from entering into any agreement or contract with any individual, group, association, or corporation which in any way, directly or indirectly, discriminates against licensed chiropractors in performing and receiving compensation for services covered by their licenses. [1974 ex.s. c 97 § 4.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.120.

18.25.160 Discrimination—Immaterial whether costs deemed additional compensation. Notwithstanding any other provision of law, for the purpose of RCW 18.25.120 through 18.25.150 and 18.25.170 it is immaterial whether the cost of any policy, plan, agreement, or contract be deemed additional compensation for services, or otherwise. [1974 ex.s. c 97 § 5.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.120.

18.25.170 Discrimination—Application of RCW 18.25.120 through 18.25.160. RCW 18.25.120 through 18.25.160 shall apply to all agreements, renewals, or contracts issued on or after July 24, 1974. [1974 ex.s. c 97 § 6.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.120.

18.25.180 Employment of x-ray technicians—Rules.

(1) A chiropractor may employ a technician to operate x-ray equipment after the technician has registered with the board.

(2) The board may adopt rules necessary and appropriate to carry out the purposes of this section. [1991 c 222 § 9.]

Effective date—1991 c 222: See RCW 18.84.903.

18.25.190 Exemptions—Jurisdiction of chiropractic disciplinary board. Nothing in this chapter shall be construed to prohibit:

(1) The temporary practice in this state of chiropractic by any chiropractor licensed by another state, territory, or country in which he or she resides. However, the chiropractor shall not establish a practice open to the general public and shall not engage in temporary practice under this section for a period longer than thirty days. The chiropractor shall register his or her intention to engage in the temporary practice of chiropractic in this state with the board of chiropractic examiners before engaging in the practice of chiropractic, and shall agree to be bound by such conditions as may be prescribed by rule by the board.

(2) The practice of chiropractic, except the administration of a chiropractic adjustment, by a person who is a regular senior student in an accredited school of chiropractic approved by the board if the practice is part of a regular course of instruction offered by the school and the student is under the direct supervision and control of a chiropractor duly licensed pursuant to this chapter and approved by the board.

(3) The practice of chiropractic by a person serving a period of postgraduate chiropractic training in a program of clinical chiropractic training sponsored by a school of chiropractic accredited in this state if the practice is part of his or her duties as a clinical postgraduate trainee and the trainee is under the direct supervision and control of a chiropractor duly licensed pursuant to this chapter and approved by the board.

(4) The practice of chiropractic by a person who is eligible and has applied to take the next available examination for licensing offered by the board of chiropractic examiners, except that the unlicensed chiropractor must provide all services under the direct control and supervision of a licensed chiropractor approved by the board. The unlicensed chiropractor may continue to practice as provided by this subsection until the results of the next available examination are published, but in no case for a period longer than six months. The board shall adopt rules necessary to effectuate the intent of this subsection.

Any provision of chiropractic services by any individual under subsection (1), (2), (3), or (4) of this section shall be subject to the jurisdiction of the chiropractic disciplinary board as provided in chapters 18.26 and 18.130 RCW. [1991 c 320 § 10.]

18.25.200 Service and fee limitations by health care purchasers—Pilot projects. All state health care purchasers shall have the authority to set service and fee limitations on chiropractic costs. The health care authority shall establish pilot projects in defined geographic regions of the state to contract with organizations of chiropractors for a prepaid capitated amount. [1992 c 241 § 4.]

Intent—1992 c 241: See note following RCW 18.25.005.

Chapter 18.26

CHIROPRACTIC DISCIPLINARY BOARD

Sections

18.26.005	Regulation of health care professions—Criteria.
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18.26.020	Definitions.
18.26.025	"Chiropractic" defined.
18.26.028	Application of uniform disciplinary act.
18.26.030	"Unprofessional conduct."
18.26.040	Board created—Composition—Terms.
18.26.050	Vacancies.
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18.26.070	Compensation and travel expenses of members.
18.26.080	Territorial scope of operations.
18.26.090	Officers—Meetings—Quorum.
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18.26.340	Peer review proceedings—Requests—Records—Costs.
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18.26.360	Peer review committee complaint—Confidentiality.
18.26.370	Biennial report of peer review decisions.
18.26.380	Inadmissibility of peer review findings and decisions.
18.26.390	Rules.
18.26.900	Severability—1967 c 171.

Reviser's note—Sunset Act application: The chiropractic disciplinary board is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.337. RCW 18.26.010 through 18.26.110 and 18.26.900 are scheduled for future repeal under RCW 43.131.338.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

18.26.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.26.010 Declaration of purpose. This chapter is passed:

(1) In the exercise of the police power of the state and to provide an adequate public agency to act as a disciplinary body for the members of the chiropractic profession licensed to practice chiropractic in this state;

(2) Because the health and well-being of the people of this state are of paramount importance;

(3) Because the conduct of members of the chiropractic profession licensed to practice chiropractic in this state plays a vital role in preserving the health and well-being of the people of the state; and

(4) Because practicing other healing arts while licensed to practice chiropractic and while holding one's self out to the public as a chiropractor affects the health and welfare of the people of the state. [1989 c 258 § 7; 1967 c 171 § 1.]

Sunset Act application: See note following chapter digest.

Chiropractic examining board: Chapter 18.25 RCW.

18.26.020 Definitions. Terms used in this chapter shall have the meaning set forth in this section unless the context clearly indicates otherwise:

(1) "Board" means the chiropractic disciplinary board;

(2) "License" means a certificate of license to practice chiropractic in this state as provided for in chapter 18.25 RCW;

(3) "Members" means members of the chiropractic disciplinary board;

(4) "Department" means the department of health;

(5) "Secretary" means the secretary of the department of health or the secretary's designee;

(6) "Chiropractor" means a person licensed under chapter 18.25 RCW. [1991 c 3 § 43; 1989 c 258 § 8; 1967 c 171 § 2.]

Sunset Act application: See note following chapter digest.

18.26.025 "Chiropractic" defined. See RCW 18.25.005.

18.26.028 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs the discipline of licensees under this chapter. [1987 c 150 § 13; 1986 c 259 § 22.]

Sunset Act application: See note following chapter digest.

Reviser's note: The above section was enacted by both 1986 c 259 § 22 and 1987 c 150 § 13. It is consolidated here for publication purposes.

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.26.030 "Unprofessional conduct." (1) In addition to those acts defined in chapter 18.130 RCW, the term "unprofessional conduct" as used in this chapter and chapter 18.25 RCW includes failing to differentiate chiropractic care from any and all other methods of healing at all times.

(2) Proceedings involving alleged unprofessional conduct shall be conducted by the attorney general upon the direction of the board. [1986 c 259 § 25; 1979 ex.s. c 111 § 17; 1975 1st ex.s. c 39 § 1; 1974 ex.s. c 97 § 12; 1967 c 171 § 3.]

Sunset Act application: See note following chapter digest.

Savings—1986 c 259 §§ 25, 29: "The amendment of RCW 18.26.030 and the repeal of RCW 18.26.035 and 18.26.037 by this act shall not be construed as affecting any rights and duties which matured, penalties which were incurred, and proceedings which were begun before June 11, 1986." [1986 c 259 § 30.]

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1979 ex.s. c 111: "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 111 § 21.]

Severability—1975 1st ex.s. c 39: "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." [1975 1st ex.s. c 39 § 10.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.120.

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.26.040 Board created—Composition—Terms. There is hereby created the Washington state chiropractic disciplinary board of seven members to be composed of six chiropractic members to be appointed by the governor, and one member appointed by the governor who shall be representative of the public at large. For at least five years preceding the time of their appointment, and during their tenure of office, the chiropractic members of the board must be residents of Washington.

In addition, the doctors of chiropractic shall have been engaged in the active licensed practice of chiropractic in this state for a minimum of five years.

Board appointments shall be for a term of five years. No board member shall serve more than two consecutive full terms. [1989 c 258 § 9; 1980 c 46 § 1. Prior: 1979 ex.s. c 111 § 18; 1979 c 158 § 20; 1974 ex.s. c 97 § 13; 1967 c 171 § 4.]

Sunset Act application: See note following chapter digest.

Severability—1979 ex.s. c 111: See note following RCW 18.26.030.

Severability—1974 ex.s. c 97: See note following RCW 18.25.120.

Secretary of health or secretary's designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.26.050 Vacancies. Vacancies on the board shall be filled as provided for initially for the position for which a vacancy exists. The vacancy shall be filled within thirty days of the existence thereof and the secretary shall be informed of the name and address of the person named to fill the vacancy. [1991 c 3 § 44; 1979 c 158 § 21; 1967 c 171 § 5.]

Sunset Act application: See note following chapter digest.

18.26.060 Removal of members. Any member of the board may be removed by the governor for neglect of duty, misconduct or malfeasance or misfeasance in office, after being given a written statement of the charges against him and sufficient opportunity to be heard thereon. [1967 c 171 § 6.]

Sunset Act application: See note following chapter digest.

18.26.070 Compensation and travel expenses of members. Members of the board may be compensated in accordance with RCW 43.03.240 and may be paid their travel expenses while engaged in the business of the board in accordance with RCW 43.03.050 and 43.03.060, with such reimbursement to be paid out of the general fund on vouchers signed by the secretary. [1991 c 3 § 45; 1984 c 287 § 28; 1980 c 46 § 2. Prior: 1979 ex.s. c 111 § 20; 1979 c 158 § 22; 1975-'76 2nd ex.s. c 34 § 33; 1974 ex.s. c 97 § 14; 1967 c 171 § 7.]

Sunset Act application: See note following chapter digest.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Severability—1979 ex.s. c 111: See note following RCW 18.26.030.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Severability—1974 ex.s. c 97: See note following RCW 18.25.120.

18.26.080 Territorial scope of operations. The board may meet, function, and exercise its powers at any place within the state. [1967 c 171 § 8.]

Sunset Act application: See note following chapter digest.

18.26.090 Officers—Meetings—Quorum. The board shall elect from its members a chairman and vice-chairman, who shall serve for one year and until their successors are elected and qualified. The board shall meet at least once a year or oftener upon the call of the chairman at such times and places as the chairman shall designate. A simple majority of the board members shall constitute a quorum of the board. [1989 c 258 § 11; 1967 c 171 § 9.]

Sunset Act application: See note following chapter digest.

18.26.110 Rules. The board may adopt, amend and rescind such rules and regulations as it deems necessary to carry out the provisions of this chapter. [1986 c 259 § 26; 1975 1st ex.s. c 39 § 2; 1967 c 171 § 11.]

Sunset Act application: See note following chapter digest.

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1975 1st ex.s. c 39: See note following RCW 18.26.030.

18.26.320 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 18.26.330 through 18.26.380.

(1) "Accepted standards" means those standards of practice, skill, and treatment that are recognized by a reasonably prudent chiropractor as being acceptable under similar conditions and circumstances.

(2) "Appropriate chiropractic treatment" means treatment and other services performed or ordered, in connection with a substantiated and properly documented condition, which would appear to a reasonably prudent chiropractor to be consistent with the diagnosis or analysis presented.

(3) "Excessive" fees or costs means charges above the usual and customary charges in that service area as paid by public and private third-party payors.

(4) "Patient" means an individual who receives chiropractic evaluation or treatment, or both.

(5) "Peer review committee" means the committee established under RCW 18.26.330.

(6) "Peer review proceeding" or "peer review" means an evaluation, based on accepted standards, by the peer review committee, of the appropriateness, quality, utilization, and cost of health services provided to a patient. Peer review does not include matters related to the licensing, discipline, or scope of practice of any health care profession.

(7) "Properly utilized services" means appropriate services rendered or ordered, including the frequency and duration of such services, which are documented as being necessary and reasonable by clinical records and reports or by other facts, presentations, or evidence reviewed by the peer review committee.

(8) "Services rendered" means all services provided to a patient. [1991 c 320 § 1.]

18.26.330 Peer review committee. (1) The board shall appoint the peer review committee, which shall be constituted as follows: The chair of the peer review committee shall be a member of the board and shall not vote except to break a tie; one chiropractor from each congressional district; one independent member representative of the health insurance industry; and one representative from the department of labor and industries. The term of appointment of peer review committee members shall be one year, and no member shall serve more than four consecutive terms. The board may appoint additional pro tem members as necessary. Chiropractor members shall have at least five years of active practice in this state. The board shall adopt rules establishing other qualifications for appointment of the chiropractic members to the peer review committee, including rules to avoid conflict of interest or the appearance of conflict of interest.

(2) The peer review committee may be compensated in accordance with RCW 43.03.240 and may be paid travel expenses while engaged in the business of the committee in accordance with RCW 43.03.050 and 43.03.060. [1991 c 320 § 2.]

18.26.340 Peer review proceedings—Requests—Records—Costs. (1) A patient, a patient's representative, an insurer, an agency of the state of Washington, or a chiropractor may request a peer review proceeding by submitting an inquiry about services rendered to a patient by a chiropractor. The board shall, in its discretion, determine whether the inquiry should be reviewed as a peer review proceeding, as a matter for possible voluntary mediation, or as a disciplinary proceeding. Peer review shall not be used to replace the independent medical/chiropractic examination.

(2) Request for peer review constitutes consent to submission by the requesting party of all necessary records and other information concerning the chiropractic services rendered. Chiropractors licensed under this chapter who are a party to the peer review are required to submit all necessary records and other information concerning services rendered by the chiropractor.

(3) All costs associated with conducting peer review under this chapter shall be borne by the chiropractic profession as part of the licensing fees. Notwithstanding, the board shall assess a fee to cover the costs of the review when the requesting party is a chiropractor or a third-party payor. [1991 c 320 § 3.]

18.26.350 Peer review committee authority—Findings—Appeals. (1) The peer review committee may review matters regarding the appropriateness, quality, utilization, or cost of chiropractic services rendered. The peer review committee on each review shall include in its findings a determination whether appropriate chiropractic treatment was rendered, whether the services rendered were properly utilized services, whether treatment or services rendered or ordered were appropriate in accordance with accepted standards, and whether the fees charged were excessive or not.

(2) The committee may appoint subcommittees to assist it in conducting peer review. All activities of the subcommittees shall be reviewed and approved or disapproved by the committee.

(3) The peer review committee shall submit to all parties and to the board a decision setting forth the committee's findings and recommendations.

(4) Any party may appeal the decision to the board. The board, on the record of the peer review committee, may return the proceeding with recommendations to the committee for reconsideration, may initiate disciplinary proceedings, or may approve the decision of the peer review committee, or may take any combination of the above actions. [1991 c 320 § 4.]

18.26.360 Peer review committee complaint—Confidentiality. The peer review committee shall file with the board a complaint against a chiropractor if the committee determines that reasonable cause exists to believe the chiropractor has committed unprofessional conduct. The

peer review committee shall transmit all information pertinent to the complaint to the board. Such information shall be confidential and shall be used solely for disciplinary purposes. [1991 c 320 § 5.]

18.26.370 Biennial report of peer review decisions. The board shall prepare a biennial report summarizing its peer review decisions and shall include such report as part of the board's report requirements under RCW 18.130.310. The published summary of peer review decisions shall not be used and shall not serve as the basis for establishing appropriate fee schedules or treatment regimes for the profession. [1991 c 320 § 6.]

18.26.380 Inadmissibility of peer review findings and decisions. No findings or decisions of the peer review committee shall have any effect on or be admissible in any court proceeding or administrative proceedings conducted under another chapter of the Revised Code of Washington. [1991 c 320 § 7.]

18.26.390 Rules. The board may adopt rules necessary and appropriate to implement RCW 18.26.320 through 18.26.380. [1991 c 320 § 11.]

18.26.900 Severability—1967 c 171. 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. [1967 c 171 § 31.]

Sunset Act application: See note following chapter digest.

Chapter 18.27

REGISTRATION OF CONTRACTORS

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- 18.27.900 Severability—1963 c 77.

Actions or claims for construction of improvements upon real property, accrual and limitations upon: RCW 4.16.300 through 4.16.320.

18.27.010 Definitions. A "contractor" as used in this chapter is any person, firm or corporation who or which, in the pursuit of an independent business undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development, or improvement attached to real estate or to do any part thereof including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works in connection therewith or who installs or repairs roofing or siding; or, who, to do similar work upon his own property, employs members of more than one trade upon a single job or project or under a single building permit except as otherwise provided herein. A "general contractor" is a contractor whose business operations require the use of more than two unrelated building trades or crafts whose work the contractor shall superintend or do in whole or in part; the term "general contractor" shall not include an individual who does all work personally without employees or other "specialty contractors" as defined herein. The terms "general contractor" and "builder" are synonymous. A "specialty contractor" is a contractor whose operations as such do not fall within the foregoing definition of "general contractor".

"Department" as used in this chapter means the department of labor and industries.

"Director" as used in this chapter means the director of the department of labor and industries. [1973 1st ex.s. c 153 § 1; 1972 ex.s. c 118 § 1; 1967 c 126 § 5; 1963 c 77 § 1.]

Effective date—1963 c 77: "This act shall take effect August 1, 1963." [1963 c 77 § 12.]

18.27.020 Registration required—Prohibited acts—Criminal penalty. (1) Every contractor shall register with the department.

(2) It is a misdemeanor for any contractor having knowledge of the registration requirements of this chapter to:

(a) Advertise, offer to do work, submit a bid, or perform any work as a contractor without being registered as required by this chapter;

(b) Advertise, offer to do work, submit a bid, or perform any work as a contractor when the contractor's registration is suspended; or

(c) Transfer a valid registration to an unregistered contractor or allow an unregistered contractor to work under a registration issued to another contractor.

(3) All misdemeanor actions under this chapter shall be prosecuted in the county where the infraction occurs. [1987 c 362 § 1; 1986 c 197 § 1; 1983 1st ex.s. c 2 § 17; 1973 1st ex.s. c 153 § 2; 1963 c 77 § 2.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.030 Application for registration—Grounds for denial. (1) An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the director and which shall include the following information pertaining to the applicant:

(a) Employer social security number.

(b) As applicable: (i) The industrial insurance account number covering employees domiciled in Washington; and (ii) evidence of workers' compensation coverage in the applicant's state of domicile for the applicant's employees working in Washington who are not domiciled in Washington.

(c) Employment security department number.

(d) State excise tax registration number.

(e) Unified business identifier (UBI) account number may be substituted for the information required by (b), (c), and (d) of this subsection.

(f) Type of contracting activity, whether a general or a specialty contractor and if the latter, the type of specialty.

(g) The name and address of each partner if the applicant be a firm or partnership, or the name and address of the owner if the applicant be an individual proprietorship, or the name and address of the corporate officers and statutory agent, if any, if the applicant be a corporation. The information contained in such application shall be a matter of public record and open to public inspection.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(b) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3) Registration shall be denied if the applicant has been previously registered as a sole proprietor, partnership or corporation, and was a principal or officer of the corporation, and if the applicant has an unsatisfied final judgment in an action based on RCW 18.27.040 that incurred during a previous registration under this chapter. [1992 c 217 § 1; 1988 c 285 § 1. Prior: 1987 c 362 § 2; 1987 c 111 § 9; 1973 1st ex.s. c 153 § 3; 1963 c 77 § 3.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

18.27.040 Bond or other security required—Actions against—Suspension of registration upon impairment.

(1) Each applicant shall, at the time of applying for or renewing a certificate of registration, file with the department a surety bond issued by a surety insurer who meets the requirements of chapter 48.28 RCW in a form acceptable to the department running to the state of Washington if a general contractor, in the sum of six thousand dollars; if a specialty contractor, in the sum of four thousand dollars, conditioned that the applicant will pay all persons performing labor, including employee benefits, for the contractor, will pay all taxes and contributions due to the state of Washington, and will pay all persons furnishing labor or material or renting or supplying equipment to the contractor and will pay all amounts that may be adjudged against the contractor by reason of negligent or improper work or breach of contract in the conduct of the contracting business. A change in the name of a business or a change in the type of business entity shall not impair a bond for the purposes of this section so long as one of the original applicants for such bond maintains partial ownership in the business covered by the bond.

(2) Any contractor registered as of *the effective date of this 1983 act who maintains such registration in accordance with this chapter shall be in compliance with this chapter until the next annual renewal of the contractor's certificate of registration. At that time, the contractor shall provide a bond, cash deposit, or other security deposit as required by this chapter and comply with all of the other provisions of this chapter before the department shall renew the contractor's certificate of registration.

(3) Any person, firm, or corporation having a claim against the contractor for any of the items referred to in this section may bring suit upon such bond or deposit in the superior court of the county in which the work was done or of any county in which jurisdiction of the contractor may be had. The surety issuing the bond shall be named as a party to any suit upon the bond. Action upon such bond or deposit shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within one year from the date of expiration of the certificate of registration in force at the time the claimed labor was performed and benefits accrued, taxes and contributions owing the state of Washington became due, materials and equipment were furnished, or the claimed contract work was completed. Service of process in an action against the contractor, the contractor's bond, or the deposit shall be exclusively by service upon the department. Three copies of the summons and complaint and a fee of ten dollars to cover the handling costs shall be served by registered or certified mail upon the department at the time suit is started and the department shall maintain a record, available for public inspection, of all suits so commenced. Service is not complete until the department receives the ten-dollar fee and three copies of the summons and complaint. Such service shall constitute service on the registrant and the surety for suit upon the bond or deposit and the department shall transmit the summons and complaint or a copy thereof to the registrant at the address listed in his application and to the

surety within forty-eight hours after it shall have been received.

(4) The surety upon the bond shall not be liable in an aggregate amount in excess of the amount named in the bond nor for any monetary penalty assessed pursuant to this chapter for an infraction. The liability of the surety shall not cumulate where the bond has been renewed, continued, reinstated, reissued or otherwise extended. The surety upon the bond may, upon notice to the department and the parties, tender to the clerk of the court having jurisdiction of the action an amount equal to the claims thereunder or the amount of the bond less the amount of judgments, if any, previously satisfied therefrom and to the extent of such tender the surety upon the bond shall be exonerated but if the actions commenced and pending at any one time exceed the amount of the bond then unimpaired, claims shall be satisfied from the bond in the following order:

- (a) Labor, including employee benefits;
- (b) Claims for breach of contract by a party to the construction contract;
- (c) Material and equipment;
- (d) Taxes and contributions due the state of Washington;
- (e) Any court costs, interest, and attorney's fees plaintiff may be entitled to recover.

(5) In the event that any final judgment shall impair the liability of the surety upon the bond so furnished that there shall not be in effect a bond undertaking in the full amount prescribed in this section, the department shall suspend the registration of such contractor until the bond liability in the required amount unimpaired by unsatisfied judgment claims shall have been furnished. If such bond becomes fully impaired, a new bond must be furnished at the increased rates prescribed by this section as now or hereafter amended.

(6) In lieu of the surety bond required by this section the contractor may file with the department a deposit consisting of cash or other security acceptable to the department.

(7) Any person having filed and served a summons and complaint as required by this section having an unsatisfied final judgment against the registrant for any items referred to in this section may execute upon the security held by the department by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the department within one year of the date of entry of such judgment. Upon the receipt of service of such certified copy the department shall pay or order paid from the deposit, through the registry of the superior court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the department shall be the order of receipt by the department, but the department shall have no liability for payment in excess of the amount of the deposit.

(8) The director may promulgate rules necessary for the proper administration of the security. [1988 c 139 § 1; 1987 c 362 § 6; 1983 1st ex.s. c 2 § 18; 1977 ex.s. c 11 § 1; 1973 1st ex.s. c 153 § 4; 1972 ex.s. c 118 § 2; 1967 c 126 § 1; 1963 c 77 § 4.]

**Reviser's note:* 1983 1st ex.s. c 2 generally took effect August 23, 1983, except for §§ 1 through 17 which took effect January 1, 1984; see note following RCW 18.27.200.

Unpaid wages by public works contractor constitute lien against bond: RCW 39.12.050.

18.27.050 Insurance or financial responsibility required—Suspension of registration upon impairment.

(1) At the time of registration and subsequent reregistration, the applicant shall furnish insurance or financial responsibility in the form of an assigned account in the amount of twenty thousand dollars for injury or damages to property, and fifty thousand dollars for injury or damage including death to any one person, and one hundred thousand dollars for injury or damage including death to more than one person or financial responsibility to satisfy these amounts.

(2) Failure to maintain insurance or financial responsibility relative to the contractor's activities shall be cause to suspend or deny the contractor his or her or their registration.

(3)(a) Proof of financial responsibility authorized in this section may be given by providing, in the amount required by subsection (1) of this section, an assigned account acceptable to the department. The assigned account shall be held by the department to satisfy any execution on a judgment issued against the contractor for damage to property or injury or death to any person occurring in the contractor's contracting operations, according to the provisions of the assigned account agreement. The department shall have no liability for payment in excess of the amount of the assigned account.

(b) The assigned account filed with the director as proof of financial responsibility shall be canceled at the expiration of three years after:

(i) The contractor's registration has expired or been revoked; or

(ii) The contractor has furnished proof of insurance as required by subsection (1) of this section; if, in either case, no legal action has been instituted against the contractor or on the account at the expiration of the three-year period.

(c) If a contractor chooses to file an assigned account as authorized in this section, the contractor shall, on any contracting project, notify each person with whom the contractor enters into a contract or to whom the contractor submits a bid that the contractor has filed an assigned account in lieu of insurance and that recovery from the account for any claim against the contractor for property damage or personal injury or death occurring in the project requires the claimant to obtain a court judgment. [1987 c 303 § 1; 1963 c 77 § 5.]

18.27.060 Certificate of registration—Issuance, duration, renewal—Suspension. (1) A certificate of registration shall be valid for one year and shall be renewed on or before the expiration date. The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) If the department approves an application, it shall issue a certificate of registration to the applicant. The certificate shall be valid for:

(a) One year;

(b) Until the bond expires; or

(c) Until the insurance expires, whichever comes first.

The department shall place the expiration date on the certificate.

(3) A contractor may supply a short-term bond or insurance policy to bring its registration period to the full one year.

(4) If a contractor's surety bond or other security has an unsatisfied judgment against it or is canceled, or if the contractor's insurance policy is canceled, the contractor's registration shall be automatically suspended on the effective date of the impairment or cancellation. The department shall give notice of the suspension to the contractor. [1983 1st ex.s. c 2 § 19; 1977 ex.s. c 61 § 1; 1963 c 77 § 6.]

18.27.065 Partnership or joint venture deemed registered, when. A partnership or joint venture shall be deemed registered under this chapter if any one of the general partners or venturers whose name appears in the name under which the partnership or venture does business is registered. [1983 1st ex.s. c 2 § 16.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.070 Fees. The department shall charge fees for issuance, renewal, and reinstatement of certificates of registration; and changes of name, address, or business structure. The department shall set the fees by rule.

The fees shall cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs shall include reproduction, travel, per diem, and administrative and legal support costs. [1983 c 74 § 1; 1977 ex.s. c 66 § 1; 1973 1st ex.s. c 153 § 5; 1967 c 126 § 2; 1963 c 77 § 7.]

Effective date—1977 ex.s. c 66: "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 on July 1, 1977." [1977 ex.s. c 66 § 2.]

18.27.075 Limit on fees for issuing or renewing certificate of registration. The department may not set a fee higher than fifty dollars for issuing or renewing a certificate of registration. [1983 c 74 § 2.]

18.27.080 Registration prerequisite to suit. No person engaged in the business or acting in the capacity of a contractor may bring or maintain any action in any court of this state for the collection of compensation for the performance of any work or for breach of any contract for which registration is required under this chapter without alleging and proving that he was a duly registered contractor and held a current and valid certificate of registration at the time he contracted for the performance of such work or entered into such contract. For the purposes of this section, the court shall not find a contractor in substantial compliance with the registration requirements of this chapter unless: (1) The department has on file the information required by RCW 18.27.030; (2) the contractor has a current bond or other security as required by RCW 18.27.040; and (3) the contractor has current insurance as required by RCW 18.27.050. In determining under this section whether a contractor is in substantial compliance with the registration requirements of this chapter, the court shall take into consideration the length of time during which the contractor did not hold a valid

certificate of registration. [1988 c 285 § 2; 1972 ex.s. c 118 § 3; 1963 c 77 § 8.]

18.27.090 Exemptions. This chapter shall not apply to:

(1) An authorized representative of the United States government, the state of Washington, or any incorporated city, town, county, township, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) Officers of a court when they are acting within the scope of their office;

(3) Public utilities operating under the regulations of the utilities and transportation commission in construction, maintenance, or development work incidental to their own business;

(4) Any construction, repair, or operation incidental to the discovering or producing of petroleum or gas, or the drilling, testing, abandoning, or other operation of any petroleum or gas well or any surface or underground mine or mineral deposit when performed by an owner or lessee;

(5) The sale or installation of any finished products, materials, or articles of merchandise which are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) Any construction, alteration, improvement, or repair of personal property, except this chapter shall apply to all mobile/manufactured housing. A mobile/manufactured home may be installed, set up, or repaired by the registered or legal owner, by a contractor licensed under this chapter, or by a mobile/manufactured home retail dealer or manufacturer licensed under chapter 46.70 RCW who shall warranty service and repairs under chapter 46.70 RCW;

(7) Any construction, alteration, improvement, or repair carried on within the limits and boundaries of any site or reservation under the legal jurisdiction of the federal government;

(8) Any person who only furnished materials, supplies, or equipment without fabricating them into, or consuming them in the performance of, the work of the contractor;

(9) Any work or operation on one undertaking or project by one or more contracts, the aggregate contract price of which for labor and materials and all other items is less than five hundred dollars, such work or operations being considered as of a casual, minor, or inconsequential nature. The exemption prescribed in this subsection does not apply in any instance wherein the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made into contracts of amounts less than five hundred dollars for the purpose of evasion of this chapter or otherwise. The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he is a contractor, or that he is qualified to engage in the business of contractor;

(10) Any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts or reclamation districts; or to farming, dairying, agriculture, viticulture, horticulture, or stock or poultry raising; or to clearing or

other work upon land in rural districts for fire prevention purposes; except when any of the above work is performed by a registered contractor;

(11) An owner who contracts for a project with a registered contractor;

(12) Any person working on his own property, whether occupied by him or not, and any person working on his residence, whether owned by him or not but this exemption shall not apply to any person otherwise covered by this chapter who constructs an improvement on his own property with the intention and for the purpose of selling the improved property;

(13) Owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

(14) A licensed architect or civil or professional engineer acting solely in his professional capacity, an electrician licensed under the laws of the state of Washington, or a plumber licensed under the laws of the state of Washington or licensed by a political subdivision of the state of Washington while operating within the boundaries of such political subdivision. The exemption provided in this subsection is applicable only when the licensee is operating within the scope of his license;

(15) Any person who engages in the activities herein regulated as an employee of a registered contractor with wages as his sole compensation or as an employee with wages as his sole compensation;

(16) Contractors on highway projects who have been prequalified as required by chapter 13 of the Laws of 1961, RCW 47.28.070, with the department of transportation to perform highway construction, reconstruction, or maintenance work. [1987 c 313 § 1; 1983 c 4 § 1; 1980 c 68 § 2; 1974 ex.s. c 25 § 2. Prior: 1973 1st ex.s. c 161 § 1; 1973 1st ex.s. c 153 § 6; 1967 c 126 § 3; 1965 ex.s. c 170 § 50; 1963 c 77 § 9.]

18.27.100 Business practices—Advertising—Penalty.

(1) Except as provided in RCW 18.27.065 for partnerships and joint ventures, no person who has registered under one name as provided in this chapter shall engage in the business, or act in the capacity, of a contractor under any other name unless such name also is registered under this chapter.

(2) All advertising and all contracts, correspondence, cards, signs, posters, papers, and documents which show a contractor's name or address shall show the contractor's name or address as registered under this chapter. The alphabetized listing of contractors appearing in the advertising section of telephone books or other directories and all advertising that shows the contractor's name or address shall show the contractor's current registration number: PROVIDED, That signs on motor vehicles subject to RCW 46.16.010 and on-premise signs shall not constitute advertising as provided in this section. All materials used to directly solicit business from retail customers who are not businesses shall show the contractor's current registration number. Advertising by airwave transmission shall not be subject to this subsection if the person selling the advertisement obtains the contractor's current registration number from the contractor.

(3) No contractor shall advertise that he or she is bonded and insured because of the bond required to be filed and sufficiency of insurance as provided in this chapter.

(4) A contractor shall not falsify a registration number and use it in connection with any solicitation or identification as a contractor. All individual contractors and all partners, associates, agents, salesmen, solicitors, officers, and employees of contractors shall use their true names and addresses at all times while engaged in the business or capacity of a contractor or activities related thereto.

(5) Any person who is found to be in violation of this section by the director at a hearing held in accordance with the administrative procedure act, chapter 34.05 RCW, shall be required to pay a penalty of not more than five thousand dollars as determined by the director. However, the penalty under this section shall not apply to a violation determined to be an inadvertent error. [1990 c 46 § 1; 1987 c 362 § 3; 1980 c 68 § 1; 1979 ex.s. c 116 § 1; 1963 c 77 § 10.]

Effective date—1979 ex.s. c 116: "The provisions of this 1979 amendatory act shall become effective on January 1, 1980." [1979 ex.s. c 116 § 2.]

18.27.102 Unlawful advertising—Liability. When determining a violation of RCW 18.27.100, the director and administrative law judge shall hold responsible the person who purchased the advertising. [1987 c 362 § 4.]

18.27.104 Unlawful advertising—Citations. (1) If, upon investigation, the director or the director's designee has probable cause to believe that a person holding a registration, an applicant for registration, or an unregistered person acting in the capacity of a contractor who is not otherwise exempted from this chapter, has violated RCW 18.27.100 by unlawfully advertising for work covered by this chapter in an alphabetical or classified directory, the department may issue a citation containing an order of correction. Such order shall require the violator to cease the unlawful advertising.

(2) If the person to whom a citation is issued under subsection (1) of this section notifies the department in writing that he or she contests the citation, the department shall afford an opportunity for an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, within thirty days after receiving the notification. [1989 c 175 § 61; 1987 c 362 § 5.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.27.110 Construction building permits—Cities, towns or counties prohibited from issuing without verification of registration. No city, town or county shall issue a construction building permit for work which is to be done by any contractor required to be registered under chapter 77, Laws of 1963 and chapter 18.27 RCW without verification that such contractor is currently registered as required by law. When such verification is made, nothing contained in this section is intended to be, nor shall be construed to create, or form the basis for any liability under this chapter on the part of any city, town or county, or its officers, employees or agents. [1986 c 197 § 14; 1967 c 126 § 4.]

18.27.111 Public works, contracts with unregistered contractors prohibited. See RCW 39.06.010.

18.27.114 Disclosure statement required—Prerequisite to lien claim. (1) Until July 1, 1989, any contractor agreeing to perform any contracting project: (a) For the repair, alteration, or construction of four or fewer residential units or accessory structures on such residential property when the bid or contract price totals one thousand dollars or more; or (b) for the repair, alteration, or construction of a commercial building when the bid or contract price totals one thousand dollars or more but less than sixty thousand dollars, must provide the customer with the following disclosure statement prior to starting work on the project:

"NOTICE TO CUSTOMER

This contractor is registered with the state of Washington, registration no. . . . , as a general/specialty contractor and has posted with the state a bond or cash deposit of \$6,000/\$4,000 for the purpose of satisfying claims against the contractor for negligent or improper work or breach of contract in the conduct of the contractor's business. This bond or cash deposit may not be sufficient to cover a claim which might arise from the work done under your contract. If any supplier of materials used in your construction project or any employee of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property may be liened to force payment. If you wish additional protection, you may request the contractor to provide you with original "lien release" documents from each supplier or subcontractor on your project. The contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the department of labor and industries."

(2) On and after July 1, 1989, any contractor agreeing to perform any contracting project: (a) For the repair, alteration, or construction of four or fewer residential units or accessory structures on such residential property when the bid or contract price totals one thousand dollars or more; or (b) for the repair, alteration, or construction of a commercial building when the bid or contract price totals one thousand dollars or more but less than sixty thousand dollars, must provide the customer with the following disclosure statement prior to starting work on the project:

"NOTICE TO CUSTOMER

This contractor is registered with the state of Washington, registration no. . . . , as a general/specialty contractor and has posted with the state a bond or cash deposit of \$6,000/\$4,000 for the purpose of satisfying claims against the contractor for negligent or improper work or breach of contract in the conduct of the contractor's business. The expiration date of this contractor's registration is This bond or cash deposit may not be sufficient to cover a claim which might arise from

the work done under your contract. If any supplier of materials used in your construction project or any employee of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property may be liened to force payment. If you wish additional protection, you may request the contractor to provide you with original "lien release" documents from each supplier or subcontractor on your project. The contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the department of labor and industries."

(3) On and after July 1, 1989, a contractor subject to this section shall notify any consumer to whom notice is required under subsection (2) of this section if the contractor's registration has expired or is revoked or suspended by the department prior to completion or other termination of the contract with the consumer.

(4) No contractor subject to this section may bring or maintain any lien claim under chapter 60.04 RCW based on any contract to which this section applies without alleging and proving that the contractor has provided the customer with a copy of the disclosure statement as required in subsection (1) or (2) of this section.

(5) This section does not apply to contracts authorized under chapter 39.04 RCW or to contractors contracting with other contractors.

(6) Failure to comply with this section shall constitute an infraction under the provisions of this chapter.

(7) The department shall produce model disclosure statements, and public service announcements detailing the information needed to assist contractors and contractors' customers to comply under this section. As necessary, the department shall periodically update these education materials. [1988 c 182 § 1; 1987 c 419 § 1.]

Voluntary compliance with notification requirements: "Nothing in RCW 18.27.114 shall be construed to prohibit a contractor from voluntarily complying with the notification requirements of that section which take effect July 1, 1989, prior to that date." [1988 c 182 § 2.]

18.27.117 Violations relating to mobile/manufactured homes. The legislature finds that setting up and siting mobile/manufactured homes must be done properly for the health, safety, and enjoyment of the occupants. Therefore, when any of the following cause a health and safety risk to the occupants of a mobile/manufactured home, or severely hinder the use and enjoyment of the mobile/manufactured home, a violation of RCW 19.86.020 shall have occurred:

(1) The mobile/manufactured home has been improperly installed by a contractor licensed under chapter 18.27 RCW, or a mobile/manufactured dealer or manufacturer licensed under chapter 46.70 RCW;

(2) A warranty given under chapter 18.27 RCW or chapter 46.70 RCW has not been fulfilled by the person or business giving the warranty; and

(3) A bonding company that issues a bond under chapter 18.27 RCW or chapter 46.70 RCW does not reasonably and professionally investigate and resolve claims made by injured parties. [1987 c 313 § 2.]

18.27.120 Department to compile, update list of registered contractors—Availability, fee. (1) The department shall compile a list of all contractors registered under this chapter and update the list at least bimonthly. The list shall be considered as public record information and shall be available to the public upon request: PROVIDED, That the department may charge a reasonable fee under RCW 42.17.300.

(2) The department shall inform any person, firm, or corporation, if a contractor is registered, and if a contractor is bonded or insured, without charge except for a reasonable fee under RCW 42.17.300 for copies made. [1983 1st ex.s. c 2 § 20; 1973 1st ex.s. c 153 § 7; 1972 ex.s. c 118 § 5.]

Fees, generally: RCW 18.27.070.

18.27.125 Director to adopt rules. The director shall adopt rules in compliance with chapter 34.05 RCW to effect the purposes of this chapter. [1986 c 197 § 12.]

18.27.130 Provisions of chapter exclusive—Certain authority of cities and towns not limited or abridged. The provisions of this chapter relating to the registration or licensing of any person, firm, or corporation, including the requirement of a bond with the state of Washington named as obligee therein and the collection of a fee therefor, shall be exclusive and no political subdivision of the state of Washington shall require or issue any registrations, licenses, or bonds nor charge any fee for the same or a similar purpose: PROVIDED, That nothing herein shall limit or abridge the authority of any city or town to levy and collect a general and nondiscriminatory license fee levied upon all businesses, or to levy a tax based upon gross business conducted by any firm within said city: PROVIDED, FURTHER, That nothing herein shall limit the authority of any city or town with respect to contractors not required to be registered under this chapter. [1972 ex.s. c 118 § 4.]

18.27.140 Purpose of chapter. It is the purpose of this chapter to afford protection to the public including all persons, firms, and corporations furnishing labor, materials, or equipment to a contractor from unreliable, fraudulent, financially irresponsible, or incompetent contractors. [1983 1st ex.s. c 2 § 21; 1973 1st ex.s. c 161 § 2.]

18.27.200 Violation—Infraction. An offer to do work, submission of a bid, or performance of any work by a contractor who is not registered with the department of labor and industries as required by this chapter is an infraction. Each day that a contractor works without being registered as required by this chapter is a separate infraction. Each worksite at which a contractor works without being registered as required by this chapter is a separate infraction. [1983 1st ex.s. c 2 § 1.]

Effective date—1983 1st ex.s. c 2: "Sections 1 through 17 of this act shall take effect January 1, 1984." [1983 1st ex.s. c 2 § 24.]

18.27.210 Violations—Investigations—Evidence. (1) The director shall appoint compliance inspectors to investigate alleged or apparent violations of this chapter. The director, or authorized compliance inspector, upon presentation of appropriate credentials, may inspect and investigate

job sites at which a contractor had bid or presently is working to determine whether the contractor is registered in accordance with this chapter or the rules adopted under this chapter. Upon request of the compliance inspector of the department, a contractor or an employee of the contractor shall provide information identifying the contractor.

(2) If the employee of an unregistered contractor is cited by a compliance inspector, that employee is cited as the agent of the employer-contractor, and issuance of the infraction to the employee is notice to the employer-contractor that the contractor is in violation of this chapter. An employee who is cited by a compliance inspector shall not be liable for any of the alleged violations contained in the citation unless the employee is also the contractor. [1987 c 419 § 2; 1986 c 197 § 2; 1983 1st ex.s. c 2 § 2.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.220 Violations—Investigations—Failure to provide information identifying contractor misdemeanor. Wilful refusal to provide information identifying a contractor as required by RCW 18.27.210 is a misdemeanor. [1983 1st ex.s. c 2 § 12.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.225 Violations—Restraining orders—Injunctions. (1) If, upon inspection or investigation, the director or authorized compliance inspector reasonably believes that a contractor has failed to register in accordance with this chapter or the rules adopted under this chapter, the director shall issue an order immediately restraining further construction work at the job site by the contractor. The order shall describe the specific violation that necessitated issuance of the restraining order. The contractor or representative to whom the restraining order is directed may request a hearing before an administrative law judge, such hearing to be conducted pursuant to chapter 34.05 RCW. A request for hearing shall not stay the effect of the restraining order.

(2) In addition to and after having invoked the powers of restraint vested in the director as provided in subsection (1) of this section, the director, through the attorney general, may petition the superior court of the state of Washington to enjoin any activity in violation of this chapter. A prima facie case for issuance of an injunction shall be established by affidavits and supporting documentation demonstrating that a restraining order was served upon the contractor and that the contractor continued to work after service of the order. Upon the filing of the petition, the superior court shall have jurisdiction to grant injunctive or other appropriate relief, pending the outcome of enforcement proceedings under this chapter, or to enforce restraining orders issued by the director. If the contractor fails to comply with any court order, the director shall request the attorney general to petition the superior court for an order holding the contractor in contempt of court and for any other appropriate relief. [1987 c 419 § 3.]

18.27.230 Notice of infraction—Service. The department may issue a notice of infraction if the department reasonably believes that the contractor required to be

registered by this chapter has failed to do so. A notice of infraction issued under this section shall be personally served on the contractor named in the notice by the department's compliance inspectors or service can be made by certified mail directed to the contractor named in the notice of infraction. If the contractor named in the notice of infraction is a firm or corporation, the notice may be personally served on any employee of the firm or corporation. If a notice of infraction is personally served upon an employee of a firm or corporation, the department shall within four days of service send a copy of the notice by certified mail to the contractor if the department is able to obtain the contractor's address. [1986 c 197 § 3; 1983 1st ex.s. c 2 § 3.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.240 Notice of infraction—Form—Contents. The form of the notice of infraction issued under this chapter shall include the following:

(1) A statement that the notice represents a determination that the infraction has been committed by the contractor named in the notice and that the determination shall be final unless contested as provided in this chapter;

(2) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

(3) A statement of the specific violation which necessitated issuance of the infraction;

(4) A statement of penalty involved if the infraction is established;

(5) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(6) A statement that at any hearing to contest the notice of infraction the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the contractor may subpoena witnesses, including the compliance inspector of the department who issued and served the notice of infraction;

(7) A statement, which the person who has been served with the notice of infraction shall sign, that the contractor promises to respond to the notice of infraction in one of the ways provided in this chapter;

(8) A statement that refusal to sign the infraction as directed in subsection (7) of this section is a misdemeanor and may be punished by a fine or imprisonment in jail; and

(9) A statement that a contractor's failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine or imprisonment in jail. [1986 c 197 § 4; 1983 1st ex.s. c 2 § 5.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.250 Notice of infraction—Filing—Administrative hearing—Appeal. A violation designated as an infraction under this chapter shall be heard and determined by an administrative law judge of the office of administrative hearings. If a party desires to contest the notice of infraction, the party shall file a notice of appeal with the department, within twenty days of issuance of the infraction. The administrative law judge shall conduct

hearings in these cases at locations in the county where the infraction occurred. [1986 c 197 § 5; 1983 1st ex.s. c 2 § 4.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.260 Notice of infraction—Determination infraction committed. Unless contested in accordance with this chapter, the notice of infraction represents a determination that the contractor to whom the notice was issued committed the infraction. [1983 1st ex.s. c 2 § 6.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.270 Notice of infraction—Response—Failure to respond, appear, or pay monetary penalties. (1) A contractor who is issued a notice of infraction shall respond within twenty days of the date of issuance of the notice of infraction.

(2) If the contractor named in the notice of infraction does not elect to contest the notice of infraction, then the contractor shall pay to the department, by check or money order, the amount of the penalty prescribed for the infraction. When a response which does not contest the notice of infraction is received by the department with the appropriate penalty, the department shall make the appropriate entry in its records.

(3) If the contractor named in the notice of infraction elects to contest the notice of infraction, the contractor shall respond by filing an answer of protest with the department specifying the grounds of protest.

(4) If any contractor issued a notice of infraction fails to respond within the prescribed response period, the contractor shall be guilty of a misdemeanor and prosecuted in the county where the infraction occurred.

(5) After final determination by an administrative law judge that an infraction has been committed, a contractor who fails to pay a monetary penalty within thirty days, that is not waived, reduced, or suspended pursuant to RCW 18.27.340(2), and who fails to file an appeal pursuant to RCW 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the county where the infraction occurred.

(6) A contractor who fails to pay a monetary penalty within thirty days after exhausting appellate remedies pursuant to RCW 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the county where the infraction occurred. [1986 c 197 § 6; 1983 1st ex.s. c 2 § 7.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.280 Notice of infraction—Person's failure to respond—Misdemeanor. It is a misdemeanor for any person who has been personally served with a notice of infraction to refuse to sign a written promise to respond to the notice. [1983 1st ex.s. c 2 § 10.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.290 Notice of infraction—Contractor's failure to respond—Misdemeanor. It is a misdemeanor for a contractor who has been personally served with a notice of

infraction to wilfully violate the written promise to respond to a notice of infraction as provided in this chapter, regardless of the ultimate disposition of the infraction. [1983 1st ex.s. c 2 § 11.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.300 Representation by attorney—Department represented by attorney general. A contractor subject to proceedings under this chapter may appear or be represented by counsel. The department shall be represented by the attorney general in administrative proceedings and any subsequent appeals under this chapter. [1986 c 197 § 7; 1983 1st ex.s. c 2 § 8.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.310 Infraction—Administrative hearing—Procedure—Burden of proof—Order—Appeal. (1) The administrative law judge shall conduct contractors' notice of infraction cases pursuant to chapter 34.05 RCW.

(2) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence. The notice of infraction shall be dismissed if the defendant establishes that, at the time the notice was issued, the defendant was registered by the department or was exempt from registration.

(3) After consideration of the evidence and argument, the administrative law judge shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the record of the proceedings. If it has been established that the infraction was committed, the administrative law judge shall issue findings of fact and conclusions of law in its decision and order determining whether the infraction was committed.

(4) An appeal from the administrative law judge's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure. [1986 c 197 § 8; 1983 1st ex.s. c 2 § 9.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.320 Infraction—Dismissal, when. The administrative law judge shall dismiss the notice of infraction at any time upon written notification from the department that the contractor named in the notice of infraction was registered at the time the notice of infraction was issued. [1986 c 197 § 9; 1983 1st ex.s. c 2 § 13.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.340 Infraction—Monetary penalty. (1) A contractor found to have committed an infraction under RCW 18.27.200 shall be assessed a monetary penalty of not less than two hundred dollars and not more than three thousand dollars.

(2) The administrative law judge may waive, reduce, or suspend the monetary penalty imposed for the infraction only

upon a showing of good cause that the penalty would be unduly burdensome to the contractor.

(3) Monetary penalties collected under this chapter shall be deposited in the general fund. [1986 c 197 § 10; 1983 1st ex.s. c 2 § 15.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.350 Violations—Consumer protection act.

The consumers of this state have a right to be protected from unfair or deceptive acts or practices when they enter into contracts with contractors. The fact that a contractor is found to have committed a misdemeanor or infraction under this chapter shall be deemed to affect the public interest and shall constitute a violation of chapter 19.86 RCW. The surety bond shall not be liable for monetary penalties or violations of chapter 19.86 RCW. [1986 c 197 § 11.]

18.27.900 Severability—1963 c 77. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [1963 c 77 § 11.]

Chapter 18.28 DEBT ADJUSTING

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18.28.010 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) "Debt adjusting" means the managing, counseling, settling, adjusting, prorating, or liquidating of the indebtedness of a debtor, or receiving funds for the purpose of distributing said funds among creditors in payment or partial payment of obligations of a debtor.

(2) "Debt adjuster", which includes any person known as a debt pooler, debt manager, debt consolidator, debt prorater, or credit counselor, is any person engaging in or holding himself out as engaging in the business of debt adjusting for compensation. The term shall not include:

(a) Attorneys at law, escrow agents, accountants, broker-dealers in securities, or investment advisors in securities, while performing services solely incidental to the practice of their professions;

(b) Any person, partnership, association, or corporation doing business under and as permitted by any law of this state or of the United States relating to banks, *small loan companies, industrial loan companies, trust companies, mutual savings banks, savings and loan associations, building and loan associations, credit unions, crop credit associations, development credit corporations, industrial development corporations, title insurance companies, or insurance companies;

(c) Persons who, as employees on a regular salary or wage of an employer not engaged in the business of debt adjusting, perform credit services for their employer;

(d) Public officers while acting in their official capacities and persons acting under court order;

(e) Any person while performing services incidental to the dissolution, winding up or liquidation of a partnership, corporation, or other business enterprise;

(f) Nonprofit organizations dealing exclusively with debts owing from commercial enterprises to business creditors;

(g) Nonprofit organizations engaged in debt adjusting and which do not assess against the debtor a service charge in excess of fifteen dollars per month.

(3) "Debt adjusting agency" is any partnership, corporation, or association engaging in or holding itself out as engaging in the business of debt adjusting.

(4) "License" means a debt adjuster license or debt adjusting agency license issued under the provisions of this chapter.

(5) "Licensee" means a debt adjuster or debt adjusting agency to whom a license has been issued under the provisions of this chapter.

(6) "Director" means the director of the department of licensing. [1979 c 156 § 1; 1970 ex.s. c 97 § 1; 1967 c 201 § 1.]

***Reviser's note:** In chapter 31.08 RCW, the term "small loan companies" was changed to "consumer finance business" by 1979 c 18. Chapter 31.08 RCW was repealed by 1991 c 208 § 24, effective January 1, 1993.

Effective date—1979 c 156: "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, 1979." [1979 c 156 § 14.]

Severability—1979 c 156: "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 156 § 13.]

18.28.020 License required. No debt adjuster, debt adjusting agency, or branch office of any debt adjusting agency may engage in the business of debt adjusting within this state except as authorized by this chapter and without first obtaining a license from the director. [1967 c 201 § 2.]

18.28.030 Application for license, form, contents—Investigation fees—Licensing fees—Bond—Qualifications—Forms to be furnished. An application for a license shall be in writing, under oath, and in the form prescribed by the director. The application shall contain such relevant information as the director may require, but in all cases shall contain the name and residential and business addresses of each individual applicant, and of each member when the applicant is a partnership or association, and of each director and officer when the applicant is a corporation.

Except as provided hereinafter in this section the applicant shall pay an investigation fee and a licensing fee determined by the director as provided in RCW 43.24.086: PROVIDED, That a branch office of a licensed debt adjusting agency need not pay an investigation fee but only the licensing fee. If a license is not issued in response to the application, the director shall return the licensing fee to the applicant. An annual license fee determined by the director as provided in RCW 43.24.086, shall be paid to the director by January 1st of each year. If the annual license fee is not paid by January 1st, the licensee shall be assessed a penalty for late payment determined by the director as provided in RCW 43.24.086. And if the fee and penalty are not paid by January 31st, reapplication for a new license will be necessary, which may include taking any examination prescribed by the director.

The applicant shall file a surety bond with the director or in lieu thereof the applicant may file with the director a cash deposit or other negotiable security acceptable to the director and under conditions set forth in RCW 18.28.040: PROVIDED, That each branch office of a debt adjusting agency shall be required to be bonded as provided herein, but no bond will be required of an individual applicant while he is employed by a bonded debt adjusting agency or branch thereof.

The applicant shall furnish the director with such proof as the director may reasonably require to establish the qualifications set forth in RCW 18.28.060.

If the applicant is an individual person making an original license application he shall pay an examination fee determined by the director as provided in RCW 43.24.086.

If the applicant is applying for a debt adjusting agency license it shall furnish the director with complete forms of all contracts and assignments designed for execution by debtors making any assignments to or placing any property with the applicant for the purpose of paying the creditors of such debtors, and complete forms of all contracts and agreements designed for execution by creditors to whom payments are made by the applicant. Only such forms furnished the director and not disapproved by him shall be used by a debt adjusting agency licensee. [1985 c 7 § 18; 1975 1st ex.s. c 30 § 23; 1971 ex.s. c 266 § 6; 1967 c 201 § 3.]

18.28.040 Bond requirements—Security in lieu of bond. The bond, required in RCW 18.28.030, shall be a surety bond, annually renewable on January 1st, to be approved by the director as to form and content, in the sum of ten thousand dollars, executed by the applicant as principal and by a surety company authorized to do business in this state as a surety, whose liability shall not exceed the said sum in the aggregate. Such bond shall run to the state of Washington as obligee for the benefit of the state and of any person or persons who may have cause of action against the principal of said bond under the provisions of this chapter. Such bond shall be conditioned that said principal as licensee hereunder will not commit any fraudulent act and will comply with the provisions of this chapter and the rules lawfully adopted hereunder, and will pay to the state and any such person or persons any and all moneys that may become due and owing from such principal under and by virtue of the provisions of this chapter. The surety on such bond shall be released and discharged from all liability accruing on such bond after the expiration of thirty days from the date upon which such surety shall have lodged with the director a written request to be released and discharged, but this provision shall not operate to relieve, release or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty day period. The director shall promptly upon receiving any such request notify the principal who furnished the bond; and unless the principal shall, on or before the expiration of the thirty day period, file a new bond, the director shall forthwith cancel the principal's license.

An applicant for a license under this chapter may furnish, file and deposit with the director, in lieu of the surety bond provided for herein, United States currency or bonds, representing obligations of the United States, or bonds of the state of Washington or any legal subdivision thereof, for which the faith of the United States, the state of Washington or any legal subdivision thereof is pledged, for the payment of both the principal and interest, equal in amount to the amount of the bond required by this chapter. The security deposited with the director in lieu of the surety bond shall be returned to the licensee at the expiration of three years after the license issued thereon has expired or been revoked if no legal action has been instituted against the licensee or on the bond at the expiration of said three years. [1967 c 201 § 4.]

18.28.045 Additional bond—When required. If the director finds at any time that the bond is insecure, depleted, exhausted, or otherwise doubtful, an additional bond of the character specified in RCW 18.28.040 and approved by the director in the sum of not more than ten thousand dollars, shall be filed by the licensee within ten days after written demand upon the licensee by the director. [1979 c 156 § 2.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

18.28.050 Action on bond or security. If the licensee has failed to account to a debtor or distribute to the debtor's creditors such amounts as are required by this chapter and the contract between the debtor and licensee, the debtor, his legal representative or receiver, or the director,

shall have, in addition to all other legal remedies, a right of action in the name of the debtor on the bond or the security given pursuant to the provisions of RCW 18.28.040, for loss suffered by the debtor, not exceeding the face of the bond or security, and without the necessity of joining the licensee in such suit or action. No action shall be brought upon any bond or security given under RCW 18.28.040 after the expiration of three years from the revocation or expiration of the license issued thereon. Upon entering judgment for plaintiff in any action on the bond required under RCW 18.28.040, for more than the sum tendered in the court by the defendant, if any, the court shall include in the judgment reasonable compensation for services of plaintiff's attorney in the action. [1967 c 201 § 5.]

18.28.060 Applicants for licenses—Requirements. The director shall issue a license to an applicant if the following requirements are met:

(1) The application is complete and the applicant has complied with RCW 18.28.030.

(2) Neither an individual applicant, nor any of the applicant's members if the applicant is a partnership or association, nor any of the applicant's officers or directors if the applicant is a corporation: (a) Has ever been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or any other like offense, or has been disbarred from the practice of law; (b) has participated in a violation of this chapter or of any valid rules, orders or decisions of the director promulgated under this chapter; (c) has had a license to engage in the business of debt adjusting revoked or removed for any reason other than for failure to pay licensing fees in this or any other state; or (d) is an employee or owner of a collection agency, or process serving business.

(3) An individual applicant is at least eighteen years of age.

(4) An applicant which is a partnership, corporation, or association is authorized to do business in this state.

(5) An individual applicant for an original license as a debt adjuster has passed an examination administered by the director, which examination may be oral or written, or partly oral and partly written, and shall be practical in nature and sufficiently thorough to ascertain the applicant's fitness. Questions on bookkeeping, credit adjusting, business ethics, agency, contracts, debtor and creditor relationships, trust funds and the provisions of this chapter shall be included in the examination. No applicant may use any books or other similar aids while taking the examination, and no applicant may take the examination more than three times in any twelve month period. [1979 c 156 § 3; 1971 ex.s. c 292 § 20; 1967 ex.s. c 141 § 1; 1967 c 201 § 6.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

18.28.070 Licenses—Form—Contents—Display—Transferability. Each license shall:

(1) Be in the form and size prescribed by the director;
 (2) Show the name of the licensee and the address at which the business of debt adjusting is to be conducted;

(3) Show the date of expiration of the license as December 31st, and show such other matter as may be prescribed by the director;

(4) While in force, be at all times conspicuously displayed in the outer office of the debt adjusting agency or branch thereof; and

(5) Not be transferable or assignable. [1967 c 201 § 7.]

18.28.080 Fees for debt adjusting services—Limitations—Requirements. (1) By contract a licensee may charge a reasonable fee for debt adjusting services. The total fee for debt adjusting services may not exceed fifteen percent of the total debt listed by the debtor on the contract. The fee retained by the licensee from any one payment made by or on behalf of the debtor may not exceed fifteen percent of the payment: PROVIDED, That the licensee may make an initial charge of up to twenty-five dollars which shall be considered part of the total fee. If an initial charge is made, no additional fee may be retained which will bring the total fee retained to date to more than fifteen percent of the total payments made to date. No fee whatsoever shall be applied against rent and utility payments for housing.

In the event of cancellation or default on performance of the contract by the debtor prior to its successful completion, the licensee may collect in addition to fees previously received, six percent of that portion of the remaining indebtedness listed on said contract which was due when the contract was entered into, but not to exceed twenty-five dollars.

(2) A licensee shall not be entitled to retain any fee until notifying all creditors listed by the debtor that the debtor has engaged the licensee in a program of debt adjusting. [1979 c 156 § 4; 1967 ex.s. c 141 § 2; 1967 c 201 § 8.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

18.28.090 Excess charges—Contract void—Return of payments. If a licensee contracts for, receives or makes any charge in excess of the maximums permitted by this chapter, except as the result of an accidental and bona fide error, the licensee's contract with the debtor shall be void and the licensee shall return to the debtor the amount of all payments received from the debtor or on his behalf and not distributed to creditors. [1967 c 201 § 9.]

18.28.100 Contract requirements. Every contract between a licensee and a debtor shall:

(1) List every debt to be handled with the creditor's name and disclose the approximate total of all known debts;

(2) Provide in precise terms payments reasonably within the ability of the debtor to pay;

(3) Disclose in precise terms the rate and amount of all of the licensee's charges and fees;

(4) Disclose the approximate number and amount of installments required to pay the debts in full;

(5) Disclose the name and address of the licensee and of the debtor;

(6) Provide that the licensee shall notify the debtor, in writing, within five days of notification to the licensee by a

creditor that the creditor refuses to accept payment pursuant to the contract between the licensee and the debtor;

(7) Contain the following notice in ten point boldface type or larger directly above the space reserved in the contract for the signature of the buyer: NOTICE TO DEBTOR:

(a) Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank.

(b) You are entitled to a copy of this contract at the time you sign it.

(c) You may cancel this contract within three days of signing by sending notice of cancellation by certified mail return receipt requested to the debt adjuster at his address shown on the contract, which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing of the contract; and

(8) Contain such other and further provisions or disclosures as the director shall determine are necessary for the protection of the debtor and the proper conduct of business by the licensee. [1979 c 156 § 5; 1967 c 201 § 10.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

18.28.110 Licensees—Functions required to be performed. Every licensee shall perform the following functions:

(1) Make a permanent record of all payments by debtors, or on the debtors' behalf, and of all disbursements to creditors of such debtors, and shall keep and maintain in this state all such records, and all payments not distributed to creditors. No person shall intentionally make any false entry in any such record, or intentionally mutilate, destroy or otherwise dispose of any such record. Such records shall at all times be open for inspection by the director or his authorized agent, and shall be preserved as original records or by microfilm or other methods of duplication acceptable to the director, for at least six years after making the final entry therein.

(2) Deliver a completed copy of the contract between the licensee and a debtor to the debtor immediately after the debtor executes the contract, and sign the debtor's copy of such contract.

(3) Unless paid by check or money order, deliver a receipt to a debtor for each payment within five days after receipt of such payment.

(4) Distribute to the creditors of the debtor at least once each forty days after receipt of payment during the term of the contract at least eighty-five percent of each payment received from the debtor.

(5) At least once every month render an accounting to the debtor which shall indicate the total amount received from or on behalf of the debtor, the total amount paid to each creditor, the total amount which any creditor has agreed to accept as payment in full on any debt owed him by the debtor, the amount of charges deducted, and any amount held in trust. The licensee shall in addition render such an account to a debtor within ten days after written demand.

(6) Notify the debtor, in writing, within five days of notification to the licensee by a creditor that the creditor refuses to accept payment pursuant to the contract between the licensee and the debtor.

(7) Furnish the director with all contracts, assignments, and forms as described in RCW 18.28.030 which are currently in use. [1979 c 156 § 6; 1967 c 201 § 11.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

18.28.120 Licensees—Prohibited acts. A licensee shall not:

(1) Take any contract, or other instrument which has any blank spaces when signed by the debtor;

(2) Receive or charge any fee in the form of a promissory note or other promise to pay or receive or accept any mortgage or other security for any fee, whether as to real or personal property;

(3) Lend money or credit;

(4) Take any confession of judgment or power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceedings;

(5) Take, concurrent with the signing of the contract or as a part of the contract or as part of the application for the contract, a release of any obligation to be performed on the part of the licensee;

(6) Advertise his services, display, distribute, broadcast or televise, or permit his services to be displayed, advertised, distributed, broadcasted or televised in any manner whatsoever wherein any false, misleading or deceptive statement or representation with regard to the services to be performed by the licensee, or the charges to be made therefor, is made;

(7) Offer, pay, or give any cash, fee, gift, bonus, premiums, reward, or other compensation to any person for referring any prospective customer to the licensee;

(8) Receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the debtor or a person in the debtor's behalf in connection with his activities as a licensee; or

(9) Disclose to anyone, other than the director or his agent, the debtors who have contracted with the licensee; nor shall the licensee disclose the creditors of a debtor to anyone other than: (a) The debtor, or (b) the director or his agent, or (c) another creditor of the debtor and then only to the extent necessary to secure the cooperation of such a creditor in a debt adjusting plan. [1967 c 201 § 12.]

18.28.130 Legal services—Rendering or obtaining—Using name of attorney—Prohibited. Without limiting the generality of the foregoing and other applicable laws, the licensee, manager or employee of a licensee shall not:

(1) Prepare, advise, or sign a release of attachment or garnishment, stipulation, affidavit for exemption, compromise agreement or other legal or court document, nor furnish legal advice or perform legal services of any kind;

(2) Represent that he is authorized or competent to furnish legal advice or perform legal services;

(3) Assume authority on behalf of creditors or a debtor or accept a power of attorney authorizing it to employ or terminate the services of any attorney or to arrange the terms of or compensate for such services; or

(4) Communicate with the debtor or creditor or any other person in the name of any attorney or upon the stationery of any attorney or prepare any form or instrument

which only attorneys are authorized to prepare. [1967 c 201 § 13.]

18.28.140 Assignment of wages not prohibited. Nothing in this chapter shall be construed as prohibiting the assignment of wages by a debtor to a licensee, if such assignment is otherwise in accordance with the law of this state. [1967 c 201 § 14.]

18.28.150 Payments by debtor to be kept in trust account—Disbursements. (1) Any payment received by a licensee from or on behalf of a debtor shall be held in trust by the licensee from the moment it is received. The licensee shall not commingle such payment with his own property or funds, but shall maintain a separate trust account and deposit in such account all such payments received. All disbursements whether to the debtor or to the creditors of the debtor, or to the licensee, shall be made from such account.

(2) In the event that the debtor cancels or defaults on the contract between the debtor and the licensee, the licensee shall close out the debtor's trust account in the following manner:

(a) The licensee may take from the account that amount necessary to satisfy any fees, other than any cancellation or default fee, authorized by this chapter.

(b) After deducting the fees provided in subsection (2)(a) of this section, the licensee shall distribute the remaining amount in the account to the creditors of the debtor. The distribution shall be made within five days of the demand therefor by the debtor, but if the debtor fails to make the demand, then the licensee shall make the distribution within thirty days of the date of cancellation or default. [1979 c 156 § 8; 1967 c 201 § 15.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

18.28.160 Revocation of licenses—Grounds. The director shall, upon reasonable opportunity to be heard, revoke any license issued pursuant to this chapter if he finds that:

(1) The licensee has failed to renew its bond as required by this chapter;

(2) The licensee has violated any provision of this chapter or any rule, promulgated by the director under the authority of this chapter or any order or decision of the director hereunder; or

(3) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the director in refusing originally to issue such license. [1967 c 201 § 16.]

18.28.165 Investigations. For the purpose of discovering violations of this chapter or securing information lawfully required by him hereunder, the director may at any time, either personally or by a person or persons duly designated by him, investigate the debt adjusting business and examine the books, accounts, records, and files used therein, of every licensee. For that purpose the director and his duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all licensees. The director

and all persons duly designated by him may require the attendance of and examine under oath all persons whomsoever whose testimony he may require relative to such debt adjusting business or to the subject matter of any examination, investigation, or hearing. [1979 c 156 § 7.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

18.28.170 Rules, orders, decisions, etc. The director may promulgate rules, make specific decisions, orders and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of this chapter. The director shall include among rules promulgated, those which describe and forbid deceptive advertising. [1979 c 156 § 9; 1967 c 201 § 17.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

18.28.180 Administrative procedure act to govern administration. The administrative procedure act, chapter 34.05 RCW, shall wherever applicable herein, govern the rights, remedies, and procedures respecting the administration of this chapter. [1967 c 201 § 18.]

18.28.185 Violations—Unfair practice under chapter 19.86 RCW. A violation of this chapter constitutes an unfair or deceptive act or practice in the conduct of trade or commerce under chapter 19.86 RCW. [1979 c 156 § 10.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

18.28.190 Violations—Penalty. Any person who violates any provision of this chapter or aids or abets such violation, or any rule lawfully promulgated hereunder or any order or decision of the director hereunder, or any person who operates as a debt adjuster without a license, shall be guilty of a misdemeanor. [1967 c 201 § 19.]

18.28.200 Violations may be enjoined. Notwithstanding any other actions which may be brought under the laws of this state, the attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1967 c 201 § 20.]

18.28.210 Violations—Assurance of discontinuance—Effect. The attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter in the enforcement thereof from any person engaging in or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in the alternative, in Thurston county. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing any injunction as provided for in RCW 18.28.200: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided therein, the attorney general may not accept an

assurance of discontinuance without the consent of said prosecuting attorney. [1967 c 201 § 21.]

18.28.220 Violation of injunction—Civil penalty. Any person who violates any injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than one thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1967 c 201 § 22.]

18.28.900 Contracts prior to effective date not invalidated. The provisions of this chapter shall not invalidate or make unlawful contracts between debt adjusters and debtors executed prior to the effective date of this chapter. [1967 c 201 § 23.]

Effective date—1967 c 201: June 8, 1967, see preface to 1967 session laws.

18.28.910 Severability—1967 c 201. 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. [1967 c 201 § 24.]

**Chapter 18.29
DENTAL HYGIENIST**

Sections

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- 18.29.011 License required.
- 18.29.021 Requirements for licensure.
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Reviser's note: Powers and duties of the department of licensing and the director of licensing transferred to the department of health and the secretary of health. See RCW 43.70.220.

Dentistry: Chapter 18.32 RCW.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Rebating by practitioners of healing professions prohibited: Chapter 19.68 RCW.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.29.003 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.29.005 "Surfaces of the teeth" defined. The term "surfaces of the teeth" as used in this chapter means the portions of the crown and root surface to which there is no periodontal membrane attached. [1969 c 47 § 6.]

18.29.011 License required. No person may practice as a dental hygienist in this state without having a license as such and, after the first year, an unexpired license renewal certificate. [1987 c 150 § 16.]

Severability—1987 c 150: See RCW 18.122.901.

18.29.021 Requirements for licensure. (1) The department shall issue a license to any applicant who, as determined by the secretary:

- (a) Has successfully completed an educational program approved by the secretary. This educational program shall include course work encompassing the subject areas within the scope of the license to practice dental hygiene in the state of Washington;
- (b) Has successfully completed an examination administered by the dental hygiene examining committee; and
- (c) Has not engaged in unprofessional conduct or is not unable to practice with reasonable skill and safety as a result of a physical or mental impairment.

(2) Applications for licensure shall be submitted on forms provided by the department. The department may require any information and documentation necessary to determine if the applicant meets the criteria for licensure as provided in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250. The fee shall be submitted with the application. [1991 c 3 § 46; 1989 c 202 § 1.]

18.29.045 Licensure by endorsement. An applicant holding a valid license and currently engaged in practice in another state may be granted a license without examination required by this chapter, on the payment of any required fees, if the secretary in consultation with the advisory committee determines that the other state's licensing standards are substantively equivalent to the standards in this state: **PROVIDED**, That the secretary in consultation with the advisory committee may require the applicant to: (1) File with the secretary documentation certifying the applicant is licensed to practice in another state; and (2) provide information as the secretary deems necessary pertaining to the conditions and criteria of the uniform disciplinary act, chapter 18.130 RCW and to demonstrate to the secretary a knowledge of Washington law pertaining to the practice of dental hygiene. [1991 c 3 § 47; 1989 c 202 § 29.]

18.29.050 Scope of licensee's functions—Employment—Supervision. Any person licensed as a dental hygienist in this state may remove deposits and stains from the surfaces of the teeth, may apply topical preventive or prophylactic agents, may polish and smooth restorations, may perform root planing and soft-tissue curettage, and may perform other dental operations and services delegated to

them by a licensed dentist: PROVIDED HOWEVER, That licensed dental hygienists shall in no event perform the following dental operations or services:

- (1) Any surgical removal of tissue of the oral cavity;
 - (2) Any prescription of drugs or medications requiring the written order or prescription of a licensed dentist or physician;
 - (3) Any diagnosis for treatment or treatment planning;
- or
- (4) The taking of any impression of the teeth or jaw, or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis.

Such licensed dental hygienists may perform dental operations and services only under the supervision of a licensed dentist, and under such supervision may be employed by hospitals, boards of education of public or private schools, county boards, boards of health, or public or charitable institutions, or in dental offices: PROVIDED, That the number of hygienists so employed in any dental office shall not exceed twice in number the licensed dentists practicing therein. [1971 ex.s. c 235 § 1; 1969 c 47 § 4; 1923 c 16 § 27; RRS § 10030-27.]

18.29.056 Employment by health care facilities authorized—Limitations. (1) Dental hygienists licensed under this chapter with two years' practical clinical experience with a licensed dentist within the preceding five years may be employed or retained by health care facilities to perform authorized dental hygiene operations and services without dental supervision, limited to removal of deposits and stains from the surfaces of the teeth, application of topical preventive or prophylactic agents, polishing and smoothing restorations, and performance of root planing and soft-tissue curettage, but shall not perform injections of anesthetic agents, administration of nitrous oxide, or diagnosis for dental treatment. The performance of dental hygiene operations and services in health care facilities shall be limited to patients, students, and residents of the facilities. For dental planning and dental treatment, dental hygienists shall refer patients to licensed dentists.

(2) For the purposes of this section, "health care facilities" are limited to hospitals; nursing homes; home health agencies; group homes serving the elderly, handicapped, and juveniles; state-operated institutions under the jurisdiction of the department of social and health services or the department of corrections; and federal, state, and local public health facilities. [1984 c 279 § 63.]

Severability—1984 c 279: See RCW 18.130.901.

18.29.060 License issuance—Display. Upon passing an examination and meeting the requirements as provided in RCW 18.29.021, the secretary of health shall issue to the successful applicant a license as dental hygienist. The license shall be displayed in a conspicuous place in the operation room where such licensee shall practice. [1991 c 3 § 48; 1989 c 202 § 12; 1985 c 7 § 21; 1981 c 277 § 4; 1979 c 158 § 32; 1923 c 16 § 31; RRS § 10030-31.]

18.29.071 Renewals. The secretary shall establish by rule the requirements for renewal of licenses. The secretary shall establish a renewal and late renewal penalty fee as

provided in RCW 43.70.250. Failure to renew invalidates the license and all privileges granted by the license. The secretary shall determine by rule whether a license shall be canceled for failure to renew and shall establish procedures and requirements for relicensure. [1991 c 3 § 49; 1989 c 202 § 2.]

18.29.076 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 15; 1986 c 259 § 31.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.29.100 Violations—Penalty—Prosecutions. Any person who shall violate any provision of this chapter shall be guilty of a misdemeanor. It shall be the duty of the prosecuting attorney of each county to prosecute all cases involving a violation of this chapter arising within his or her county. The attorney general may assist in such prosecutions and shall appear at all hearings when requested to do so by the secretary of health. [1991 c 3 § 50; 1979 c 158 § 34; 1923 c 16 § 36; RRS § 10030-36.]

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.29.110 Dental hygiene examining committee—Generally. There shall be a dental hygiene examining committee consisting of three practicing dental hygienists and one public member appointed by the secretary, to be known as the Washington dental hygiene examining committee. Each dental hygiene member shall be licensed and have been actively practicing dental hygiene for a period of not less than five years immediately before appointment and shall not be connected with any dental hygiene school. The public member shall not be connected with any dental hygiene program or engaged in any practice or business related to dental hygiene. Members of the committee shall be appointed by the secretary to prepare and conduct examinations for dental hygiene licensure. Members shall be appointed to serve for terms of three years from October 1 of the year in which they are appointed. Terms of the members shall be staggered. Each member shall hold office for the term of his or her appointment and until his or her successor is appointed and qualified. Any member of the committee may be removed by the secretary for neglect of duty, misconduct, malfeasance, or misfeasance in office, after being given a written statement of the charges against him or her and sufficient opportunity to be heard thereon. Members of the committee 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. [1991 c 3 § 51; 1989 c 202 § 3.]

18.29.120 Examinations—Secretary's authority—Consultation with examining authority. The secretary in consultation with the Washington dental hygiene examining committee shall:

(1) Adopt rules in accordance with chapter 34.05 RCW necessary to prepare and conduct examinations for dental hygiene licensure;

(2) Require an applicant for licensure to pass an examination consisting of written and practical tests upon such subjects and of such scope as the committee determines;

(3) Set the standards for passage of the examination;

(4) Administer at least two examinations each calendar year in conjunction with examinations for licensure of dentists under chapter 18.32 RCW. Additional examinations may be given as necessary; and

(5) Establish by rule the procedures for an appeal of an examination failure. [1991 c 3 § 52; 1989 c 202 § 4.]

18.29.130 Secretary's authority—Generally—Continuing education. In addition to any other authority provided by law, the secretary may:

(1) Adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;

(2) Establish forms necessary to administer this chapter;

(3) Issue a license to any applicant who has met the education and examination requirements for licensure and deny a license to applicants who do not meet the minimum qualifications for licensure. Proceedings concerning the denial of licenses based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(4) Employ clerical, administrative, and investigative staff as needed to implement and administer this chapter and hire individuals, including those licensed under this chapter, to serve as examiners or consultants as necessary to implement and administer this chapter;

(5) Maintain the official departmental record of all applicants and licensees;

(6) Establish, by rule, the minimum education requirements for licensure, including but not limited to approval of educational programs; and

(7) Establish and implement by rule a continuing education program. [1991 c 3 § 53; 1989 c 202 § 5.]

18.29.140 Approval of educational programs. The secretary shall establish by rule the standards and procedures for approval of educational programs and may contract with individuals or organizations having expertise in the profession or in education to report to the secretary information necessary for the secretary to evaluate the educational programs. The secretary may establish a fee for educational program evaluation. The fee shall be set to defray the administrative costs for evaluating the educational program, including, but not limited to, costs for site evaluation. [1991 c 3 § 54; 1989 c 202 § 6.]

18.29.150 Examinations. (1) The secretary shall establish the date and location of the examination. Applicants who meet the education requirements for licensure shall be scheduled for the next examination following the filing of the application. The secretary shall establish by rule the examination application deadline.

(2) The examination shall contain subjects appropriate to the scope of practice and on laws in the state of Washington regulating dental hygiene practice.

(3) The committee shall establish by rule the requirements for a reexamination if the applicant has failed the examination.

(4) The committee may approve an examination prepared or administered by a private testing agency or association of licensing authorities. [1991 c 3 § 55; 1989 c 202 § 7.]

18.29.160 Immunity. The secretary, members of the committee, and individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any acts performed in the course of their duties. [1991 c 3 § 56; 1989 c 202 § 8.]

18.29.170 Committee meetings—Quorum—Effect of vacancy. The committee shall meet at least once a year and at such times as may be necessary for the transaction of business.

A majority of the committee shall constitute a quorum.

A vacancy in the committee membership shall not impair the right of the remaining members of the committee to exercise any power or to perform any duty of the committee, so long as the power is exercised or the duty performed by a quorum of the committee. [1989 c 202 § 9.]

18.29.180 Exemptions from chapter. The following practices, acts, and operations are excepted from the operation of this chapter:

(1) The practice of dental hygiene in the discharge of official duties by dental hygienists in the United States armed services, coast guard, public health services, veterans' bureau, or bureau of Indian affairs;

(2) Dental hygiene programs approved by the secretary and the practice of dental hygiene by students in dental hygiene programs approved by the secretary, when acting under the direction and supervision of persons licensed under chapter 18.29 or 18.32 RCW acting as instructors. [1991 c 3 § 57; 1989 c 202 § 10.]

18.29.900 Construction—1923 c 16. Words used in this chapter importing the singular number may also be applied to the plural of persons and things. Words importing the plural may be applied to the singular, and words importing the masculine gender may be extended to females also. [1923 c 16 § 37.]

Number and gender: RCW 1.12.050.

18.29.910 Severability—1923 c 16. Should any section of this chapter, or any portion of any section be for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. [1923 c 16 § 38.]

18.29.915 Captions not law—1989 c 202. Section headings as used in this act do not constitute any part of the law. [1989 c 202 § 11.]

Chapter 18.32
DENTISTRY

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**18.32.005 Regulation of health care professions—
Criteria.** See chapter 18.120 RCW.

18.32.010 Words defined. Words used in the singular in this chapter may also be applied to the plural of the persons and things; words importing the plural may be applied to the singular; words importing the masculine gender may be extended to females also; the term "board" used in this chapter shall mean the Washington state board of dental examiners and the term "secretary" shall mean the secretary of health of the state of Washington. [1991 c 3 § 58; 1935 c 112 § 1; RRS § 10031-1.]

Creation of board, appointment of members, etc.: RCW 18.32.035.

Number and gender: RCW 1.12.050.

18.32.020 Practice of dentistry defined. A person practices dentistry, within the meaning of this chapter, who (1) represents himself as being able to diagnose, treat, remove stains and concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaw, or (2) offers or undertakes by any means or methods to diagnose, treat, remove stains or concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the same, or take impressions of the teeth or jaw, or (3) owns, maintains or operates an office for the practice of dentistry, or (4) engages in any of the practices included in the curricula of recognized and approved dental schools or colleges, or (5) professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth.

The fact that a person uses any dental degree, or designation, or any card, device, directory, poster, sign, or other media whereby he represents himself to be a dentist, shall be prima facie evidence that such person is engaged in the practice of dentistry.

X-ray diagnosis as to the method of dental practice in which the diagnosis and examination is made of the normal and abnormal structures, parts or functions of the human teeth, the alveolar process, maxilla, mandible or soft tissues adjacent thereto, is hereby declared to be the practice of dentistry. Any person other than a regularly licensed physician or surgeon who makes any diagnosis or interpretation or explanation, or attempts to diagnose or to make any interpretation or explanation of the registered shadow or shadows of any part of the human teeth, alveolar process, maxilla, mandible or soft tissues adjacent thereto by the use of x-ray is declared to be engaged in the practice of dentistry, medicine or surgery. [1957 c 98 § 1; 1957 c 52 § 20. Prior: (i) 1935 c 112 § 6; RRS § 10031-6. (ii) 1943 c 240 § 1; Rem. Supp. 1943 § 10031-6a.]

18.32.030 Exemptions from chapter. The following practices, acts, and operations are excepted from the operation of the provisions of this chapter:

(1) The rendering of dental relief in emergency cases in the practice of his or her profession by a physician or surgeon, licensed as such and registered under the laws of this state, unless the physician or surgeon undertakes to or does reproduce lost parts of the human teeth in the mouth or to restore or to replace in the human mouth lost or missing teeth;

(2) The practice of dentistry in the discharge of official duties by dentists in the United States federal services on federal reservations, including but not limited to the armed services, coast guard, public health service, veterans' bureau, or bureau of Indian affairs;

(3) Dental schools or colleges approved under RCW 18.32.040, and the practice of dentistry by students in Washington state dental schools or colleges approved by the board, when acting under the direction and supervision of Washington state-licensed dental school faculty;

(4) The practice of dentistry by licensed dentists of other states or countries while appearing as clinicians at meetings of the Washington state dental association, or component parts thereof, or at meetings sanctioned by them, or other groups approved by the board of dental examiners;

(5) The use of roentgen and other rays for making radiographs or similar records of dental or oral tissues, under the supervision of a licensed dentist or physician;

(6) The making, repairing, altering, or supplying of artificial restorations, substitutions, appliances, or materials for the correction of disease, loss, deformity, malposition, dislocation, fracture, injury to the jaws, teeth, lips, gums, cheeks, palate, or associated tissues or parts; providing the same are made, repaired, altered, or supplied pursuant to the written instructions and order of a licensed dentist which may be accompanied by casts, models, or impressions furnished by the dentist, and the prescriptions shall be retained and filed for a period of not less than three years and shall be available to and subject to the examination of the secretary or the secretary's authorized representatives;

(7) The removal of deposits and stains from the surfaces of the teeth, the application of topical preventative or prophylactic agents, and the polishing and smoothing of restorations, when performed or prescribed by a dental hygienist licensed under the laws of this state;

(8) A qualified and licensed physician and surgeon extracting teeth or performing oral surgery pursuant to the scope of practice under chapter 18.71 or 18.57 RCW;

(9) The performing of dental operations or services by persons not licensed under this chapter when performed under the supervision of a licensed dentist: PROVIDED HOWEVER, That such nonlicensed person shall in no event perform the following dental operations or services unless permitted to be performed by the person under this chapter or chapters 18.29, 18.57, 18.71, and 18.88 RCW:

(a) Any removal of or addition to the hard or soft tissue of the oral cavity;

(b) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure;

(c) Any administration of general or injected local anaesthetic of any nature in connection with a dental operation, including intravenous sedation;

(d) Any oral prophylaxis;

(e) The taking of any impressions of the teeth or jaw or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis. [1991 c 3 § 59; 1989 c 202 § 13; 1979 c 158 § 35; 1971 ex.s. c 236 § 1; 1969 c 47 § 7; 1957 c 52 § 21; 1953 c 93 § 1; 1951 c 130 § 1. Prior: (i) 1941 c 92 § 3; 1935 c 112 § 25; Rem. Supp. 1941 § 10031-25; prior: 1923 c 16 § 23. (ii) 1935 c 112 § 6; RRS § 10031-6; prior: 1923 c 16 § 1; 1901 c 152 § 5; 1893 c 55 § 11.]

18.32.035 Board of dental examiners—Creation—Membership—Terms—Powers—Vacancies—Compacts and agreements with other states. There shall be a board of dental examiners consisting of nine practicing dentists, at least three of whom reside east of the summit of the Cascade range, and one consumer member, to be known as the Washington state board of dental examiners.

The members shall be appointed by the governor in the manner hereinafter set forth and at the time of their appointment upon said board must be actual residents of the state in active practice of dentistry as defined in this chapter and must have been for a period of five years or more legally licensed to practice dentistry in this state. No person is eligible to appointment to the board who is in any way connected with or interested in any dental college or dental department of any institution of learning. Members shall be appointed to the board to serve for terms of five years from January 1st of the year in which they are appointed, and shall hold office until their successors are appointed.

In case of a vacancy occurring on the board, the vacancy shall be filled by the governor as provided in this section for the remainder of the term of the vacancy and the appointee shall hold office until a successor is appointed.

The board may contract with competent persons on a temporary basis to assist in developing or administering examinations for licensure.

The board may enter into compacts and agreements with other states and with organizations formed by several states, for the purpose of conducting multi-state licensing examinations. The board may enter into such compacts and agreements even though they would result in the examination of a candidate for a license in this state by an examiner or examiners from another state or states, and even though the compacts and agreements would result in the examination of a candidate or candidates for a license in another state or states by an examiner or examiners from this state.

The board of dental examiners may adopt rules in accordance with chapter 34.05 RCW to implement this chapter and chapter 18.130 RCW. [1989 c 202 § 14; 1984 c 279 § 50; 1979 c 38 § 1; 1975 c 49 § 1; 1953 c 93 § 2; 1941 c 92 § 1; 1935 c 112 § 2; Rem. Supp. 1941 § 10031-2. Formerly RCW 43.68.010.]

Severability—1984 c 279: See RCW 18.130.901.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.32.037 Board of dental examiners—Generally.

The board shall designate one of its members as chairperson and one as secretary, and it shall meet at least once in each year, and more often if necessary, at the discretion of the secretary or board, and at such times and places as the secretary or the board deems proper. A majority of the members of the board currently serving constitutes a quorum for the transaction of the business of the board. [1991 c 3 § 60; 1989 c 202 § 15; 1935 c 112 § 3; RRS § 10031-3. Formerly RCW 43.68.020.]

18.32.039 Application of uniform disciplinary act.

The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 17; 1986 c 259 § 34.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.32.040 Requirements for licensure. The board shall require that every applicant for a license to practice dentistry shall:

(1) Present satisfactory evidence of graduation from a dental college, school, or dental department of an institution approved by the board;

(2) Submit, for the files of the board, a recent picture duly identified and attested; and

(3) Pass an examination prepared or approved by and administered under the direction of the board. The dentistry licensing examination shall consist of practical and written tests upon such subjects and of such scope as the board determines. The board may accept, in lieu of all or part of a written examination, a certificate granted by a national or regional testing organization approved by the board. The board shall set the standards for passing the examination. The secretary shall keep on file the examination papers and records of examination for at least one year. This file shall be open for inspection by the applicant or the applicant's agent unless the disclosure will compromise the examination process as determined by the board or is exempted from disclosure under RCW 42.17.250 through 42.17.340. [1991 c 3 § 61; 1989 c 202 § 16; 1979 c 38 § 2; 1935 c 112 § 5; RRS § 10031-5. Prior: 1923 c 16 §§ 4, 5. Formerly RCW 18.32.040 and 18.32.130 through 18.32.150.]

18.32.042 Removal of board member. A member of the board of dental examiners may be removed by the governor for neglect of duty, misconduct, or malfeasance or misfeasance in office. Whenever the governor is satisfied that a member of the board has been guilty of neglect of duty, misconduct, or malfeasance or misfeasance in office, the governor shall file with the secretary of state a statement showing the governor's reasons, with the order of removal. The secretary of state shall immediately send a certified copy of the order of removal and statement of causes by certified mail to the last known address of the member in question. [1989 c 202 § 28.]

18.32.050 Board—Members' compensation and travel expenses. The members of the board shall each be compensated in accordance with RCW 43.03.240 and shall

be reimbursed for travel expenses incurred in attending the meetings of the board in accordance with RCW 43.03.050 and 43.03.060. Board members shall be compensated and reimbursed pursuant to this section for their activities in administering a multi-state licensing examination pursuant to the board's compact or agreement with another state or states or with organizations formed by several states: **PROVIDED**, That any compensation or reimbursement received by a board member from another state, or organization formed by several states, for such member's services in administering a multi-state licensing examination, shall be deposited in the state general fund. [1984 c 287 § 30; 1979 c 38 § 3; 1975-'76 2nd ex.s. c 34 § 34; 1967 c 188 § 2; 1957 c 52 § 23; 1953 c 93 § 3. Prior: 1935 c 112 § 11, part; RRS § 10031-11, 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.

18.32.091 License required. No person, unless previously licensed to practice dentistry in this state, shall begin the practice of dentistry without first applying to, and obtaining a license. [1987 c 150 § 18.]

Severability—1987 c 150: See RCW 18.122.901.

18.32.100 Applications. The applicant for a dentistry license shall file an application on a form furnished by the secretary, stating the applicant's name, age, place of residence, the name of the school or schools attended by the applicant, the period of such attendance, the date of the applicant's graduation, whether the applicant has ever been the subject of any disciplinary action related to the practice of dentistry, and shall include a statement of all of the applicant's dental activities. This shall include any other information deemed necessary by the board.

The application shall be signed by the applicant and sworn to by the applicant before some person authorized to administer oaths, and shall be accompanied by proof of the applicant's school attendance and graduation. [1991 c 3 § 62; 1989 c 202 § 18; 1957 c 52 § 28; 1953 c 93 § 4; 1951 c 130 § 2; 1941 c 92 § 2; 1935 c 112 § 4; Rem. Supp. 1941 § 10031-4, part. Prior: 1923 c 16 §§ 2, 3, 6, 7; 1901 c 152 § 1; 1893 c 55 § 4.]

18.32.110 Application fee. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250, which shall accompany the application. [1991 c 3 § 63; 1989 c 202 § 19; 1985 c 7 § 23; 1975 1st ex.s. c 30 § 27; 1969 c 49 § 1; 1957 c 52 § 29. Prior: 1941 c 92 § 2, part; 1935 c 112 § 4; Rem. Supp. 1941 § 10031-4, part.]

18.32.120 Examination—Fee. When the application and the accompanying proof are found satisfactory, the secretary shall notify the applicant to appear before the board at a time and place to be fixed by the board.

The examination papers, and all grading thereon, and the grading of the practical work, shall be preserved for a period of not less than one year after the board has made and published its decisions thereon. All examinations shall

be conducted by the board under fair and wholly impartial methods.

Any applicant who fails to make the required grade by his or her fourth examination may be reexamined only under rules adopted by the board.

Applicants for examination or reexamination shall pay a fee as determined by the secretary as provided in RCW 43.70.250. [1991 c 3 § 64; 1989 c 202 § 20; 1985 c 7 § 24; 1975 1st ex.s. c 30 § 28; 1969 c 49 § 2; 1957 c 52 § 30; 1953 c 93 § 5. Prior: 1941 c 92 § 2, part; 1935 c 112 § 4, part; Rem. Supp. 1941 § 10031-4, part.]

18.32.160 Licenses—Signed by secretary. All licenses issued by the secretary on behalf of the board shall be signed by the secretary or chairperson and secretary of the board. [1991 c 3 § 65; 1989 c 202 § 21; 1951 c 130 § 3; 1935 c 112 § 17; RRS § 10031-17.]

18.32.170 Duplicate licenses—Fee. A fee determined by the secretary as provided in RCW 43.70.250 shall be charged for every duplicate license issued by the secretary. [1991 c 3 § 66; 1985 c 7 § 25; 1975 1st ex.s. c 30 § 29; 1957 c 52 § 25. Prior: 1935 c 112 § 11, part; RRS § 10031-11, part.]

18.32.180 Registration requirements—Validity of license. (1) Every person licensed to practice dentistry in this state shall register with the secretary, and pay a renewal registration fee determined by the secretary as provided in RCW 43.70.250. Any failure to register and pay the renewal registration fee renders the license invalid, and the practice of dentistry shall not be permitted. The license shall be reinstated upon written application to the secretary and payment to the state of a penalty fee determined by the secretary as provided in RCW 43.70.250, together with all delinquent license renewal fees.

(2) A person who fails to renew the license for a period of three years may not renew the license under subsection (1) of this section. In order to obtain a license to practice dentistry in this state, such a person shall file an original application as provided for in this chapter, along with the requisite fees. The board, in its sole discretion, may permit the applicant to be licensed without examination, and with or without conditions, if it is satisfied that the applicant meets all the requirements for licensure in this state and is competent to engage in the practice of dentistry. [1991 c 3 § 67; 1989 c 202 § 22; 1985 c 7 § 26; 1975 1st ex.s. c 30 § 30; 1969 c 49 § 3; 1951 c 130 § 4; 1935 c 112 § 24; RRS § 10031-24.]

18.32.190 Licenses display—Notification of address. Every person who engages in the practice of dentistry in this state shall cause his or her license to be, at all times, displayed in a conspicuous place, in his or her office wherein he or she shall practice such profession, and shall further, whenever requested, exhibit such license to any of the members of said board, or its authorized agent, and to the secretary or his or her authorized agent. Every licensee shall notify the secretary of the address or addresses, and of every change thereof, where the licensee shall engage in the practice of dentistry. [1991 c 3 § 68; 1981 c 277 § 7; 1935

c 112 § 7; RRS § 10031-7. Prior: 1923 c 16 § 15; 1893 c 55 § 5.]

18.32.195 University of Washington school of dentistry faculty and residents—Licenses. The board may, without examination, issue a license to persons who possess the qualifications set forth in this section.

(1) The board may, upon written request of the dean of the school of dentistry of the University of Washington, issue a license to practice dentistry in this state to persons who have been licensed or otherwise authorized to practice dentistry in another state or country and who have been accepted for employment by the school of dentistry as full-time faculty members. For purposes of this subsection, this means teaching members of the faculty of the school of dentistry of the University of Washington who are so employed on a one hundred percent of work time basis. Such license shall permit the holder thereof to practice dentistry within the confines of the university facilities for a period of one year while he or she is so employed as a full-time faculty member by the school of dentistry of the University of Washington. It shall terminate whenever the holder ceases to be such a full-time faculty member. Such license shall permit the holder thereof to practice dentistry only in connection with his or her duties in employment with the school of dentistry of the University of Washington. This limitation shall be stated on the license.

(2) The board may, upon written request of the dean of the school of dentistry of the University of Washington, issue a limited license to practice dentistry in this state to university residents in postgraduate dental education. The license shall permit the resident dentist to provide dental care only in connection with his or her duties as a university resident.

(3) The board may condition the granting of a license under this section with terms the board deems appropriate. All persons licensed under this section shall be subject to the jurisdiction of the dental disciplinary board to the same extent as other members of the dental profession, in accordance with this chapter, and in addition the licensee may be disciplined by the dental disciplinary board after a hearing has been held in accordance with the provisions set forth in this chapter, and determination by the dental disciplinary board that such licensee has violated any of the restrictions set forth in this section.

(4) Persons applying for licensure pursuant to this section shall pay the application fee determined by the secretary and, in the event the license applied for is issued, a license fee at the rate provided for licenses generally. After review by the board of dental examiners, licenses issued under this section may be renewed annually if the licensee continues to be employed as a full-time faculty member of the school of dentistry of the University of Washington, or a university resident in postgraduate dental education, and otherwise meets the requirements of the provisions and conditions deemed appropriate by the board of dental examiners. Any person who obtains a license pursuant to this section may, without an additional application fee, apply for licensure under this chapter, in which case the applicant shall be subject to examination and the other

requirements of this chapter. [1992 c 59 § 1; 1991 c 3 § 69; 1985 c 111 § 1.]

18.32.215 Licensure without examination—Licensed in another state. An applicant holding a valid license and currently engaged in practice in another state may be granted a license without examination required by this chapter, on the payment of any required fees, if the board determines that the other state's licensing standards are substantively equivalent to the standards in this state: PROVIDED, That the board may require the applicant to: (1) File with the board documentation certifying the applicant is licensed to practice in another state; and (2) provide information as the board deems necessary pertaining to the conditions and criteria of the uniform disciplinary act, chapter 18.130 RCW and to demonstrate to the board a knowledge of Washington law pertaining to the practice of dentistry. [1989 c 202 § 30.]

18.32.220 Certificate available for dentists going out-of-state. Anyone who is a licensed dentist in the state of Washington who desires to change residence to another state or territory, shall, upon application to the secretary and payment of a fee as determined by the secretary under RCW 43.70.250, receive a certificate over the signature of the secretary or his or her designee, which shall attest to the facts mentioned in this section, and giving the date upon which the dentist was licensed. [1991 c 3 § 70; 1989 c 202 § 23; 1935 c 112 § 14; RRS § 10031-14. FORMER PART OF SECTION: 1935 c 112 § 15; RRS § 10031-15, now codified as RCW 18.32.225.]

18.32.326 Identification of dental prostheses—Technical assistance.

Reviser's note: RCW 18.32.326 was both recodified and repealed during the 1989 legislative sessions, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.32.390 Penalty—General. Any person who violates any of the provisions of the chapter for which no specific penalty has been provided herein, shall be subject to prosecution before any court of competent jurisdiction, and shall, upon conviction, be guilty of a gross misdemeanor. [1986 c 259 § 38; 1935 c 112 § 16; RRS § 10031-16. Prior: 1901 c 152 § 4; 1893 c 55 § 8.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.32.400 Dentist members of committees to evaluate credentials and qualifications of dentists—Immunity from civil suit. See RCW 4.24.240.

18.32.410 Dentists filing charges or presenting evidence before dental society committee or board—Immunity from civil suit. See RCW 4.24.250.

18.32.420 Records of dental society committees or boards not subject to civil process. See RCW 4.24.250.

DENTAL DISCIPLINARY BOARD ACT

18.32.500 Short title. RCW 18.32.510 through 18.32.755 shall be known and may be cited as the "Dental Disciplinary Board Act". [1989 c 202 § 24; 1986 c 259 § 39; 1977 ex.s. c 5 § 37.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.32.510 Legislative declaration. The legislature finds that the health and well-being of the people of this state are of paramount importance.

The legislature further finds that the conduct of members of the dental profession licensed to practice dentistry in this state plays a vital role in preserving the health and well-being of the people of the state.

The legislature further finds that there is no effective means of handling disciplinary proceedings against members of the dental profession licensed in this state when such proceedings are necessary for the protection of the public health.

Therefore, the legislature declares its intention to exercise the police power of the state to protect the public health, to promote the welfare of the state, and to provide a dental disciplinary board to act as a disciplinary body for the members of the dental profession licensed to practice dentistry in this state. [1977 ex.s. c 5 § 1.]

18.32.520 Definitions. Unless the context clearly requires otherwise, the definitions contained in this section shall apply throughout RCW 18.32.510 through 18.32.755.

(1) "Board" means the dental disciplinary board created in RCW 18.32.560.

(2) "License" means a certificate or license to practice dentistry in this state as provided for in this chapter.

(3) "Member" means member of the dental disciplinary board.

(4) "Secretary" means the secretary of the dental disciplinary board.

(5) "Secretary of health" means the secretary of the department of health of the state of Washington.

(6) "To practice dentistry" means to engage in the practice of dentistry as defined in RCW 18.32.020. [1991 c 3 § 71; 1989 c 202 § 25; 1986 c 259 § 40; 1979 c 158 § 36; 1977 ex.s. c 5 § 2.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.32.530 "Unprofessional conduct." In addition to those acts defined in chapter 18.130 RCW, the term "unprofessional conduct" as used in RCW 18.32.530 through 18.32.765 includes gross, willful, or continued overcharging for professional services. [1989 c 202 § 26; 1986 c 259 § 41; 1977 ex.s. c 5 § 3.]

Savings—1986 c 259 §§ 36, 37, 41, 43: See note following RCW 18.32.665.

Severability—1986 c 259: See note following RCW 18.130.010.

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.32.533 Unprofessional conduct—Abrogation of copayment provisions. It is unprofessional conduct under this chapter and chapter 18.130 RCW for a dentist to

abrogate the copayment provisions of a contract by accepting the payment received from a third party payer as full payment. [1985 c 202 § 1.]

18.32.534 Impaired dentist program—Content—License surcharge. (1) To implement an impaired dentist program as authorized by RCW 18.130.175, the dental disciplinary board shall enter into a contract with a voluntary substance abuse monitoring program. The impaired dentist program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired dentists to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired dentists including those ordered by the board;
- (f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired dentists; and
- (g) Performing other related activities as determined by the board.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to fifteen dollars on each license issuance or renewal to be collected by the department of health from every dentist licensed under chapter 18.32 RCW. These moneys shall be placed in the health professions account to be used solely for the implementation of the impaired dentist program. [1991 c 3 § 72; 1989 c 125 § 1.]

18.32.560 Board created—Composition—Attorney general as legal counsel. There is hereby created the Washington state dental disciplinary board, which shall be composed of five members, each of whom shall be a resident of this state engaged in the active practice of dentistry and who shall have been licensed to practice dentistry in this state for a period of five years or more prior to appointment to the board. Of the five members appointed to the board, two members shall reside and engage in the active practice of dentistry east of the summit of the Cascade range and the other three members shall reside and engage in the active practice of dentistry west of the summit of the Cascade range.

The attorney general shall be counsel to the board and shall represent it in all legal proceedings.

In addition to the members specified in this section, the governor shall appoint a consumer member of the board. The consumer member shall serve a term of six years commencing on October 1st. [1984 c 279 § 51; 1977 ex.s. c 5 § 6.]

Severability—1984 c 279: See RCW 18.130.901.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.32.570 Appointment of board members—Terms. Members of the board shall be appointed by the governor from among the holders of licenses to practice dentistry residing in this state and shall hold office until their successors are appointed and qualified. The members of the first board shall serve for the following terms: Two members for

two years, two members for four years, and one member for six years. Thereafter members of the board shall be appointed to terms of six years. The position of the members first appointed for the term of four years shall be held in such first term and in successive terms by the members residing east of the Cascade summit. The terms of office of members shall commence on October 1st. [1977 ex.s. c 5 § 7.]

18.32.580 Vacancies. Vacancies in the board shall be filled by the governor and a member appointed to fill a vacancy on the board shall serve for the balance of the unexpired term of the position to which said member was appointed and until the successor is appointed and takes office. [1977 ex.s. c 5 § 8.]

18.32.590 Removal of members. Any member of the board may be removed by the governor for neglect of duty, misconduct, or malfeasance or misfeasance in office. Whenever the governor is satisfied that any member of the board has been guilty of neglect of duty, misconduct, or malfeasance or misfeasance in office, the governor shall file with the secretary of state a statement showing the governor's reasons, with the order of removal, and the secretary of state shall forthwith send a certified copy of such order of removal and statement of causes by registered mail to the last known post office address of the member in question. [1977 ex.s. c 5 § 9.]

18.32.600 Compensation and travel expenses of members. Members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 while engaged in business of the board. [1984 c 287 § 31; 1977 ex.s. c 5 § 10.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

18.32.610 Territorial scope of operations. The board may meet, function, and exercise its powers at any geographical location within the state. [1977 ex.s. c 5 § 11.]

18.32.620 Officers—Meetings—Quorum. The board shall elect from its members a chairman, vice chairman, and secretary, who shall serve for one year and until their successors are elected and qualified. The board shall meet at least once a year or upon the call of the chairman at such times and places as the chairman shall designate. Four members shall constitute a quorum to transact business. [1984 c 279 § 62; 1977 ex.s. c 5 § 12.]

Severability—1984 c 279: See RCW 18.130.901.

18.32.640 Rules—Administration of sedation and general anesthesia. (1) The board may adopt, amend, and rescind such rules as it deems necessary to carry out this chapter.

(2) The board may adopt rules governing administration of sedation and general anesthesia by persons licensed under this chapter, including necessary training, education, equipment, and the issuance of any permits, certificates, or

registration as required. [1988 c 217 § 1; 1986 c 259 § 42; 1977 ex.s. c 5 § 14.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.32.655 Dental disciplinary board—Supervision of records. The dental disciplinary board has the power and it shall be its duty to:

(1) Require licensed dentists to keep and maintain a copy of each laboratory referral instruction, describing detailed services rendered, for a period to be determined by the board but not more than three years, and to require the production of all such records for examination by the board or its authorized representatives; and

(2) Promulgate reasonable rules and regulations requiring licensed dentists to make, maintain and produce for examination by the board or its authorized representatives such other records as may be reasonable and proper in the performance of its duties and enforcing the provisions of this chapter. [1986 c 259 § 35; 1953 c 93 § 8. Formerly RCW 18.32.085.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.32.665 Advertising—False—Credit terms. It shall be unlawful for any person, firm or corporation to publish, directly or indirectly, or circulate any fraudulent, false or misleading statements within the state of Washington as to the skill or method of practice of any person or operator; or in any way to advertise in print any matter with a view of deceiving the public, or in any way that will tend to deceive or defraud the public; or to claim superiority over neighboring dental practitioners; or to publish reports of cases or certificates of same in any public advertising media; or to advertise as using any anesthetic, drug, formula, medicine, which is either falsely advertised or misnamed; or to employ "capper" or "steerers" to obtain patronage; and any person committing any offense against any of the provisions of this section shall, upon conviction, be subjected to such penalties as are provided in this chapter: **PROVIDED**, That any person licensed under this chapter may announce credit, terms of credit or installment payments that may be made at periodical intervals to apply on account of any dental service rendered. The dental disciplinary board may adopt such rules as are necessary to carry out the intent of this section. [1986 c 259 § 36; 1935 c 112 § 20; RRS § 10031-20. Formerly RCW 18.32.290.]

Savings—1986 c 259 §§ 36, 37, 41, 43: "The repeal of RCW 18.32.090 and 18.32.550 and the amendment of RCW 18.32.290, 18.32.360, and 18.32.530 by this act shall not be construed as affecting any rights and duties which matured, penalties which were incurred, and proceedings which were begun before June 11, 1986." [1986 c 259 § 44.]

Severability—1986 c 259: See note following RCW 18.130.010.

False advertising: RCW 9.04.010.

18.32.675 Practice or solicitation by corporations prohibited—Penalty. No corporation shall practice dentistry or shall solicit through itself, or its agent, officers, employees, directors or trustees, dental patronage for any dentists or dental surgeon employed by any corporation: **PROVIDED**, That nothing contained in this chapter shall prohibit a corporation from employing a dentist or dentists to render dental services to its employees: **PROVIDED**,

FURTHER, That such dental services shall be rendered at no cost or charge to the employees; nor shall it apply to corporations or associations in which the dental services were originated and are being conducted upon a purely charitable basis for the worthy poor, nor shall it apply to corporations or associations furnishing information or clerical services which can be furnished by persons not licensed to practice dentistry, to any person lawfully engaged in the practice of dentistry, when such dentist assumes full responsibility for such information and services. Any corporation violating the provisions of this section is guilty of a gross misdemeanor, and each day that this chapter is violated shall be considered a separate offense. [1935 c 112 § 19; RRS § 10031-19. Formerly RCW 18.32.310.]

18.32.685 Prescriptions—Filled by druggists.

Registered pharmacists of this state may fill prescriptions of legally licensed dentists of this state for any drug necessary in the practice of dentistry. [1935 c 112 § 26; RRS § 10031-26. Prior: 1923 c 16 § 24. Formerly RCW 18.32.320.]

Pharmacists: Chapter 18.64 RCW.

18.32.695 Identification of new dental prostheses.

Every complete upper and lower denture and removable dental prosthesis fabricated by a dentist licensed under this chapter, or fabricated pursuant to the dentist's work order or under the dentist's direction or supervision, shall be marked with the name of the patient for whom the prosthesis is intended. The markings shall be done during fabrication and shall be permanent, legible, and cosmetically acceptable. The exact location of the markings and the methods used to apply or implant them shall be determined by the dentist or dental laboratory fabricating the prosthesis. If, in the professional judgment of the dentist or dental laboratory, this identification is not practical, identification shall be provided as follows:

(1) The initials of the patient may be shown alone, if use of the name of the patient is impracticable; or

(2) The identification marks may be omitted in their entirety if none of the forms of identification specified in subsection (1) of this section is practicable or clinically safe. [1987 c 252 § 1. Formerly RCW 18.32.322.]

Severability—1987 c 252: "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 252 § 5.]

18.32.705 Identification of previously fabricated prostheses.

Any removable prosthesis in existence before July 26, 1987, that was not marked in accordance with RCW 18.32.695 at the time of its fabrication, shall be so marked at the time of any subsequent rebasing. [1987 c 252 § 2. Formerly RCW 18.32.324.]

Severability—1987 c 252: See note following RCW 18.32.695.

18.32.715 Identification of dental prostheses—

Violation. Failure of any dentist to comply with RCW 18.32.695 and 18.32.705 is a violation for which the dentist may be subject to proceedings if the dentist is charged with the violation within two years of initial insertion of the

dental prosthetic device. [1987 c 252 § 4. Formerly RCW 18.32.328.]

Severability—1987 c 252: See note following RCW 18.32.695.

18.32.725 Sanitary regulations. It shall be the duty of every person engaged in the practice of dentistry or who shall own, operate, or manage any dental office to keep said office and dental equipment in a thoroughly clean and sanitary condition. [1935 c 112 § 27; RRS § 10031-27. Prior: 1923 c 16 § 25. Formerly RCW 18.32.330.]

18.32.735 Unlawful practice—Hygienists—Penalty. Any licensed dentist who shall permit any dental hygienist operating under his supervision to perform any operation required to be performed by a dentist under the provisions of this chapter shall be guilty of a misdemeanor. [1935 c 112 § 28; RRS § 10031-28. Formerly RCW 18.32.340.]

18.32.745 Unlawful practice—Employing unlicensed dentist—Penalty. No manager, proprietor, partnership, or association owning, operating, or controlling any room, office, or dental parlors, where dental work is done, provided, or contracted for, shall employ or retain any unlicensed person or dentist as an operator; nor shall fail, within ten days after demand made by the secretary of health, the state board of dental examiners, or the dental disciplinary board in writing sent by certified mail, addressed to any such manager, proprietor, partnership, or association at said room, office, or dental parlor, to furnish the secretary of health, the state board of dental examiners, or the dental disciplinary board with the names and addresses of all persons practicing or assisting in the practice of dentistry in his or her place of business or under his or her control, together with a sworn statement showing by what license or authority said persons are practicing dentistry.

The sworn statement shall not be used as evidence in any subsequent court proceedings, except in a prosecution for perjury connected with its execution.

Any violation of the provisions of this section shall constitute improper, unprofessional, and dishonorable conduct; it shall also constitute grounds for injunction proceedings as provided by this chapter and in addition shall constitute a gross misdemeanor, except that the failure to furnish the information as may be requested in accordance with this section shall constitute a misdemeanor. [1991 c 3 § 73; 1977 ex.s. c 5 § 31; 1957 c 52 § 38; 1953 c 93 § 7. Prior: 1937 c 45 § 1, part; 1935 c 112 § 18, part; RRS § 10031-18, part. Formerly RCW 18.32.350.]

18.32.755 Names used—Advertising—Penalty. Any advertisement or announcement for dental services must include for each office location advertised the names of all persons practicing dentistry at that office location.

Any violation of the provisions of this section shall constitute improper, unprofessional and dishonorable conduct; it shall also constitute grounds for injunction proceedings as provided by RCW 18.130.190(2), and in addition shall constitute a gross misdemeanor. [1986 c 259 § 37; 1957 c 52 § 39. Prior: 1937 c 45 § 1, part; 1935 c 112 § 18, part; RRS § 10031-18, part. Formerly RCW 18.32.360.]

Savings—1986 c 259 §§ 36, 37, 41, 43: See note following RCW 18.32.660.

Severability—1986 c 259: See note following RCW 18.130.010.

18.32.900 Severability—1935 c 112. Should any section of this act for any reason be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act. [1935 c 112 § 29.]

18.32.910 Severability—1953 c 93. If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications 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. [1953 c 93 § 9.]

18.32.915 Severability—1977 ex.s. c 5. 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 5 § 36.]

18.32.916 Severability—1979 c 38. 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. [1979 c 38 § 4.]

Chapter 18.34

DISPENSING OPTICIANS

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- 18.34.020 Definitions.
- 18.34.030 Apprentices.
- 18.34.050 Examining committee—Compensation and travel expenses.
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- 18.34.136 Application of uniform disciplinary act.
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Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

18.34.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.34.010 Licensing—Exemptions—Limitations. Nothing in this chapter shall:

(1) Be construed to limit or restrict a duly licensed physician or optometrist or employees working under the personal supervision of a duly licensed physician or optometrist from the practices enumerated in this chapter, and each such licensed physician and optometrist shall have all the rights and privileges which may accrue under this chapter to dispensing opticians licensed hereunder;

(2) Be construed to prohibit an unlicensed person from performing mechanical work upon inert matter in an optical office, laboratory or shop;

(3) Be construed to prohibit an unlicensed person from engaging in the sale of spectacles, eyeglasses, magnifying glasses, goggles, sunglasses, telescopes, binoculars, or any such articles which are completely preassembled and sold only as merchandise;

(4) Be construed to authorize or permit a licensee hereunder to hold himself out as being able to, or to offer to, or to undertake to attempt, by any manner of means, to examine or exercise eyes, diagnose, treat, correct, relieve, operate or prescribe for any human ailment, deficiency, deformity, disease or injury. [1957 c 43 § 1.]

18.34.020 Definitions. The term "secretary" wherever used in this chapter shall mean the secretary of health of the state of Washington. The term "apprentice" wherever used in this chapter shall mean a person who shall be designated an apprentice in the records of the secretary at the request of a physician, registered optometrist or licensee hereunder, and who shall thereafter receive from such physician, registered optometrist or licensee hereunder training and direct supervision in the work of a dispensing optician. [1991 c 3 § 74; 1979 c 158 § 37; 1957 c 43 § 2.]

18.34.030 Apprentices. No licensee hereunder may have more than two apprentices in training at one time: PROVIDED, That the licensee shall be responsible for the acts of his or her apprentices in the performance of their work in the apprenticeship program: PROVIDED FURTHER, That apprentices shall complete their apprenticeship in six years and shall not work longer as an apprentice unless the secretary determines, after a hearing, that the apprentice was prevented by causes beyond his or her control from completing his or her apprenticeship and becoming a licensee hereunder in six years. [1991 c 3 § 75; 1957 c 43 § 3.]

18.34.050 Examining committee—Compensation and travel expenses. The examining committee shall consist of three persons primarily engaged in the business of dispensing opticians and who currently hold a valid license under this chapter. Members of the committee 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. [1984 c 287 § 32; 1957 c 43 § 5.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

18.34.060 Dispensing optician. A dispensing optician is a person who prepares duplications of, or prepares and dispenses lenses, spectacles, eyeglasses and/or appurtenances thereto to the intended wearers thereof on written prescriptions from physicians or optometrists, and in accordance with such prescriptions, measures, adapts, adjusts and fabricates such lenses, spectacles, eyeglasses and/or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eye: PROVIDED, HOWEVER, That contact lenses may be fitted only upon a

written prescription of a physician or optometrist. [1957 c 43 § 6.]

18.34.070 Applicants—Eligibility for examination—Fee. Any applicant for a license shall be examined if he or she pays an examination fee determined by the secretary as provided in RCW 43.70.250 and certifies under oath that he or she:

- (1) Is eighteen years or more of age; and
- (2) Has graduated from an accredited high school; and
- (3) Is a citizen of the United States or has declared his or her intention of becoming such citizen in accordance with law; and
- (4) Is of good moral character; and
- (5) Has either:
 - (a) Had at least three years of apprenticeship training; or
 - (b) Successfully completed a prescribed course in opticianry in a college or university approved by the secretary; or
 - (c) Been principally engaged in practicing as a dispensing optician not in the state of Washington for five years. [1991 c 3 § 76; 1985 c 7 § 29; 1975 1st ex.s. c 30 § 34; 1971 ex.s. c 292 § 22; 1957 c 43 § 7.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

18.34.080 Examination—Issuance and display of license. The examination shall determine whether the applicant has a thorough knowledge of the principles governing the practice of a dispensing optician which is hereby declared necessary for the protection of the public health. The secretary shall license successful examinees and the license shall be conspicuously displayed in the place of business of the licensee. [1991 c 3 § 77; 1957 c 43 § 8.]

18.34.110 Existing practitioner—Fee. The secretary shall issue a license without examination to any person who makes application therefor within six months after June 12, 1957, pays a fee of fifty dollars and certifies under oath that he or she is of good moral character and has been actually and principally engaged in the practice of a dispensing optician in the state of Washington for a period of not less than six months immediately preceding June 12, 1957. [1991 c 3 § 78; 1957 c 43 § 11.]

18.34.115 Credentialing by endorsement. An applicant holding a credential in another state may be credentialed to practice in this state without examination if the secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1991 c 332 § 33.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

18.34.120 Annual renewal—Fee—Reinstatement—Penalty—Continuing education. Each licensee hereunder shall pay an annual renewal registration fee determined by the secretary as provided in RCW 43.70.250, on or before the first day of July of each year, and thereupon the license of such person shall be renewed for a period of one year. Any failure to pay the annual renewal registration fee shall

render the license invalid, but such license shall be reinstated upon written application therefor to the secretary and payment of a penalty determined by the secretary as provided in RCW 43.70.250, together with all delinquent annual license renewal fees. In addition, the secretary may adopt rules establishing mandatory continuing education requirements to be met by persons applying for license renewal. [1991 c 3 § 79; 1984 c 279 § 52; 1975 1st ex.s. c 30 § 35; 1957 c 43 § 12.]

Severability—1984 c 279: See RCW 18.130.901.

18.34.136 Application of uniform disciplinary act.

The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 19; 1986 c 259 § 45.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.34.141 License required. No person may practice or represent himself or herself as a dispensing optician without first having a valid license to do so. [1987 c 150 § 20.]

Severability—1987 c 150: See RCW 18.122.901.

18.34.900 Severability—1957 c 43. 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. [1957 c 43 § 16.]

Chapter 18.35 HEARING AIDS

Sections

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18.35.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.35.010 Definitions. As used in this chapter, unless the context requires otherwise:

- (1) "Department" means the department of health.
- (2) "Council" means the council on hearing aids.
- (3) "Hearing aid" means any wearable prosthetic instrument or device designed for or represented as aiding, improving, compensating for, or correcting defective human hearing and any parts, attachments, or accessories of such an instrument or device, excluding batteries and cords and ear molds.

(4) "Fitting and dispensing of hearing aids" means the sale, lease, or rental or attempted sale, lease, or rental of hearing aids together with the selection and adaptation of hearing aids and the use of those tests and procedures essential to the performance of these functions. It includes the taking of impressions for ear molds for these purposes.

(5) "Secretary" means the secretary of health.

(6) "Establishment" means any facility engaged in the fitting and dispensing of hearing aids. [1991 c 3 § 80; 1983 c 39 § 1; 1979 c 158 § 38; 1973 1st ex.s. c 106 § 1.]

18.35.020 License required—Hearing aid establishments' responsibilities. No person shall engage in the fitting and dispensing of hearing aids or imply or represent that he or she is engaged in the fitting and dispensing of hearing aids unless he or she holds a valid license issued by the department as provided in this chapter and is an owner or employee of an establishment that is bonded as provided by RCW 18.35.240. The owner or manager of a hearing aid establishment is responsible under this chapter for all transactions made in the establishment name or conducted on its premises by agents or employees of the establishment engaged in fitting and dispensing hearing aids. Every establishment shall have in its employ at least one licensed fitter-dispenser at all times, and shall annually submit proof that all audiometric equipment at that establishment has been properly calibrated. [1989 c 198 § 1; 1983 c 39 § 2; 1973 1st ex.s. c 106 § 2.]

18.35.030 Receipt required—Contents. Any person who engages in the fitting and dispensing of hearing aids shall provide to each person who enters into an agreement to purchase a hearing aid a receipt at the time of the agreement containing the following information:

- (1) The seller's name, signature, license number, address, and phone number of his or her regular place of business;

(2) A description of the aid furnished, including make, model, and the term "used" or "reconditioned" if applicable;

(3) A disclosure of the cost of all services including but not limited to the cost of testing and fitting, the actual cost of the hearing aid furnished, the cost of ear molds if any, and the terms of the sale. These costs, including the cost of ear molds, shall be known as the total purchase price. The receipt shall also contain a statement of the purchaser's rescission rights under this chapter and an acknowledgment that the purchaser has read and understands these rights. Upon request, the purchaser shall also be supplied with a signed and dated copy of any hearing evaluation performed by the seller.

(4) At the time of delivery of the hearing aid, the purchaser shall also be furnished with the serial number of the hearing aid supplied. [1983 c 39 § 3; 1973 1st ex.s. c 106 § 3.]

18.35.040 Applicants—Generally. An applicant for license shall be at least eighteen years of age and shall pay a fee determined by the secretary as provided in RCW 43.70.250. An applicant shall not be issued a license under the provisions of this chapter unless the applicant:

(1) Satisfactorily completes the examination required by this chapter; or

(2) Holds a current, unsuspended, unrevoked license or certificate from a state or jurisdiction with which the department has entered into a reciprocal agreement, and shows evidence satisfactory to the department that the applicant is licensed in good standing in the other jurisdiction. [1991 c 3 § 81; 1989 c 198 § 2; 1985 c 7 § 30; 1983 c 39 § 4; 1975 1st ex.s. c 30 § 36; 1973 1st ex.s. c 106 § 4.]

18.35.050 Examination—Required—When offered—Review. Except as otherwise provided in this chapter an applicant for license shall appear at a time and place and before such persons as the department may designate to be examined by written and practical tests. The department shall give an examination in May and November of each year. The examination shall be reviewed annually by the council and the department, and revised as necessary. No examination of any established association may be used as the exclusive replacement for the examination approved and developed by the council. [1989 c 198 § 3; 1983 c 39 § 5; 1973 1st ex.s. c 106 § 5.]

18.35.060 Trainee license—Generally. (1) The department shall issue a trainee license to any applicant who has shown to the satisfaction of the department that:

(a) The applicant is at least eighteen years of age;

(b) If issued a trainee license, would be employed and directly supervised in the fitting and dispensing of hearing aids by a person licensed in good standing as a fitter-dispenser for at least one year unless otherwise approved by the council; and

(c) Has paid an application fee determined by the secretary as provided in RCW 43.70.250, to the department.

The provisions of RCW 18.35.030, 18.35.110, and 18.35.120 shall apply to any person issued a trainee license. Pursuant to the provisions of this section, a person issued a trainee license may engage in the fitting and dispensing of

hearing aids without having first passed the examination provided under this chapter.

(2) The trainee license shall contain the name of the person licensed under this chapter who is employing and supervising the trainee and that person shall execute an acknowledgment of responsibility for all acts of the trainee in connection with the fitting and dispensing of hearing aids.

(3) A trainee may fit and dispense hearing aids, but only if the trainee is under the direct supervision of a person licensed under this chapter in a capacity other than as a trainee. Direct supervision by a licensed fitter-dispenser shall be required whenever the trainee is engaged in the fitting or dispensing of hearing aids during the trainee's first three months of full-time employment. The council shall develop and adopt guidelines on any additional supervision or training it deems necessary.

(4) The trainee license shall expire one year from the date of its issuance except that on recommendation of the council the license may be reissued for one additional year only.

(5) No person licensed under this chapter may assume the responsibility for more than two trainees at any one time, except that the department may approve one additional trainee if none of the trainees is within the initial ninety-day period of direct supervision and the licensee demonstrates to the department's satisfaction that adequate supervision will be provided for all trainees. [1991 c 3 § 82; 1985 c 7 § 31; 1983 c 39 § 6; 1975 1st ex.s. c 30 § 37; 1973 1st ex.s. c 106 § 6.]

18.35.070 Examination—Contents—Tests. The examination provided in RCW 18.35.050 shall consist of:

(1) Tests of knowledge in the following areas as they pertain to the fitting of hearing aids:

(a) Basic physics of sound;

(b) The human hearing mechanism, including the science of hearing and the causes and rehabilitation of abnormal hearing and hearing disorders; and

(c) Structure and function of hearing aids.

(2) Tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

(a) Pure tone audiometry, including air conduction testing and bone conduction testing;

(b) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;

(c) Effective masking;

(d) Recording and evaluation of audiograms and speech audiometry to determine hearing aid candidacy;

(e) Selection and adaptation of hearing aids and testing of hearing aids; and

(f) Taking ear mold impressions.

(3) Evidence of knowledge regarding the medical and rehabilitation facilities for children and adults that are available in the area served.

(4) Evidence of knowledge of grounds for revocation or suspension of license under the provisions of this chapter.

(5) Any other tests as the department may by rule establish. [1973 1st ex.s. c 106 § 7.]

18.35.080 License—Generally. The department shall license each applicant, without discrimination, who satisfactorily completes the required examination and, upon payment of a fee determined by the secretary as provided in RCW 43.70.250 to the department, shall issue to the applicant a license. If a person does not apply for a license within three years of the successful completion of the license examination, reexamination is required for licensure. The license shall be effective until the licensee's next birthday at which time it is subject to renewal. Subsequent renewal dates shall coincide with the licensee's birthday. [1991 c 3 § 83; 1989 c 198 § 4; 1985 c 7 § 32; 1975 1st ex.s. c 30 § 38; 1973 1st ex.s. c 106 § 8.]

18.35.085 Credentialing by endorsement. An applicant holding a credential in another state may be credentialed to practice in this state without examination if the board determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1991 c 332 § 31.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

18.35.090 Renewal fee—Display of license—Continuing education requirements or competency standards. Each person who engages in the fitting and dispensing of hearing aids shall as the department prescribes by rule, pay to the department a fee established by the secretary under RCW 43.70.250 for a renewal of the license and shall keep the license conspicuously posted in the place of business at all times. Any person who fails to renew his or her license prior to the expiration date must pay a penalty fee in addition to the renewal fee and satisfy the requirements that may be set forth by rule promulgated by the secretary for reinstatement. The secretary may by rule establish mandatory continuing education requirements and/or continued competency standards to be met by licensees as a condition for license renewal. [1991 c 3 § 84; 1989 c 198 § 5; 1985 c 7 § 33; 1983 c 39 § 7; 1973 1st ex.s. c 106 § 9.]

18.35.100 Place of business. (1) Every person who holds a license under this chapter shall notify the department in writing of the regular address of the place or places in the state of Washington where the person engages or intends to engage in the fitting and dispensing of hearing aids and of any change thereof within ten days of such change. Failure to notify the department in writing shall be grounds for suspension or revocation of license.

(2) The department shall keep a record of the places of business of persons who hold licenses.

(3) Any notice required to be given by the department to a person who holds a license may be given by mailing it to the address of the last place of business of which the person has notified the department, except that notice to a licensee of proceedings to deny, suspend, or revoke the license shall be by certified or registered mail or by means authorized for service of process. [1983 c 39 § 8; 1973 1st ex.s. c 106 § 10.]

18.35.105 Records—Contents. Each licensee shall keep records of all services rendered for a period of three years. These records shall contain the names and addresses of all persons to whom services were provided, the date the warranty expires, a description of the services and the dates the services were provided, and copies of any contracts and receipts. All records, as required pursuant to this chapter or by rule, kept by licensees shall be owned by the establishment and shall remain with the establishment in the event the licensee changes employment. If a contract between the establishment and the licensee provides that the records are to remain with the licensee, copies of such records shall be provided to the establishment. [1989 c 198 § 6; 1983 c 39 § 16.]

18.35.110 Disciplinary action—Grounds. In addition to causes specified under RCW 18.130.170 and 18.130.180, any person licensed under this chapter may be subject to disciplinary action by the council for any of the following causes:

(1) For unethical conduct in dealing in hearing aids. Unethical conduct shall include, but not be limited to:

(a) Using or causing or promoting the use of, in any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is false, misleading or deceptive;

(b) Failing or refusing to honor or to perform as represented any representation, promise, agreement, or warranty in connection with the promotion, sale, dispensing, or fitting of the hearing aid;

(c) Advertising a particular model, type, or kind of hearing aid for sale which purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing and where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind than that advertised;

(d) Falsifying hearing test or evaluation results;

(e)(i) Whenever any of the following conditions are found or should have been found to exist either from observations by the licensee or on the basis of information furnished by the prospective hearing aid user prior to fitting and dispensing a hearing aid to any such prospective hearing aid user, failing to advise that prospective hearing aid user in writing that the user should first consult a licensed physician specializing in diseases of the ear or if no such licensed physician is available in the community then to any duly licensed physician:

(A) Visible congenital or traumatic deformity of the ear, including perforation of the eardrum;

(B) History of, or active drainage from the ear within the previous ninety days;

(C) History of sudden or rapidly progressive hearing loss within the previous ninety days;

(D) Acute or chronic dizziness;

(E) Any unilateral hearing loss;

(F) Significant air-bone gap when generally acceptable standards have been established as defined by the food and drug administration;

(G) Visible evidence of significant cerumen accumulation or a foreign body in the ear canal;

(H) Pain or discomfort in the ear; or

(I) Any other conditions that the department may by rule establish. It is a violation of this subsection for any licensee or that licensee's employees and putative agents upon making such required referral for medical opinion to in any manner whatsoever disparage or discourage a prospective hearing aid user from seeking such medical opinion prior to the fitting and dispensing of a hearing aid. No such referral for medical opinion need be made by any licensee in the instance of replacement only of a hearing aid which has been lost or damaged beyond repair within six months of the date of purchase. The licensee or the licensee's employees or putative agents shall obtain a signed statement from the hearing aid user documenting the waiver of medical clearance and the waiver shall inform the prospective user that signing the waiver is not in the user's best health interest: **PROVIDED**, That the licensee shall maintain a copy of either the physician's statement showing that the prospective hearing aid user has had a medical evaluation or the statement waiving medical evaluation, for a period of three years after the purchaser's receipt of a hearing aid. Nothing in this section required to be performed by a licensee shall mean that the licensee is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited under the laws of this state;

(ii) Fitting and dispensing a hearing aid to any person under eighteen years of age who has not been examined and cleared for hearing aid use within the previous six months by a physician specializing in otolaryngology except in the case of replacement instruments or except in the case of the parents or guardian of such person refusing, for good cause, to seek medical opinion: **PROVIDED**, That should the parents or guardian of such person refuse, for good cause, to seek medical opinion, the licensee shall obtain from such parents or guardian a certificate to that effect in a form as prescribed by the department;

(iii) Fitting and dispensing a hearing aid to any person under eighteen years of age who has not been examined by an audiologist who holds at least a master's degree in audiology for recommendations during the previous six months, without first advising such person or his or her parents or guardian in writing that he or she should first consult an audiologist who holds at least a master's degree in audiology, except in cases of hearing aids replaced within six months of their purchase;

(f) Representing that the services or advice of a person licensed to practice medicine and surgery under chapter 18.71 RCW or osteopathy and surgery under chapter 18.57 RCW or of a clinical audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true, or using the word "doctor," "clinic," or other like words, abbreviations, or symbols which tend to connote a medical or osteopathic profession when such use is not accurate;

(g) Permitting another to use his or her license;

(h) Stating or implying that the use of any hearing aid will restore normal hearing, preserve hearing, prevent or retard progression of a hearing impairment, or any other false, misleading, or medically or audiotically

unsupportable claim regarding the efficiency of a hearing aid;

(i) Representing or implying that a hearing aid is or will be "custom-made," "made to order," "prescription made," or in any other sense specially fabricated for an individual when that is not the case; or

(j) Directly or indirectly offering, giving, permitting, or causing to be given, money or anything of value to any person who advised another in a professional capacity as an inducement to influence that person, or to have that person influence others to purchase or contract to purchase any product sold or offered for sale by the licensee, or to influence any person to refrain from dealing in the products of competitors.

(2) Engaging in any unfair or deceptive practice or unfair method of competition in trade within the meaning of RCW 19.86.020 as now or hereafter amended.

(3) Aiding or abetting any violation of the rebating laws as stated in chapter 19.68 RCW. [1987 c 150 § 22; 1983 c 39 § 9; 1973 1st ex.s. c 106 § 11.]

Severability—1987 c 150: See RCW 18.122.901.

Violation of chapter 69.50 RCW, the uniform controlled substances act—Suspension of license: RCW 69.50.413.

18.35.120 Disciplinary action—Additional grounds.

A licensee under this chapter may also be subject to disciplinary action if the licensee:

(1) Is found guilty in any court of any crime involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and ten years have not elapsed since the date of the conviction; or

(2) Has a judgment entered against him or her in any civil action involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and five years have not elapsed since the date of the entry of the final judgment in the action, but a license shall not be issued unless the judgment debt has been discharged; or

(3) Has a judgment entered against him or her under chapter 19.86 RCW and two years have not elapsed since the entry of the final judgment; but a license shall not be issued unless there has been full compliance with the terms of such judgment, if any. The judgment shall not be grounds for denial, suspension, nonrenewal, or revocation of a license unless the judgment arises out of and is based on acts of the applicant, licensee, or employee of the licensee. [1983 c 39 § 10; 1973 1st ex.s. c 106 § 12.]

Penalties authorized: RCW 18.35.161.

18.35.140 Powers and duties of department. The powers and duties of the department, in addition to the powers and duties provided under other sections of this chapter, are as follows:

(1) To purchase and maintain or rent audiometric equipment and facilities necessary to carry out the examination of applicants for license.

(2) To authorize all disbursements necessary to carry out the provisions of this chapter.

(3) To require the periodic examination of the audiometric testing equipment and to carry out the periodic inspection of facilities of persons who deal in hearing aids, as reason-

ably required within the discretion of the department. [1983 c 39 § 11; 1973 1st ex.s. c 106 § 14.]

18.35.150 Council on hearing aids—Created—Membership—Qualifications—Terms—Vacancies—Meetings—Compensation—Travel expenses. (1) There is created hereby the council on hearing aids. The council shall consist of nine members to be appointed by the governor.

(2) Members of the council shall be residents of this state. Five members shall be persons experienced in the fitting of hearing aids who shall hold valid licenses under this chapter. One member shall be a medical doctor specializing in diseases of the ear. One member shall be a nondispensing audiologist. Two members shall represent the public.

(3) The term of office of a member is three years. No member shall be appointed to serve more than two consecutive terms. A member shall continue to serve until a successor has been appointed. The governor shall either reappoint the member or appoint a successor to assume the member's duties at the expiration of his or her predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

(4) The chairman of the council shall be elected from the membership of the council at the beginning of each year.

(5) The council shall meet at least once each year, at a place, day and hour determined by the council, unless otherwise directed by a majority of council members. The council shall also meet at such other times and places as are requested by the department or by three members of the council.

(6) Members of the council shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1989 c 198 § 7; 1984 c 287 § 33; 1983 c 39 § 12; 1975-'76 2nd ex.s. c 34 § 35; 1973 1st ex.s. c 106 § 15.]

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.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.35.161 Council on hearing aids—Powers and duties. The council shall have the following powers and duties:

(1) To establish by rule such minimum standards and procedures in the fitting and dispensing of hearing aids as deemed appropriate and in the public interest;

(2) To develop guidelines on the training and supervision of trainees;

(3) To adopt any other rules or regulations necessary to implement this chapter and which are not inconsistent with it;

(4) To develop, approve, and administer all licensing examinations required by this chapter; and

(5) To require a licensee to make restitution to any individual injured by a violation of this chapter or chapter 18.130 RCW, the uniform disciplinary act. The authority to require restitution does not limit the council's authority to take other action deemed appropriate and provided for in this

chapter or chapter 18.130 RCW. [1987 c 150 § 23; 1983 c 39 § 13.]

Severability—1987 c 150: See RCW 18.122.901.

18.35.170 Council on hearing aids—Restriction upon member taking examination. A member of the council on hearing aids shall not be permitted to take the examination provided under this chapter unless he has first satisfied the department that adequate precautions have been taken to assure that he does not and will not have any knowledge, not available to the members of the public at large, as to the contents of the examination. [1973 1st ex.s. c 106 § 17.]

18.35.172 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 21.]

Severability—1987 c 150: See RCW 18.122.901.

18.35.175 Unlawful sales practices. It is unlawful to sell a hearing aid to a resident of this state if the attempted sale or purchase is offered or made by telephone or mail order and there is no face-to-face contact to test or otherwise determine the needs of the prospective purchaser. This section does not apply to the sale of hearing aids by wholesalers to licensees under this chapter. [1983 c 39 § 21.]

18.35.180 Application of Consumer Protection Act and False Advertising Act. Acts and practices in the course of trade in the promoting, advertising, selling, fitting and dispensing of hearing aids shall be subject to the provisions of chapter 19.86 RCW (Consumer Protection Act) and RCW 9.04.050 (False Advertising Act) and any violation of the provisions of this chapter shall constitute violation of RCW 19.86.020. [1973 1st ex.s. c 106 § 18.]

18.35.185 Rescission of transaction—Requirements—Notice. (1) In addition to any other rights and remedies a purchaser may have, the purchaser of a hearing aid shall have the right to rescind the transaction for other than the seller's breach if:

(a) The purchaser, for reasonable cause, returns the hearing aid or holds it at the seller's disposal, if the hearing aid is in its original condition less normal wear and tear. "Reasonable cause" shall be defined by the council but shall not include a mere change of mind on the part of the purchaser or a change of mind related to cosmetic concerns of the purchaser about wearing a hearing aid; and

(b) The purchaser sends notice of the cancellation to the licensee at the licensee's place of business by certified mail, return receipt requested, and the notice is posted not later than thirty days following the date of delivery, but the purchaser and the seller may extend the deadline for posting of the notice of rescission by mutual, written agreement. In the event the hearing aid is in the possession of the seller or the seller's representative during the thirty days following the date of delivery, the deadline for posting the notice of rescission shall be extended by an equal number of days that

the aid is in the possession of the seller or the seller's representative. Where the hearing aid is returned to the seller for any inspection for modification or repair, and the seller has notified the purchaser that the hearing aid is available for redelivery, and where the purchaser has not responded by either taking possession of the hearing aid or instructing the seller to forward it to the purchaser, then the deadline for giving notice of the rescission shall begin seven working days after this notice.

(2) If the transaction is rescinded under this section or as otherwise provided by law and the hearing aid is returned to the licensee, the licensee shall refund to the purchaser any payments or deposits for that hearing aid. However, the licensee may retain, for each hearing aid, fifteen percent of the total purchase price or one hundred dollars, whichever is less. The licensee shall also return any goods traded in contemplation of the sale, less any costs incurred by the licensee in making those goods ready for resale. The refund shall be made within ten days after the rescission. The buyer shall incur no additional liability for such rescission. [1989 c 198 § 12.]

18.35.190 Valid license prerequisite to suits. In addition to remedies otherwise provided by law, in any action brought by or on behalf of a person required to be licensed hereunder, or by any assignee or transferee thereof, arising out of the business of fitting and dispensing of hearing aids, it shall be necessary to allege and prove that the licensee at the time of the transaction held a valid license as required by this chapter, and that such license has not been suspended or revoked pursuant to RCW 18.35.110, 18.35.120, or 18.130.160. [1989 c 198 § 8; 1987 c 150 § 24; 1983 c 39 § 14; 1973 1st ex.s. c 106 § 19.]

Severability—1987 c 150: See RCW 18.122.901.

18.35.195 Exemptions. This chapter shall not apply to federal employees, nor shall it apply to students enrolled in an accredited program who are supervised by a licensed hearing aid dispenser under the provisions of this chapter. [1983 c 39 § 22.]

18.35.200 Other laws unaffected. The provisions of this chapter shall not exclude the application of any other law to persons or circumstances covered under this chapter. [1973 1st ex.s. c 106 § 20.]

18.35.205 Chapter exclusive. The legislature finds that the public health, safety and welfare would best be protected by uniform regulation of hearing aid fitter-dispensers throughout the state. Therefore, the provisions of this chapter relating to the licensing of hearing aid fitter-dispensers and hearing aid establishments is exclusive. No political subdivision of the state of Washington within whose jurisdiction a hearing aid establishment is located may require any registrations, bonds, licenses, or permits of the establishment or its employees or charge any fee for the same or similar purposes: PROVIDED, HOWEVER, That nothing herein shall limit or abridge the authority of any political subdivision to levy and collect a general and nondiscriminatory license fee levied on all businesses, or to levy a tax based

upon the gross business conducted by any firm within the political subdivision. [1983 c 39 § 24.]

18.35.220 Violations—Cease and desist orders—Notice—Injunctions. (1) If the council determines following notice and hearing, or following notice if no hearing was timely requested, that a person has:

(a) Violated any provisions of this chapter or chapter 18.130 RCW; or

(b) Violated any lawful order, or rule of the council an order may be issued by the council requiring the person to cease and desist from the unlawful practice. The council shall then take affirmative action as is necessary to carry out the purposes of this chapter.

(2) If the council makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, a temporary cease and desist order may be issued. Prior to issuing a temporary cease and desist order, the council, whenever possible, shall give notice by telephone or otherwise of the proposal to issue a temporary cease and desist order to the person to whom the order would be directed. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held to determine whether the order becomes permanent.

(3) The department, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, or rule or order under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall be granted and a receiver or conservator may be appointed. The department shall not be required to post a bond in any court proceedings. [1987 c 150 § 25; 1983 c 39 § 17.]

Severability—1987 c 150: See RCW 18.122.901.

18.35.230 Violations—Registered agent—Service. (1) Each licensee shall name a registered agent to accept service of process for any violation of this chapter or rule adopted under this chapter.

(2) The registered agent may be released at the expiration of one year after the license issued under this chapter has expired or been revoked.

(3) Failure to name a registered agent for service of process for violations of this chapter or rules adopted under this chapter may be grounds for disciplinary action. [1989 c 198 § 9; 1983 c 39 § 19.]

18.35.240 Violations—Surety bond or security in lieu of surety bonds. (1) Every establishment engaged in the fitting and dispensing of hearing aids shall file with the department a surety bond in the sum of ten thousand dollars, running to the state of Washington, for the benefit of any person injured or damaged as a result of any violation by the establishment's employees or agents of any of the provisions of this chapter or rules adopted by the secretary.

(2) In lieu of the surety bond required by this section, the establishment may file with the department a cash deposit or other negotiable security acceptable to the department. All obligations and remedies relating to surety

bonds shall apply to deposits and security filed in lieu of surety bonds.

(3) If a cash deposit is filed, the department shall deposit the funds with the state treasurer. The cash or other negotiable security deposited with the department shall be returned to the depositor one year after the establishment has discontinued the fitting and dispensing of hearing aids if no legal action has been instituted against the establishment, its agents or employees, or the cash deposit or other security. The establishment owners shall notify the department if the establishment is sold or has discontinued the fitting and dispensing of hearing aids in order that the cash deposit or other security may be released at the end of one year from that date.

(4) A surety may file with the department notice of withdrawal of the bond of the establishment. Upon filing a new bond, or upon the expiration of sixty days after the filing of notice of withdrawal by the surety, the liability of the former surety for all future acts of the establishment terminates.

(5) Upon the filing with the department notice by a surety of withdrawal of the surety on the bond of an establishment or upon the cancellation by the department of the bond of a surety under this section, the department shall immediately give notice to the establishment by certified or registered mail with return receipt requested addressed to the establishment's last place of business as filed with the department.

(6) The department shall immediately cancel the bond given by a surety company upon being advised that the surety company's license to transact business in this state has been revoked. [1991 c 3 § 85; 1989 c 198 § 10; 1983 c 39 § 18.]

18.35.250 Violations—Remedies—Actions on bond or security. (1) In addition to any other legal remedies, an action may be brought in any court of competent jurisdiction upon the bond, cash deposit, or security in lieu of a surety bond required by this chapter, by any person having a claim against a licensee, agent, or establishment for any violation of this chapter or any rule adopted under this chapter. The aggregate liability of the surety to all claimants shall in no event exceed the sum of the bond. Claims shall be satisfied in the order of judgment rendered.

(2) An action upon the bond shall be commenced by serving and filing the complaint within one year from the date of the cancellation of the bond. An action upon a cash deposit or other security shall be commenced by serving and filing the complaint within one year from the date of notification to the department of the change in ownership of the establishment or the discontinuation of the fitting and dispensing of hearing aids by that establishment. Two copies of the complaint shall be served by registered or certified mail, return receipt requested, upon the department at the time the suit is started. The service constitutes service on the surety. The secretary shall transmit one copy of the complaint to the surety within five business days after the copy has been received.

(3) The secretary shall maintain a record, available for public inspection, of all suits commenced under this chapter under surety bonds, or the cash or other security deposited

in lieu of the surety bond. In the event that any final judgment impairs the liability of the surety upon a bond so furnished or the amount of the deposit so that there is not in effect a bond undertaking or deposit in the full amount prescribed in this section, the department shall suspend the license until the bond undertaking or deposit in the required amount, unimpaired by unsatisfied judgment claims, has been furnished.

(4) If a judgment is entered against the deposit or security required under this chapter, the department shall, upon receipt of a certified copy of a final judgment, pay the judgment from the amount of the deposit or security. [1991 c 3 § 86; 1989 c 198 § 11; 1983 c 39 § 20.]

18.35.900 Severability—1973 1st ex.s. c 106. 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 provisions to other persons or circumstances is not affected. [1973 1st ex.s. c 106 § 21.]

18.35.901 Severability—1983 c 39. 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. [1983 c 39 § 23.]

Chapter 18.36 DRUGLESS HEALING

Sections

18.36.035 License required.

18.36.035 License required. No person may practice or represent himself or herself as a drugless therapist without first having a valid license to do so. [1987 c 150 § 28.]

Severability—1987 c 150: See RCW 18.122.901.

Chapter 18.36A NATUROPATHY

Sections

18.36A.010 Intent.

18.36A.020 Definitions.

18.36A.030 License required.

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18.36A.050 Application of chapter—Exemptions.

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18.36A.090 Requirements for licensure.

18.36A.100 Standards for approval of educational programs.

18.36A.110 Examination for licensure.

18.36A.120 License standards for applicants from other jurisdictions—Reciprocity.

18.36A.130 Application for licensure—Fee.

18.36A.140 License renewal—Fee.

18.36A.900 Effective date—1987 c 447 §§ 1-14.

18.36A.901 Severability—1987 c 447.

18.36A.910 Naturopathy—Termination.

18.36A.911 Naturopathy—Repeal.

18.36A.010 Intent. (Effective until June 30, 1995.)

The legislature finds that it is necessary to regulate the practice of naturopaths in order to protect the public health, safety, and welfare. It is the legislature's intent that only individuals who meet and maintain minimum standards of competence and conduct may provide service to the public. [1987 c 447 § 1.]

18.36A.020 Definitions. (Effective until June 30, 1995.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of health or the secretary's designee.

(3) "Naturopath" means an individual licensed under this chapter.

(4) "Committee" means the Washington state naturopathic practice advisory committee.

(5) "Educational program" means a program preparing persons for the practice of naturopathy.

(6) "Nutrition and food science" means the prevention and treatment of disease or other human conditions through the use of foods, water, herbs, roots, bark, or natural food elements.

(7) "Manual manipulation" or "mechanotherapy" means manipulation of a part or the whole of the body by hand or by mechanical means.

(8) "Physical modalities" means use of physical, chemical, electrical, and other noninvasive modalities including, but not limited to heat, cold, air, light, water in any of its forms, sound, massage, and therapeutic exercise.

(9) "Homeopathy" means a system of medicine based on the use of infinitesimal doses of medicines capable of producing symptoms similar to those of the disease treated, as listed in the homeopathic pharmacopeia of the United States.

(10) "Medicines of mineral, animal, and botanical origin" means medicines derived from animal organs, tissues, and oils, minerals, and plants administered orally and topically, excluding legend drugs with the following exceptions: Vitamins, minerals, whole gland thyroid, and substances as exemplified in traditional botanical and herbal pharmacopoeia, and nondrug contraceptive devices excluding interuterine devices. The use of intermuscular injections are limited to vitamin B-12 preparations and combinations when clinical and/or laboratory evaluation has indicated vitamin B-12 deficiency. The use of controlled substances is prohibited.

(11) "Hygiene and immunization" means the use of such preventative techniques as personal hygiene, asepsis, public health, and immunizations, to the extent allowed by rule.

(12) "Minor office procedures" means care incident thereto of superficial lacerations and abrasions, and the removal of foreign bodies located in superficial structures, not to include the eye; and the use of antiseptics and topical local anesthetics in connection therewith.

(13) "Common diagnostic procedures" means the use of venipuncture to withdraw blood, commonly used diagnostic modalities consistent with naturopathic practice, health history taking, physical examination, radiography, examination of body orifices excluding endoscopy, and laboratory

medicine which obtains samples of human tissue products, including superficial scrapings but excluding procedures which would require surgical incision.

(14) "Suggestion" means techniques including but not limited to counseling, biofeedback, and hypnosis.

(15) "Radiography" means the ordering but not the interpretation of radiographic diagnostic studies and the taking and interpretation of standard radiographs. [1991 c 3 § 87; 1987 c 447 § 4.]

18.36A.030 License required. (Effective until June 30, 1995.) (1) No person may practice naturopathy or represent himself or herself as a naturopath without first applying for and receiving a license from the secretary to practice naturopathy.

(2) A person represents himself or herself as a naturopath when that person adopts or uses any title or any description of services that incorporates one or more of the following terms or designations: Naturopath or doctor of naturopathic medicine. [1991 c 3 § 88; 1987 c 447 § 2.]

18.36A.040 Scope of practice. (Effective until June 30, 1995.) Naturopathic medicine or naturopathy is the practice by naturopaths of the art and science of the diagnosis, prevention, and treatment of disorders of the body by stimulation or support, or both, of the natural processes of the human body. A naturopath is responsible and accountable to the consumer for the quality of naturopathic care rendered.

The practice of naturopathy includes manual manipulation (mechanotherapy), the prescription, administration, dispensing, and use, except for the treatment of malignancies or neoplastic disease, of nutrition and food science, physical modalities, homeopathy, certain medicines of mineral, animal, and botanical origin, hygiene and immunization, common diagnostic procedures, and suggestion; however, nothing in this chapter shall prohibit consultation and treatment of a patient in concert with a practitioner licensed under chapter 18.57 or 18.71 RCW. No person licensed under this chapter may employ the term "chiropractic" to describe any services provided by a naturopath under this chapter. [1991 c 3 § 89; 1988 c 246 § 1; 1987 c 447 § 3.]

18.36A.050 Application of chapter—Exemptions. (Effective until June 30, 1995.) Nothing in this chapter shall be construed to prohibit or restrict:

(1) The practice of a profession by individuals who are licensed, certified, or registered under other laws of this state who are performing services within their authorized scope of practice;

(2) The practice of naturopathic medicine by an individual employed by the government of the United States while the individual is engaged in the performance of duties prescribed for him or her by the laws and regulations of the United States;

(3) The practice of naturopathic medicine by students enrolled in a school approved by the secretary. The performance of services shall be pursuant to a course of instruction or assignments from an instructor and under the supervision of the instructor. The instructor shall be a naturopath licensed pursuant to this chapter; or

(4) The practice of oriental medicine or oriental herbology, or the rendering of other dietary or nutritional advice. [1991 c 3 § 90; 1987 c 447 § 5.]

18.36A.060 Powers of secretary—Application of uniform disciplinary act. (Effective until June 30, 1995.)

(1) In addition to any other authority provided by law, the secretary may:

(a) Adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;

(b) Set all license, examination, and renewal fees in accordance with RCW 43.70.250;

(c) Establish forms and procedures necessary to administer this chapter;

(d) Determine the minimum education and experience requirements for licensure in conformance with RCW 18.36A.090, including but not limited to approval of educational programs;

(e) Prepare and administer or approve the preparation and administration of examinations for licensure;

(f) Issue a license to any applicant who has met the education, training, and examination requirements for licensure and deny a license to applicants who do not meet the minimum qualifications for licensure; except that denial of licenses based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(g) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter and to hire individuals, including those licensed under this chapter, to serve as examiners or consultants as necessary to implement and administer this chapter;

(h) Maintain the official department record of all applicants and licensees;

(i) Determine whether alternative methods of training are equivalent to formal education, and establish forms, procedures, and criteria for evaluation of an applicant's equivalent alternative training to determine the applicant's eligibility to take the examination;

(j) Establish by rule the procedures for an appeal of examination failure;

(k) Conduct a hearing on an appeal of a denial of a license based on the applicant's failure to meet the minimum qualifications for licensure. The hearing shall be conducted pursuant to chapter 34.05 RCW; and

(1) Adopt rules implementing a continuing competency program.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses and the discipline of licensees under this chapter. The secretary shall be the disciplining authority under this chapter. [1991 c 3 § 91; 1987 c 447 § 6.]

18.36A.070 Naturopathic advisory committee. (Effective until June 30, 1995.)

(1) There is hereby created the Washington state naturopathic advisory committee consisting of five members appointed by the secretary who shall advise the secretary concerning the administration of this chapter. Three members of the initial committee shall be persons who would qualify for licensing under this chapter. Their successors shall be naturopaths who are

licensed under this chapter. Two members of the committee shall be individuals who are unaffiliated with the profession. For the initial committee, one unaffiliated member and one naturopath shall serve four-year terms, one unaffiliated member and one naturopath shall serve three-year terms, and one naturopath shall serve a two-year term. The term of office for committee members after the initial committee is four years. Any committee member may be removed for just cause including a finding of fact of unprofessional conduct, impaired practice, or more than three unexcused absences. The secretary may appoint a new member to fill any vacancy on the committee for the remainder of the unexpired term.

No committee member may serve more than two consecutive terms, whether full or partial.

(2) Committee members shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(3) The committee may elect annually a chair and vice-chair to direct the meetings of the committee. The committee shall meet at least once each year, and may hold additional meetings as called by the secretary or the chair. [1991 c 3 § 92; 1987 c 447 § 7.]

18.36A.080 Immunity from civil liability for secretary and committee. (Effective until June 30, 1995.)

The secretary, members of the committee, or individuals acting on their behalf, are immune from suit in any civil action based on any act performed in the course of their duties. [1991 c 3 § 93; 1987 c 447 § 8.]

18.36A.090 Requirements for licensure. (Effective until June 30, 1995.) The department shall issue a license to any applicant who meets the following requirements:

(1) Successful completion of an educational program approved by the secretary, the minimum standard of which shall be the successful completion of a doctorate degree program in naturopathy which includes a minimum of two hundred post-graduate hours in the study of mechanotherapy from an approved educational program, or successful completion of equivalent alternate training that meets the criteria established by the secretary. The requirement for two hundred post-graduate hours in the study of mechanotherapy shall expire June 30, 1989;

(2) Successful completion of any equivalent experience requirement established by the secretary;

(3) Successful completion of an examination administered or approved by the secretary;

(4) Good moral character; and

(5) Not having engaged in unprofessional conduct or being unable to practice with reasonable skill and safety as a result of a physical or mental impairment.

The secretary shall establish what constitutes adequate proof of meeting the above requirements. Any person holding a valid license to practice drugless therapeutics under chapter 18.36 RCW upon January 1, 1988, shall be deemed licensed pursuant to this chapter. [1991 c 3 § 94; 1987 c 447 § 9.]

18.36A.100 Standards for approval of educational programs. (Effective until June 30, 1995.) The secretary

shall establish by rule the standards for approval of educational programs and alternate training and may contract with individuals or organizations having expertise in the profession and/or in education to report to the secretary the information necessary for the secretary to evaluate the educational programs. The standards for approval shall be based on the minimal competencies necessary for safe practice. The standards and procedures for approval shall apply equally to educational programs and equivalent alternate training within the United States and those in foreign jurisdictions. The secretary may establish a fee for educational program evaluation. The fee shall be determined by the administrative costs for the educational program evaluation, including, but not limited to, costs for site evaluation. [1991 c 3 § 95; 1987 c 447 § 10.]

18.36A.110 Examination for licensure. (Effective until June 30, 1995.) (1) The date and location of the examination shall be established by the secretary. Applicants who have been found to meet the education and experience requirements for licensure shall be scheduled for the next examination following the filing of the application. The secretary shall establish by rule the examination application deadline.

(2) The examination shall contain subjects appropriate to the standards of competency and scope of practice.

(3) The secretary shall establish by rule the requirements for a reexamination if the applicant has failed the examination.

(4) The committee may recommend to the secretary an examination prepared or administered, or both, by a private testing agency or association of licensing boards. [1991 c 3 § 96; 1987 c 447 § 11.]

18.36A.120 License standards for applicants from other jurisdictions—Reciprocity. (Effective until June 30, 1995.) The secretary shall establish by rule the standards for licensure of applicants licensed in another jurisdiction. However, the standards for reciprocity of licensure shall not be less than required for licensure in the state of Washington. [1991 c 3 § 97; 1987 c 447 § 12.]

18.36A.130 Application for licensure—Fee. (Effective until June 30, 1995.) Applications for licensure shall be submitted on forms provided by the department. The department may require any information and documentation needed to determine if the applicant meets the criteria for licensure as provided in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250. The fee shall be submitted with the application. [1991 c 3 § 98; 1987 c 447 § 13.]

18.36A.140 License renewal—Fee. (Effective until June 30, 1995.) The secretary shall establish by rule the requirements for renewal of licenses. The secretary shall establish a renewal and late renewal penalty fee as provided in RCW 43.70.250. Failure to renew shall invalidate the license and all privileges granted by the license. The secretary shall determine by rule whether a license shall be canceled for failure to renew and shall establish procedures

and prerequisites for relicensure. [1991 c 3 § 99; 1987 c 447 § 14.]

18.36A.900 Effective date—1987 c 447 § 1-14. Sections 1 through 14 of this act shall take effect January 1, 1988. [1987 c 447 § 20.]

18.36A.901 Severability—1987 c 447. 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 447 § 25.]

18.36A.910 Naturopathy—Termination. The Washington state naturopathic practice advisory committee and its powers and duties shall be terminated on June 30, 1994, as provided in RCW 18.36A.910. [1990 c 297 § 11; 1987 c 447 § 21. Formerly RCW 43.131.351.]

Severability—1987 c 447: See RCW 18.36A.901.

18.36A.911 Naturopathy—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1995:

(1) Section 1, chapter 447, Laws of 1987 and RCW 18.36A.010;

(2) Section 2, chapter 447, Laws of 1987 and RCW 18.36A.030;

(3) Section 3, chapter 447, Laws of 1987, section 1, chapter 246, Laws of 1988 and RCW 18.36A.040;

(4) Section 4, chapter 447, Laws of 1987 and RCW 18.36A.020;

(5) Section 5, chapter 447, Laws of 1987 and RCW 18.36A.050;

(6) Section 6, chapter 447, Laws of 1987 and RCW 18.36A.060;

(7) Section 7, chapter 447, Laws of 1987 and RCW 18.36A.070;

(8) Section 8, chapter 447, Laws of 1987 and RCW 18.36A.080;

(9) Section 9, chapter 447, Laws of 1987 and RCW 18.36A.090;

(10) Section 10, chapter 447, Laws of 1987 and RCW 18.36A.100;

(11) Section 11, chapter 447, Laws of 1987 and RCW 18.36A.110;

(12) Section 12, chapter 447, Laws of 1987 and RCW 18.36A.120;

(13) Section 13, chapter 447, Laws of 1987 and RCW 18.36A.130; and

(14) Section 14, chapter 447, Laws of 1987 and RCW 18.36A.140. [1990 c 297 § 12; 1987 c 447 § 22. Formerly RCW 43.131.352.]

Severability—1987 c 447: See RCW 18.36A.901.

Chapter 18.39

EMBALMERS—FUNERAL DIRECTORS

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18.39.901	Severability—1982 c 66.

Burial and removal permits: RCW 70.58.230.

Cemeteries, morgues and human remains: Title 68 RCW.

Disposal of remains prohibited unless accompanied by proper permit: RCW 70.58.260.

Eye removal by embalmers: RCW 68.50.360.

Prearrangement contracts for cemeteries: Chapter 68.46 RCW.

Undertaker must file death certificate: RCW 70.58.240.

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

(1) "Funeral director" means a person engaged in the profession or business of conducting funerals and supervising or directing the burial and disposal of dead human bodies.

(2) "Embalmer" means a person engaged in the profession or business of disinfecting, preserving or preparing for disposal or transportation of dead human bodies.

(3) "Two-year college course" means the completion of sixty semester hours or ninety quarter hours of college credit, including the satisfactory completion of certain college courses, as set forth in this chapter.

(4) "Funeral establishment" means a place of business licensed in accordance with RCW 18.39.145, conducted at a specific street address or location, and devoted to the care and preparation for burial or disposal of dead human bodies and includes all areas of such business premises and all tools, instruments, and supplies used in preparation and embalming of dead human bodies for burial or disposal.

(5) "Director" means the director of licensing.

(6) "Board" means the state board of funeral directors and embalmers created pursuant to RCW 18.39.173.

(7) "Prearrangement funeral service contract" means any contract under which, for a specified consideration, a funeral establishment promises, upon the death of the person named or implied in the contract, to furnish funeral merchandise or services.

(8) "Funeral merchandise or services" means those services normally performed and merchandise normally provided by funeral establishments, including the sale of burial supplies and equipment, but excluding the sale by a cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches, or vaults.

(9) "Qualified public depository" means a depository defined by RCW 39.58.010, a credit union as governed by chapter 31.12 RCW, a mutual savings bank as governed by Title 32 RCW, a savings and loan association as governed by Title 33 RCW, or a federal credit union or a federal savings and loan association organized, operated, and governed by any act of congress, in which prearrangement funeral service contract funds are deposited by any funeral establishment.

Words used in this chapter importing the singular may be applied to the plural of the person or thing, words importing the plural may be applied to the singular, and words importing the masculine gender may be applied to the female. [1989 c 390 § 1; 1982 c 66 § 1; 1981 c 43 § 1; 1979 c 158 § 39; 1977 ex.s. c 93 § 1; 1965 ex.s. c 107 § 1; 1937 c 108 § 1; RRS § 8313.]

Effective dates—1982 c 66: See note following RCW 18.39.240.

Number and gender: RCW 1.12.050.

18.39.020 License required. It is a violation of RCW 18.130.190 for any person to act or hold himself out as a funeral director or embalmer or discharge any of the duties of a funeral director or embalmer as defined in this chapter unless the person has a valid license under this chapter. It is unlawful for any person to open up, maintain or operate a funeral establishment without a valid establishment license

and without having at all times at least one funeral director to supervise and direct the business conducted therefrom. [1987 c 150 § 30; 1981 c 43 § 2; 1937 c 108 § 2; RRS § 8314-1. Prior: 1909 c 215 § 1. Formerly RCW 18.39.020 and 18.39.110.]

Severability—1987 c 150: See RCW 18.122.901.

18.39.035 Applicant for license as funeral director or embalmer—Eligibility. (1) An applicant for a license as a funeral director shall be at least eighteen years of age, of good moral character, and must have completed a course of not less than two years in an accredited college, and a one-year course of training under a licensed funeral director in this state. The applicant must also pass an examination which shall include the following subjects: Funeral directing, psychology, the signs of death, sanitary science, the preparation, burial, and disposal of dead human bodies, and the shipment of bodies of persons dying of contagious or infectious diseases.

(2) An applicant for a license as an embalmer must be at least eighteen years of age, of good moral character, and have completed two years at an accredited college, a two-year course of training under a licensed embalmer in this state, and a full course of instruction in an embalming school approved by the board. No portion of the course of instruction in the embalming school can be applied towards satisfaction of the two-year college course. The applicant must also pass an examination in each of the following subjects: Embalming, anatomy and physiology including histology, embryology, and dissection, pathology, bacteriology, public health including sanitation and hygiene, chemistry including toxicology, restorative art including plastic surgery and demi-surgery, the care, disinfection, preservation, transportation, burial, and disposal of dead human bodies and the contents of this chapter and of the law of the state relating to infectious diseases and quarantine. [1981 c 43 § 3.]

18.39.045 College course requirements. (1) The two-year college course required under this chapter shall consist of sixty semester or ninety quarter hours of instruction at a school, college, or university accredited by the Northwest Association of Schools and Colleges or other accrediting association approved by the board, with a minimum 2.0 grade point, or a grade of C or better, in each subject required by subsection (2) of this section.

(2) Credits shall include one course in each of the following subjects: Psychology, mathematics, chemistry, and biology or zoology. Instruction shall also include two courses in English composition and rhetoric, two courses in social science, and three courses selected from the following subjects: Behavioral sciences, public speaking, counseling, business administration and management, and first aid.

(3) This section does not apply to any person registered and in good standing as an apprentice funeral director or embalmer on or before January 1, 1982. [1982 c 66 § 20; 1981 c 43 § 4.]

Effective dates—1982 c 66: See note following RCW 18.39.240.

18.39.050 Application—Renewal—Fees. Every application for an initial license or a license renewal under

this chapter shall be made in writing on a form prescribed by the director with such information as the director requires. The director shall set license fees in accordance with RCW 43.24.086. [1985 c 7 § 37; 1982 c 66 § 21; 1981 c 43 § 5; 1975 1st ex.s. c 30 § 42; 1971 ex.s. c 266 § 8; 1937 c 108 § 6; RRS § 8318-1. Formerly RCW 18.39.050, 18.39.060, and 18.39.140.]

Effective dates—1982 c 66: See note following RCW 18.39.240.

18.39.070 Examinations—Applications—Notice—Passing grades—Second examinations. (1) License examinations shall be held by the director at least once each year at a time and place to be designated by the director. Application to take an examination shall be filed with the director at least forty-five days prior to the examination date and the department shall give each applicant notice of the time and place of the next examination by written notice mailed to the applicant's address as given upon his application not later than fifteen days before the examination, but no person may take an examination unless his application has been on file for at least fifteen days before the examination. The applicant shall be deemed to have passed an examination if the applicant attains a grade of not less than seventy-five percent in each subject of the examination. Any applicant who fails any subject in the first examination shall be entitled, at no additional fee, to a second examination in the subject or subjects at the next regular examination.

(2) An applicant for a license hereunder may take his written examination after completing the educational requirements and before completing the course of training required under RCW 18.39.035. [1981 c 43 § 6; 1965 ex.s. c 107 § 4; 1937 c 108 § 5; RRS § 8317. Prior: 1909 c 215 §§ 8, 11.]

18.39.100 License—Form—Restrictions. Every license issued hereunder shall specify the name of the person to whom it is issued, shall bear the signature of the licensee for identification purposes, and shall be displayed conspicuously in his place of business. No license shall be assigned, and not more than one person shall carry on the profession or business of funeral directing or embalming under one license. [1937 c 108 § 7; RRS § 8319. Prior: 1909 c 215 § 13.]

18.39.120 Apprentices—Registration—Renewal—Notice of termination—Fees. Every person engaged in the business of funeral directing or embalming, who employs an apprentice to assist in the conduct of the business, shall register the name of each apprentice with the director at the beginning of the apprenticeship, and shall also forward notice of the termination of the apprenticeship. The registration shall be renewed annually and shall expire on the anniversary of the apprentice's birthdate. Fees determined under RCW 43.24.086 shall be paid for the initial registration of the apprentice, and for each annual renewal. [1985 c 7 § 38; 1981 c 43 § 7; 1975 1st ex.s. c 30 § 43; 1937 c 108 § 10; RRS § 8322.]

18.39.130 Licenses—Applicants from other states. The board may recognize licenses issued to funeral directors or embalmers from other states if the applicant's qualifica-

tions are comparable to the requirements of this chapter. Upon presentation of the license and payment by the holder of a fee determined under RCW 43.24.086, the board may issue a funeral director's or embalmer's license under this chapter. The license may be renewed annually upon payment of the renewal license fee as herein provided by license holders residing in the state of Washington. [1986 c 259 § 60; 1985 c 7 § 39; 1982 c 66 § 22; 1981 c 43 § 8; 1975 1st ex.s. c 30 § 44; 1937 c 108 § 15; RRS § 8325. Prior: 1909 c 215 § 16.]

Reviser's note: This section was amended by 1986 c 259 § 60 without reference to its amendment by 1985 c 7 § 39. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2).

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—1982 c 66: See note following RCW 18.39.240.

18.39.145 Funeral establishment license—Issuance—Requirements—Transferability—Expiration. The board shall issue a funeral establishment license to any person, partnership, association, corporation, or other organization to operate a funeral establishment, at specific locations only, which has met the following requirements:

(1) The applicant has designated the name under which the funeral establishment will operate and has designated locations for which the general establishment license is to be issued;

(2) The applicant is licensed in this state as a funeral director and as an embalmer, or employs at least one person with both such qualifications or one licensed funeral director and one embalmer who will be in service at each designated location;

(3) The applicant has filed an application with the director as required by this chapter and paid the required filing fee therefor as fixed by the director pursuant to RCW 43.24.086;

(4) As a condition of applying for a new funeral establishment license, the person or entity desiring to acquire such ownership or control shall be bound by all then existing prearrangement funeral service contracts.

The board may deny an application for a funeral establishment license, or issue a conditional license, if disciplinary action has previously been taken against the applicant or the applicant's designated funeral director or embalmer. No funeral establishment license shall be transferable, but an applicant may make application for more than one funeral establishment license so long as all of the requirements are met for each license. All funeral establishment licenses shall expire on June 30, or as otherwise determined by the director. [1986 c 259 § 61; 1985 c 7 § 40; 1977 ex.s. c 93 § 3.]

Reviser's note: This section was amended by 1986 c 259 § 61 without reference to its amendment by 1985 c 7 § 40. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2).

Severability—1986 c 259: See note following RCW 18.130.010.

18.39.148 Funeral establishment license—Cancellation—Hearing. If a licensed funeral establishment does not have a licensed funeral director and embalmer in its employ at its place of business, its license shall be canceled immediately by the board. Upon notification of cancellation

of a funeral establishment license, the funeral establishment shall be notified of the opportunity for a hearing, which shall be conducted pursuant to chapter 34.05 RCW. [1986 c 259 § 62; 1981 c 43 § 9; 1977 ex.s. c 93 § 4.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.39.150 License lapse—Reinstatement—Fee—Reexamination. Any licensed funeral director or embalmer whose license has lapsed shall reapply for a license and pay a fee as determined under RCW 43.24.086 before the license may be issued. Applications under this section shall be made within one year after the expiration of the previous license. If the application is not made within one year, the applicant shall be required to take an examination or submit other satisfactory proof of continued competency approved by the board and pay the license fee, as required by this chapter in the case of initial applications, together with all unpaid license fees and penalties. [1986 c 259 § 63; 1985 c 7 § 41; 1981 c 43 § 10; 1975 1st ex.s. c 30 § 45; 1937 c 108 § 8; RRS § 8320.]

Reviser's note: This section was amended by 1986 c 259 § 63 without reference to its amendment by 1985 c 7 § 41. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2).

Severability—1986 c 259: See note following RCW 18.130.010.

18.39.160 Contagious diseases—Report to health director—Funerals. Every funeral director and every embalmer shall immediately report to the local health officer every contagious case on which he may be called. There shall be no public funeral of any contagious disease unless authorized by the director of the state board of health, in writing, before burial or disposal. [1937 c 108 § 12; RRS § 8323-1.]

Public health and safety: Title 70 RCW.

18.39.170 Inspector of funeral directors and embalmers—Appointment—Eligibility—Term—Powers and duties. There shall be appointed by said director of licensing an agent whose title shall be "inspector of funeral directors and embalmers of the state of Washington." No person shall be eligible for such appointment unless, at the time of his appointment, he shall have been a duly licensed embalmer in the state of Washington, with a minimum experience of not less than five consecutive years both as an embalmer and as a funeral director in the state of Washington. Said inspector shall hold office during the pleasure of said director of licensing, and the duties of said inspector shall be, and he is hereby authorized, to enter the office, premises, establishment or place of business, where funeral directing or embalming is carried on for the purpose of inspecting said office, premises, establishment or place of business, and the licenses and registrations of embalmers, funeral directors and apprentices operating therein. Such inspector shall serve and execute any papers or process issued by the director of licensing under authority of this chapter, and perform any other duty or duties prescribed or ordered by the director of licensing. Said inspector shall at all times be under the supervision of said director of licensing and he may also assist the state health commissioner in enforcing the provisions of the law relating to health and

such rules and regulations as shall have been made and promulgated by the state board of health. [1937 c 108 § 16; RRS § 8325-1.]

18.39.173 Board of funeral directors and embalmers—Established—Membership—Appointment—Qualifications—Terms—Vacancies—Officers—Quorum.

There is hereby established a state board of funeral directors and embalmers to be composed of five members appointed by the governor in accordance with this section, one of whom shall be a public member. The three members of the state examining committee for funeral directors and embalmers, which was created pursuant to RCW 43.24.060, as of September 21, 1977 are hereby appointed as members of the board to serve for initial terms. The governor shall appoint two additional members of the board. Each professional member of the board shall be licensed in this state as a funeral director and embalmer and a resident of the state of Washington for a period of at least five years next preceding appointment, during which time such member shall have been continuously engaged in the practice as a funeral director or embalmer as defined in this chapter. No person shall be eligible for appointment to the board of funeral directors and embalmers who is financially interested, directly or indirectly, in any embalming college, wholesale funeral supply business, or casket manufacturing business.

All members of the board of funeral directors and embalmers shall be appointed to serve for a term of five years, to expire on July 1 of the year of termination of their term, and until their successors have been appointed and qualified: PROVIDED, That the governor is granted the power to fix the terms of office of the members of the board first appointed so that the term of office of not more than one member of the board shall terminate in any one year. In case of a vacancy occurring on the board, the governor shall appoint a qualified member for the remainder of the unexpired term of the vacant office. Any member of the board of funeral directors and embalmers who fails to properly discharge the duties of a member may be removed by the governor.

The board shall meet once annually to elect a chairman, vice chairman, and secretary and take official board action on pending matters by majority vote of all the members of the board of funeral directors and embalmers and at other times when called by the director, the chairman, or a majority of the members. A majority of the members of said board shall at all times constitute a quorum. [1977 ex.s. c 93 § 8.]

18.39.175 Board of funeral directors and embalmers—Duties and responsibilities—Compensation—Travel expenses—Disciplinary proceedings. Each member of the board of funeral directors and embalmers shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in connection with board duties in accordance with RCW 43.03.050 and 43.03.060.

The state board of funeral directors and embalmers shall have the following duties and responsibilities:

(1) To be responsible for the preparation, conducting, and grading of examinations of applicants for funeral director and embalmer licenses;

(2) To certify to the director the results of examinations of applicants and certify the applicant as having "passed" or "failed";

(3) To make findings and recommendations to the director on any and all matters relating to the enforcement of this chapter;

(4) To adopt, promulgate, and enforce reasonable rules. Rules regulating the cremation of human remains and establishing fees and permit requirements shall be adopted in consultation with the cemetery board; and

(5) To examine or audit or to direct the examination and audit of prearrangement funeral service trust fund records for compliance with this chapter and rules adopted by the board.

(6) To conduct disciplinary proceedings under chapter 18.130 RCW if the licensee has violated that chapter or has committed unprofessional conduct, which includes:

(a) Solicitation of human dead bodies by the licensee, his agents, assistants or employees, whether the solicitation occurs after death or while death is impending. This chapter does not prohibit general advertising or the sale of pre-need funeral plans;

(b) Employment by the licensee of persons known as "cappers," "steerers," or "solicitors" or other persons to obtain funeral directing or embalming business;

(c) Employment directly or indirectly of any person for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director or embalmer;

(d) The buying of business by the licensee, his agents, assistants or employees, or the direct or indirect payment or offer of payment of a commission by the licensee, his agents, assistants, or employees, for the purpose of securing business;

(e) Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum, or cemetery;

(f) Using any casket or part of a casket which has previously been used as a receptacle for, or in connection with, the burial or other disposition of a dead human body without the written consent of next of kin;

(g) Violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies;

(h) Refusing to promptly surrender the custody of a dead human body upon the express order of the person lawfully entitled to its custody;

(i) Selling, or offering for sale, a share, certificate, or an interest in the business of any funeral director or embalmer, or in any corporation, firm, or association owning or operating a funeral establishment, which promises or purports to give to purchasers a right to the services of the funeral director, embalmer, or corporation, firm, or association at a charge or cost less than that offered or given to the public; or

(j) Knowingly concealing information concerning a violation of this chapter;

(7) To adopt rules establishing mandatory continuing education requirements to be met by persons applying for license renewal. [1986 c 259 § 64; 1985 c 402 § 6; 1984 c 287 § 34; 1984 c 279 § 53; 1981 c 43 § 11; 1977 ex.s. c 93 § 9.]

Reviser's note: This section was amended by 1986 c 259 § 64 without reference to its amendment by 1985 c 402 § 6. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2).

Savings—1986 c 259 §§ 64, 73: "The repeal of RCW 18.39.179 and the amendment of RCW 18.39.175 by this act shall not be construed as affecting any rights and duties which matured, penalties which were incurred, and proceedings which were begun before June 11, 1986." [1986 c 259 § 74.]

Severability—1986 c 259: See note following RCW 18.130.010.

Legislative finding—1985 c 402: See note following RCW 68.50.165.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Severability—1984 c 279: See RCW 18.130.901.

18.39.178 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 29; 1986 c 259 § 59.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.39.181 Powers and duties of director. The director shall have the following powers and duties:

- (1) To issue all licenses provided for under this chapter;
- (2) To annually renew licenses under this chapter;
- (3) To collect all fees prescribed and required under this chapter; and
- (4) To keep general books of record of all official acts, proceedings, and transactions of the department of licensing while acting under this chapter. [1986 c 259 § 65; 1981 c 43 § 13; 1977 ex.s. c 93 § 5.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.39.190 Display of personal names where trade name, etc., used. It is unlawful for any person to use the name of any company, association, corporation, trade name, or business name, in the advertisement or operation of any funeral establishment, unless the person displays in a conspicuous place upon or near the entrance, or in a conspicuous place in the office, if any, maintained for the transaction of business with the public, a printed statement containing the name of every funeral director or embalmer engaged in the rendering of service within the office or establishment operated under the company, association, corporation, trade, or business name. [1981 c 43 § 14; 1937 c 108 § 9; RRS § 8321.]

18.39.195 Pricing information to be given—Billing "cash advanced" items. (1) Every licensed funeral director, his agent, or his employee shall give, or cause to be given, to the person making funeral arrangements or arranging for shipment, transportation, or other disposition of a deceased person:

(a) If requested by telephone, accurate information regarding the retail prices of funeral merchandise and services offered for sale by that funeral director; and

(b) At the time such arrangements are completed or prior to the time of rendering the service, a written, itemized statement showing to the extent then known the price of

merchandise and service that such person making such arrangements has selected, the price of supplemental items of service and merchandise, if any, and the estimated amount of each item for which the funeral service firm will advance money as an accommodation to the person making such funeral arrangements.

(2) No such funeral director, his agent, or his employee, shall bill or cause to be billed any item that is referred to as a "cash advanced" item unless the net amount paid for such item by the funeral director is the same amount as is billed to such funeral director. [1979 ex.s. c 62 § 1.]

18.39.215 Embalmers—Authorization required—Exception—Information required—Immediate care of body—Waiver—Penalty. (1) No licensed embalmer shall embalm a deceased body without first having obtained authorization from a family member or representative of the deceased.

Notwithstanding the above prohibition a licensee may embalm without such authority when after due diligence no authorized person can be contacted and embalming is in accordance with legal or accepted standards of care in the community, or the licensee has good reason to believe that the family wishes embalming. If embalming is performed under these circumstances, the licensee shall not be deemed to be in violation of the provisions of this subsection.

The funeral director or embalmer shall inform the family member or representative of the deceased that embalming is not required by state law, except that embalming is required under certain conditions as determined by rule by the state board of health.

(2) Any person authorized to dispose of human remains shall refrigerate or embalm the body within twenty-four hours upon receipt of the body, unless disposition of the body has been made. However, subsection (1) of this section and RCW 68.50.108 shall be complied with before a body is embalmed. Upon written authorization of the proper state or local authority, the provisions of this subsection may be waived for a specified period of time.

Violation of this subsection is a gross misdemeanor. [1987 c 331 § 76; 1985 c 402 § 5; 1981 c 43 § 15.]

Effective date—1987 c 331: See RCW 68.05.900.

Legislative finding—1985 c 402: See note following RCW 68.50.165.

18.39.217 Permit or endorsement required for cremation—Penalty—Regulation of crematories. A permit or endorsement issued by the board or under chapter 68.05 RCW is required in order to operate a crematory or conduct a cremation. Conducting a cremation without a permit or endorsement is a misdemeanor. Each such cremation is a separate violation. Crematories owned or operated by or located on property licensed as a funeral establishment shall be regulated by the board of funeral directors and embalmers. Crematories not affiliated with a funeral establishment shall be regulated by the cemetery board. [1985 c 402 § 7.]

Legislative finding—1985 c 402: See note following RCW 68.50.165.

18.39.220 Unlawful business practices—Penalty. Every funeral director or embalmer who pays, or causes to be paid, directly or indirectly, money, or other valuable consideration, for the securing of business, and every person who accepts money, or other valuable consideration, directly or indirectly, from a funeral director or from an embalmer, in order that the latter may obtain business is guilty of a gross misdemeanor. Every person who sells, or offers for sale, any share, certificate, or interest in the business of any funeral director or embalmer, or in any corporation, firm, or association owning or operating a funeral establishment, which promises or purports to give to the purchaser a right to the services of the funeral director, embalmer, or corporation, firm, or association at a charge or cost less than that offered or given to the public, is guilty of a gross misdemeanor. [1981 c 43 § 16; 1937 c 108 § 13; RRS § 8323-2.]
Violations—Penalty—Unfair practice under chapter 19.86 RCW: RCW 18.39.350.

18.39.231 Prohibited advice and transactions between funeral directors and clients—Exceptions—Rules—Penalty. A funeral director or any person under the supervision of a funeral director shall not, in conjunction with any professional services performed for compensation under this chapter, provide financial or investment advice to any person other than a family member, represent any person in a real estate transaction, or act as an agent under a power of attorney for any person. However, this section shall not be deemed to prohibit a funeral establishment from entering into prearrangement funeral service contracts in accordance with this chapter or to prohibit a funeral director from providing advice about government or insurance benefits.

A violation of this section is a gross misdemeanor and is grounds for disciplinary action.

The board shall adopt such rules as the board deems reasonably necessary to prevent unethical financial dealings between funeral directors and their clients. [1986 c 259 § 66; 1982 c 66 § 15.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—1982 c 66: See note following RCW 18.39.240.

18.39.240 Prearrangement funeral service contracts—License required. Only a funeral establishment licensed pursuant to this chapter may enter into prearrangement funeral service contracts. [1989 c 390 § 2; 1982 c 66 § 2.]

Effective dates—1982 c 66: "This act shall take effect on September 1, 1982, with the exception of sections 20, 21, and 22 of this act, which 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 immediately [March 26, 1982]." [1982 c 66 § 24.]

Transfer of records, files, and pending business—1982 c 66: "(1) All records, files, reports, papers, or other written material in the possession of the insurance commissioner pertaining to the regulation of prepaid funeral expenses shall be delivered to the director of licensing on the effective date of this act.

(2) All business or matters concerning prepaid funeral expenses pending before the insurance commissioner shall be transferred to the director of licensing and assumed by the director on the effective date of this act." [1982 c 66 § 17.]

Savings—1982 c 66: "The transfer of duties under sections 2 through 14 of this act shall not affect the validity of any rule, action, decision

promulgated or held prior to the effective date of this act." [1982 c 66 § 18.]

The above three annotations apply to 1982 c 66. For codification of that act, see Codification Tables, Volume 0.

18.39.250 Prearrangement contracts—Trusts—Refunds. (1) Any funeral establishment selling funeral merchandise or services by prearrangement funeral service contract and accepting moneys therefore shall establish and maintain one or more prearrangement funeral service trusts under Washington state law with two or more designated trustees, for the benefit of the beneficiary of the prearrangement funeral service contract or may join with one or more other Washington state licensed funeral establishments in a "master trust" provided that each member of the "master trust" shall comply individually with the requirements of this chapter.

(2) Up to ten percent of the cash purchase price of each prearrangement funeral service contract, excluding sales tax, may be retained by the funeral establishment unless otherwise provided in this chapter. If the prearrangement funeral service contract is canceled within thirty calendar days of its signing, then the purchaser shall receive a full refund of all moneys paid under the contract.

(3) At least ninety percent of the cash purchase price of each prearrangement funeral service contract, paid in advance, excluding sales tax, shall be placed in the trust established or utilized by the funeral establishment. Deposits to the prearrangement funeral service trust shall be made not later than the twentieth day of the month following receipt of each payment made on the last ninety percent of each prearrangement funeral service contract, excluding sales tax.

(4) All prearrangement funeral service trust moneys shall be deposited in an insured account in a qualified public depository or shall be invested in instruments issued or insured by any agency of the federal government if these securities are held in a public depository. The account shall be designated as the prearrangement funeral service trust of the funeral establishment for the benefit of the beneficiaries named in the prearrangement funeral service contracts. The prearrangement funeral service trust shall not be considered as, nor shall it be used as, an asset of the funeral establishment.

(5) After deduction of reasonable fees for the administration of the trust, taxes paid or withheld, or other expenses of the trust, all interest, dividends, increases, or accretions of whatever nature earned by a trust shall be kept unimpaired and shall become a part of the trust. Adequate records shall be maintained to allocate the share of principal and interest to each contract. Fees deducted for the administration of the trust shall not exceed one percent of the face amount of the prearrangement funeral service contract per annum. In no instance shall the administrative charges deducted from the prearrangement funeral service trust reduce, diminish, or in any other way lessen the value of the trust so that the services or merchandise provided for under the contract are reduced, diminished, or in any other way lessened.

(6) Except as otherwise provided in this chapter, the trustees of a prearrangement funeral service trust shall permit withdrawal of all funds deposited under a prearrangement funeral service contract, plus accruals thereon, under the following circumstances and conditions:

(a) If the funeral establishment files a verified statement with the trustees that the prearrangement funeral merchandise and services covered by the contract have been furnished and delivered in accordance therewith; or

(b) If the funeral establishment files a verified statement with the trustees that the prearrangement funeral merchandise and services covered by the contract have been canceled in accordance with its terms.

(7) Subsequent to the thirty calendar day cancellation period provided for in this chapter, any purchaser or beneficiary who has a revocable prearrangement funeral service contract has the right to demand a refund of the amount in trust.

(8) Prearrangement funeral service contracts which have or should have an account in a prearrangement funeral service trust may be terminated by the board if the funeral establishment goes out of business, becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, has its prearrangement funeral service certificate of registration revoked, or for any other reason is unable to fulfill the obligations under the contract. In such event, or upon demand by the purchaser or beneficiary of the prearrangement funeral service contract, the funeral establishment shall refund to the purchaser or beneficiary all moneys deposited in the trust and allocated to the contract unless otherwise ordered by a court of competent jurisdiction. The purchaser or beneficiary may, in lieu of a refund, elect to transfer the prearrangement funeral service contract and all amounts in trust to another funeral establishment licensed under this chapter which will agree, by endorsement to the contract, to be bound by the contract and to provide the funeral merchandise or services. Election of this option shall not relieve the defaulting funeral establishment of its obligation to the purchaser or beneficiary for any amounts required to be, but not placed, in trust.

(9) Prior to the sale or transfer of ownership or control of any funeral establishment which has contracted for prearrangement funeral service contracts, any person, corporation, or other legal entity desiring to acquire such ownership or control shall apply to the director in accordance with RCW 18.39.145. Persons and business entities selling or relinquishing, and persons and business entities purchasing or acquiring ownership or control of such funeral establishments shall each verify and attest to a report showing the status of the prearrangement funeral service trust or trusts on the date of the sale. This report shall be on a form prescribed by the board and shall be considered part of the application for a funeral establishment license. In the event of failure to comply with this subsection, the funeral establishment shall be deemed to have gone out of business and the provisions of subsection (8) of this section shall apply.

(10) Prearrangement funeral service trust moneys shall not be used, directly or indirectly, for the benefit of the funeral establishment or any director, officer, agent, or employee of the funeral establishment including, but not limited to, any encumbrance, pledge, or other use of prearrangement funeral service trust moneys as collateral or other security.

(11) If, at the time of the signing of the prearrangement funeral service contract, the beneficiary of the trust is a recipient of public assistance as defined in RCW 74.04.005,

or reasonably anticipates being so defined, the contract may provide that the trust will be irrevocable. If after the contract is entered into, the beneficiary becomes eligible or seeks to become eligible for public assistance under Title 74 RCW, the contract may provide for an election by the beneficiary, or by the purchaser on behalf of the beneficiary, to make the trust irrevocable thereafter in order to become or remain eligible for such assistance.

(12) Every prearrangement funeral service contract financed through a prearrangement funeral service trust shall contain language which:

(a) Informs the purchaser of the prearrangement funeral service trust and the amount to be deposited in the trust;

(b) Indicates if the contract is revocable or not in accordance with subsection (11) of this section;

(c) Specifies that a full refund of all moneys paid on the contract will be made if the contract is canceled within thirty calendar days of its signing;

(d) Specifies that, in the case of cancellation by a purchaser or beneficiary eligible to cancel under the contract or under this chapter, up to ten percent of the contract amount may be retained by the seller to cover the necessary expenses of selling and setting up the contract;

(e) Identifies the trust to be used and contains information as to how the trustees may be contacted. [1989 c 390 § 3; 1982 c 66 § 3.]

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.255 Prearrangement contracts—Insurance funded—Requirements. Prearranged funeral service contracts funded through insurance shall contain language which:

(1) States the amount of insurance;

(2) Informs the purchaser of the name and address of the insurance company through which the insurance will be provided, the policy number, and the name of the beneficiary; and

(3) Informs the purchaser that amounts paid for insurance may not be refundable. [1989 c 390 § 4.]

18.39.260 Prearrangement contracts—Certificates of registration required—Exception. A funeral establishment shall not enter into prearrangement funeral service contracts in this state unless the funeral establishment has obtained a certificate of registration issued by the board and such certificate is then in force.

Certificates of registration shall be maintained by funeral establishments and the funeral establishment shall comply with all requirements related to the sale of prearrangement contracts until all obligations have been fulfilled. The board may, for just cause, release a funeral establishment from specific registration or reporting requirements. [1989 c 390 § 5; 1986 c 259 § 67; 1982 c 66 § 4.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.270 Prearrangement contracts—Registration qualifications. To qualify for and hold a certificate of registration, a funeral establishment must:

- (1) Be licensed pursuant to this chapter; and
- (2) Fully comply with and qualify according to the provisions of this chapter. [1982 c 66 § 5.]

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.280 Prearrangement contracts—Application for registration. To apply for an original certificate of registration, a funeral establishment must:

- (1) File with the board its request showing:
 - (a) Its name, location, and organization date;
 - (b) The kinds of funeral business it proposes to transact;
 - (c) A statement of its financial condition, management, and affairs on a form satisfactory to or furnished by the board;
 - (d) Documents establishing its trust, or its affiliation with a master trust, and the names and addresses of the trustees if a trust is to be used to finance prearrangement funeral service contracts;
 - (e) Documents establishing its relationship with insurance carriers if insurance is to be used to finance;
 - (f) Documents establishing any other financing relationships; and
 - (g) Such other documents, stipulations, or information as the board may reasonably require to evidence compliance with the provisions of this chapter.
- (2) Deposit with the director the fees required by this chapter to be paid for filing the accompanying documents, and for the certificate of registration, if granted. [1989 c 390 § 6; 1986 c 259 § 68; 1982 c 66 § 7.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

Fees: RCW 18.39.290.

18.39.290 Prearrangement contracts—Registration—Renewal—Fees—Disposition. All certificates of registration issued pursuant to this chapter shall continue in force until the expiration date unless suspended or revoked. A certificate shall be subject to renewal annually ninety days after the end of its fiscal year, as stated on the original application, by the funeral establishment and payment of the required fees.

The director shall determine and collect fees related to certificate of registration licensure.

All fees so collected shall be remitted by the director to the state treasurer not later than the first business day following receipt of such funds and the funds shall be credited to the health professions account. [1986 c 259 § 69; 1982 c 66 § 8.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.300 Prearrangement contracts—Grounds for disciplinary action. In addition to the grounds for action set forth in RCW 18.130.170 and 18.130.180, the board may take the disciplinary action set forth in RCW 18.130.160 against the funeral establishment's license, the license of any funeral director and/or the funeral establishment's certificate of registration, if the licensee or registrant:

(1) Fails to comply with any provisions of this chapter, chapter 18.130 RCW, or any proper order or regulation of the board;

(2) Is found by the board to be in such condition that further execution of prearrangement contracts could be hazardous to purchasers or beneficiaries and the people of this state;

(3) Refuses to be examined, or refuses to submit to examination by the board when required;

(4) Fails to pay the expense of an examination; or

(5) Is found by the board after investigation or receipt of reliable information to be managed by persons who are incompetent or untrustworthy or so lacking in managerial experience as to make the proposed or continued execution or servicing of prearrangement funeral service contracts hazardous to purchasers, beneficiaries, or to the public. [1989 c 390 § 7; 1986 c 259 § 70; 1982 c 66 § 6.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.320 Prearrangement contracts—Annual financial statement—Failure to file. (1) Each funeral establishment which has prearrangement funeral service contracts outstanding shall annually, as required by the board, file with the board a true and accurate statement of its financial condition and transactions and affairs involving prearrangement funeral service contracts for its preceding fiscal year. The statement shall be on such forms and shall contain such information as required by this chapter and by the board.

(2) The board shall take disciplinary action against the certificate of registration of any funeral establishment which fails to file its annual statement when due or after any extension of time which the board has, for good cause, granted. [1989 c 390 § 8; 1986 c 259 § 71; 1982 c 66 § 10.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.330 Prearrangement contract forms—Approval required—Grounds for disapproval. No prearrangement funeral contract forms shall be used without the prior approval of the board.

The board shall disapprove any such contract form, or withdraw prior approval, when such form:

(1) Violates or does not comply with this chapter;

(2) Contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the merchandise or service purported to be provided in the general coverage of the contract;

(3) Has any title, heading, or other part of its provisions which is misleading;

(4) Is being solicited by deceptive advertising;

(5) Fails to disclose fully the terms of the funeral service being provided by the contract, including but not limited to, any discounts, guarantees, provisions for merchandise or service substitutions or other significant items; or

(6) Is not written in language which the board considers to be easily understood by the purchaser. [1989 c 390 § 9; 1986 c 259 § 72; 1982 c 66 § 11.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.345 Prearrangement trust—Examination by board. (1) The board shall examine a prearrangement funeral service trust whenever it deems it necessary, but at least once every three years, or whenever the licensee fails after reasonable notice from the board to file the reports required by this chapter or the board.

(2) The expense of the prearrangement funeral service trust examination shall be paid by the licensee and shall not be deducted from the earnings of the trust. In the case of a "master trust," the expense of the prearrangement funeral service trust examination shall be shared jointly by all funeral establishments participating in such trust.

(3) Such examination shall be conducted in private in the principal office of the licensee and the records relating to prearrangement funeral service contracts and prearrangement funeral service trusts shall be available at such office. [1989 c 390 § 10.]

18.39.350 Violations—Penalty—Consumer protection—Retail installment contracts. Any person who violates or fails to comply with, or aids or abets any person in the violation of, or failure to comply with any of the provisions of this chapter is guilty of a class C felony pursuant to chapter 9A.20 RCW. Any such violation constitutes an unfair practice under chapter 19.86 RCW and this chapter and conviction thereunder is grounds for license revocation under this chapter. Retail installment contracts under this chapter shall be governed by chapter 63.14 RCW. [1989 c 390 § 11; 1982 c 66 § 13.]

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

Unlawful business practices—Penalty: RCW 18.39.220.

18.39.360 Fraternal or benevolent organizations and labor unions excepted. This chapter does not apply to any funeral right or benefit issued or granted as an incident to or by reason of membership in any fraternal or benevolent association or cooperative or society, or labor union not organized for profit. [1989 c 390 § 12; 1982 c 66 § 14.]

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.370 Prearrangement service contracts—Abandoned trusts. Any trust which has not matured or been refunded and for which no beneficiary can be located fifty years after its creation shall be considered abandoned and will be handled in accordance with the escheat laws of the state of Washington. [1989 c 390 § 13.]

18.39.900 Severability—1937 c 108. If any section, subdivision, sentence or clause of this act shall be held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this act. [1937 c 108 § 18.]

18.39.901 Severability—1982 c 66. 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 66 § 23.]

Chapter 18.43

ENGINEERS AND LAND SURVEYORS

Sections

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Noncompliance with surveys and monuments recording law—Grounds for revocation: RCW 58.09.140.

Public contracts for engineering services: Chapter 39.80 RCW.

Surveys and monuments recording law: Chapter 58.09 RCW.

18.43.010 General provisions. In order to safeguard life, health, and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying, shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or to offer to practice in this state, engineering or land surveying, as defined in the provisions of this chapter, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer or a land surveyor, unless such a person has been duly registered under the provisions of this chapter. [1947 c 283 § 1; Rem. Supp. 1947 § 8306-21. Prior: 1935 c 167 § 2; RRS § 8306-2.]

False advertising: Chapter 9.04 RCW.

18.43.020 Definitions. Engineer: The term "engineer" as used in this chapter shall mean a professional engineer as hereinafter defined.

Professional engineer: The term "professional engineer" within the meaning and intent of this chapter, shall mean a person who, by reason of his or her special knowledge of the

mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as hereinafter defined, as attested by his or her legal registration as a professional engineer.

Engineer-in-training: The term "engineer-in-training" as used in this chapter shall mean a candidate for registration as a professional engineer who is a graduate in an approved engineering curriculum of four years or more from a school or college approved by the board as of satisfactory standing, or who has had four years or more of experience in engineering work of a character satisfactory to the board; and who, in addition, has successfully passed the examination in the fundamental engineering subjects prior to completion of the requisite years of experience in engineering work as provided in RCW 18.43.060, and who shall have received a certificate stating that he or she has successfully passed this portion of the professional examination.

Engineering: The term "engineering" as used in this chapter shall mean the "practice of engineering" as hereinafter defined.

Practice of engineering: The term "practice of engineering" within the meaning and intent of this chapter shall mean any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be a professional engineer, or through the use of some other title implies that he or she is a professional engineer; or who holds himself or herself out as able to perform, or who does perform, any engineering service or work or any other professional service designated by the practitioner or recognized by educational authorities as engineering.

The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment.

Land surveyor: The term "land surveyor" as used in this chapter shall mean a person who, through technical knowledge and skill gained by education and/or by experience, is qualified to practice land surveying as hereinafter defined.

Practice of land surveying: The term "practice of land surveying" within the meaning and intent of this chapter, shall mean assuming responsible charge of the surveying of land for the establishment of corners, lines, boundaries, and monuments, the laying out and subdivision of land, the defining and locating of corners, lines, boundaries and monuments of land after they have been established, the survey of land areas for the purpose of determining the topography thereof, the making of topographical delineations

and the preparing of maps and accurate records thereof, when the proper performance of such services requires technical knowledge and skill.

Board: The term "board" as used in this chapter shall mean the state board of registration for professional engineers and land surveyors, provided for by this chapter. [1991 c 19 § 1; 1947 c 283 § 2; Rem. Supp. 1947 § 8306-22. Prior: 1935 c 167 § 1; RRS § 8306-1.]

18.43.030 Board of registration—Members—Terms—Qualifications—Compensation and travel expenses. A state board of registration for professional engineers and land surveyors is hereby created which shall exercise all of the powers and perform all of the duties conferred upon it by this chapter. After July 9, 1986, the board shall consist of seven members, who shall be appointed by the governor and shall have the qualifications as hereinafter required. The terms of board members in office on June 11, 1986, shall not be affected. The first additional member shall be appointed for a four-year term and the second additional member shall be appointed for a three-year term. On the expiration of the term of any member, the governor shall appoint a successor for a term of five years to take the place of the member whose term on said board is about to expire. However, no member shall serve more than two consecutive terms on the board. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified.

Five members of the board shall be registered professional engineers licensed under the provisions of this chapter. Two members shall be registered professional land surveyors licensed under this chapter. Each of the members of the board shall have been actively engaged in the practice of engineering or land surveying for at least ten years subsequent to registration, five of which shall have been immediately prior to their appointment to the board.

Each member of the board shall be a citizen of the United States and shall have been a resident of this state for at least five years immediately preceding his appointment.

Each member of the board shall be compensated in accordance with RCW 43.03.240 and, in addition thereto, shall be reimbursed for travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060.

The governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor as hereinabove provided. [1986 c 102 § 1; 1984 c 287 § 35; 1975-'76 2nd ex.s. c 34 § 37; 1947 c 283 § 3; Rem. Supp. 1947 § 8306-23.]

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.

18.43.035 Bylaws—Employees—Rules—Investigations—Oaths, subpoenas—Periodic reports and roster. The board may adopt and amend bylaws establishing its organization and method of operation, including but

not limited to meetings, maintenance of books and records, publication of reports, code of ethics, and rosters, and adoption and use of a seal. Four members of the board shall constitute a quorum for the conduct of any business of the board. The board may employ such persons as are necessary to carry out its duties under this chapter. It may adopt rules and regulations reasonably necessary to administer the provisions of this chapter. It may conduct investigations concerning alleged violations of the provisions of this chapter. In making such investigations and in all proceedings under RCW 18.43.110, the chairman of the board or any member of the board acting in his place may administer oaths or affirmations to witnesses appearing before the board, subpoena witnesses and compel their attendance, and require the production of books, records, papers and documents. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, records, papers or documents so required to be produced, the board may present its petition to the superior court of the county in which such person resides, setting forth the facts, and thereupon the court shall, in any proper case, enter a suitable order compelling compliance with the provisions of this chapter and imposing such other terms and conditions as the court may deem equitable. The board shall submit to the governor such periodic reports as may be required. A roster, showing the names and places of business of all registered professional engineers and land surveyors may be published for distribution, upon request, to professional engineers and land surveyors registered under this chapter and to the public. [1986 c 102 § 2; 1977 c 75 § 10; 1961 c 142 § 1; 1959 c 297 § 1.]

18.43.040 Registration requirements. The following will be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer, engineer-in-training, or land surveyor, respectively, to wit:

As a professional engineer: A specific record of eight years or more of experience in engineering work of a character satisfactory to the board and indicating that the applicant is competent to practice engineering; and successfully passing a written or oral examination, or both, in engineering as prescribed by the board.

Graduation in an approved engineering curriculum of four years or more from a school or college approved by the board as of satisfactory standing shall be considered equivalent to four years of such required experience. The satisfactory completion of each year of such an approved engineering course without graduation shall be considered as equivalent to a year of such required experience. Graduation in a curriculum other than engineering from a school or college approved by the board shall be considered as equivalent to two years of such required experience: PROVIDED, That no applicant shall receive credit for more than four years of experience because of undergraduate educational qualifications. The board may, at its discretion, give credit as experience not in excess of one year, for satisfactory postgraduate study in engineering.

As an engineer-in-training: The board shall permit an applicant for registration as a professional engineer, upon his or her request, to take the prescribed examination in two

stages. The first stage of the examination may be taken upon submission of his or her application for registration as an engineer-in-training and payment of the application fee herein prescribed, at any time after the applicant has completed four years of the required engineering experience as defined above. The first stage of the examination shall test the applicant's knowledge of appropriate fundamentals of engineering subjects, including mathematics and the basic sciences.

At any time after the completion of the required eight years of engineering experience as defined above, the applicant may take the second stage of the examination, upon submission of application for registration and payment of the application fee herein prescribed. This stage of the examination shall test the applicant's ability, upon the basis of his or her greater experience, to apply his or her knowledge and experience in the field of his or her specific training and qualifications.

As a land surveyor: A specific record of six years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying, and successfully passing a written or oral examination, or both, in surveying as prescribed by the board.

Graduation from a school or college approved by the board as of satisfactory standing, including the completion of an approved course in surveying, shall be considered equivalent to four years of such required experience.

No person shall be eligible for registration as a professional engineer, engineer-in-training, or land surveyor, who is not of good character and reputation.

Engineering teaching, of a character satisfactory to the board, shall be considered as experience not in excess of two years for professional engineering and one year for land surveying.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be practice of engineering.

Any person having the necessary qualifications prescribed in this chapter to entitle him or her to registration shall be eligible for such registration although the person may not be practicing his or her profession at the time of making his or her application. [1991 c 19 § 2; 1947 c 283 § 7; Rem. Supp. 1947 § 8306-24. Prior: 1935 c 167 § 2; RRS § 8306-2.]

18.43.050 Application—Registration fees. Application for registration shall be on forms prescribed by the board and furnished by the director, shall contain statements made under oath, showing the applicant's education and detail summary of his or her technical work and shall contain not less than five references, of whom three or more shall be engineers having personal knowledge of the applicant's engineering experience.

The registration fee for professional engineers shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate. The fee for engineer-in-training shall be determined by the director as provided in RCW 43.24.086, which shall accompany the

application and shall include the cost of examination and issuance of certificate.

The registration fee for land surveyors shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate.

Should the board find an applicant ineligible for registration, the registration fee shall be retained as an application fee. [1991 c 19 § 3; 1985 c 7 § 42; 1975 1st ex.s. c 30 § 46; 1947 c 283 § 8; Rem. Supp. 1947 § 8306-25. Prior: 1935 c 167 § 6; RRS § 8306-6.]

18.43.060 Examinations. When oral or written examinations are required, they shall be held at such time and place as the board shall determine. If examinations are required on fundamental engineering subjects (such as ordinarily given in college curricula) the applicant shall be permitted to take this part of the professional examination prior to his or her completion of the requisite years of experience in engineering work. The board shall issue to each applicant upon successfully passing the examination in fundamental engineering subjects a certificate stating that the applicant has passed the examination in fundamental engineering subjects and that his or her name has been recorded as an engineer-in-training.

The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to design and supervise engineering works so as to insure the safety of life, health and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration separately in engineering and in land surveying. A candidate failing an examination may apply for reexamination. Subsequent examinations will be granted upon payment of a fee to be determined by the director as provided in RCW 43.24.086. [1991 c 19 § 4; 1961 c 142 § 2; 1947 c 283 § 9; Rem. Supp. 1947 § 8306-26. Prior: 1935 c 167 § 7; RRS § 8306-7.]

18.43.070 Certificates and seals. The director of licensing shall issue a certificate of registration upon payment of a registration fee as provided for in this chapter, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this chapter. In case of a registered engineer, the certificate shall authorize the practice of "professional engineering" and specify the branch or branches in which specialized, and in case of a registered land surveyor, the certificate shall authorize the practice of "land surveying".

In case of engineer-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental engineering subjects required by the board and has been enrolled as an "engineer-in-training". All certificates of registration shall show the full name of the registrant, shall have a serial number, and shall be signed by the chairman and the secretary of the board and by the director of licensing.

The issuance of a certificate of registration by the director of licensing shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered professional engineer or a registered land

surveyor, while the said certificate remains unrevoked and unexpired.

Each registrant hereunder shall upon registration obtain a seal of the design authorized by the board, bearing the registrant's name and the legend "registered professional engineer" or "registered land surveyor". Plans, specifications, plats and reports prepared by the registrant shall be signed, dated, and stamped with said seal or facsimile thereof. Such signature and stamping shall constitute a certification by the registrant that the same was prepared by or under his or her direct supervision and that to his or her knowledge and belief the same was prepared in accordance with the requirements of the statute. It shall be unlawful for anyone to stamp or seal any document with said seal or facsimile thereof after the certificate of registrant named thereon has expired or been revoked, unless said certificate shall have been renewed or reissued. [1991 c 19 § 5; 1959 c 297 § 4; 1947 c 283 § 10; Rem. Supp. 1947 § 8306-27. Prior: 1935 c 167 §§ 8, 13; RRS § 8306-8, 13.]

18.43.080 Expiration and renewals of certificates—Fees. Certificates of registration, and certificates of authorization and renewals thereof shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the administrator of the division of professional licensing to notify every person, firm or corporation registered under this chapter, of the date of the expiration of his certificate and the amount of the renewal fee that shall be required for its renewal for one year. Such notice shall be mailed at least thirty days before the end of December of each year. Renewal may be effected during the month of December by the payment of a fee determined by the director as provided in RCW 43.24.086. In case any professional engineer and/or land surveyor registered under this chapter shall fail to pay the renewal fee hereinabove provided for, within ninety days from the date when the same shall become due, the renewal fee shall be the current fee plus an amount equal to one year's fee. [1985 c 7 § 43; 1981 c 260 § 4. Prior: 1975 1st ex.s. c 30 § 47; 1975 c 23 § 1; 1965 ex.s. c 126 § 1; 1961 c 142 § 3; 1959 c 297 § 5; 1947 c 283 § 11; Rem. Supp. 1947 § 8306-28; prior: 1935 c 167 § 10; RRS § 8306-10.]

18.43.100 Registration of out-of-state applicants. The board may, upon application and the payment of a fee determined by the director as provided in RCW 43.24.086, issue a certificate without further examination as a professional engineer or land surveyor to any person who holds a certificate of qualification of registration issued to the applicant following examination by proper authority, of any state or territory or possession of the United States, the District of Columbia, or of any foreign country, provided: (1) That the applicant's qualifications meet the requirements of the chapter and the rules established by the board, and (2) that the applicant is in good standing with the licensing agency in said state, territory, possession, district, or foreign country. [1991 c 19 § 7; 1985 c 7 § 44; 1975 1st ex.s. c 30 § 48; 1959 c 297 § 6; 1947 c 283 § 13; Rem. Supp. 1947 § 8306-30. Prior: 1935 c 167 § 5; RRS § 8306-5.]

18.43.105 "Misconduct or malpractice in the practice of engineering" defined. As used in this chapter "misconduct or malpractice in the practice of engineering" shall include but not be limited to the following:

- (1) Offering to pay, paying or accepting, either directly or indirectly, any substantial gift, bribe, or other consideration to influence the award of professional work;
- (2) Being wilfully untruthful or deceptive in any professional report, statement or testimony;
- (3) Attempting to injure falsely or maliciously, directly or indirectly, the professional reputation, prospects or business of anyone;
- (4) Failure to state separately or to charge separately for professional engineering services or land surveying where other services or work are also being performed in connection with the engineering services;
- (5) Conviction in any court of any offense involving moral turpitude;
- (6) Violation of any provisions of this chapter;
- (7) Conflict of interest—Having a financial interest in bidding for or performance of a contract to supply labor or materials for or to construct a project for which employed or retained as an engineer except with the consent of the client or employer after disclosure of such facts; or allowing an interest in any business to affect a decision regarding engineering work for which retained, employed, or called upon to perform;
- (8) Nondisclosure—Failure to promptly disclose to a client or employer any interest in a business which may compete with or affect the business of the client or employer;
- (9) Unfair competition—Reducing a fee quoted for prospective employment or retainer as an engineer after being informed of the fee quoted by another engineer for the same employment or retainer;
- (10) Improper advertising—Soliciting retainer or employment by advertisement which is undignified, self-laudatory, false or misleading, or which makes or invites comparison between the advertiser and other engineers;
- (11) Committing any other act, or failing to act, which act or failure are customarily regarded as being contrary to the accepted professional conduct or standard generally expected of those practicing professional engineering or land surveying. [1961 c 142 § 4; 1959 c 297 § 2.]

18.43.110 Revocations, fines, reprimands, and suspensions. The board shall have the exclusive power to fine and reprimand the registrant and suspend or revoke the certificate of registration of any registrant who is found guilty of:

The practice of any fraud or deceit in obtaining a certificate of registration; or

Any gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered engineer or land surveyor.

Any person may prefer charges of fraud, deceit, gross negligence, incompetency, or misconduct against any registrant. Such charges shall be in writing and shall be sworn to by the person making them and shall be filed with the secretary of the board.

All procedures related to hearings on such charges shall be in accordance with provisions relating to adjudicative proceedings in chapter 34.05 RCW, the Administrative Procedure Act.

If, after such hearing, a majority of the board vote in favor of finding the accused guilty, the board shall revoke or suspend the certificate of registration of such registered professional engineer or land surveyor.

The board, for reasons it deems sufficient, may reissue a certificate of registration to any person whose certificate has been revoked or suspended, providing a majority of the board vote in favor of such issuance. A new certificate of registration to replace any certificate revoked, lost, destroyed, or mutilated may be issued, subject to the rules of the board, and a charge determined by the director as provided in RCW 43.24.086 shall be made for such issuance.

Any person who shall feel aggrieved by any action of the board in denying or revoking his certificate of registration may appeal therefrom to the superior court of the county in which such person resides, and after full hearing, said court shall make such decree sustaining or revoking the action of the board as it may deem just and proper.

Fines imposed by the board shall not exceed one thousand dollars for each offense.

In addition to the imposition of civil penalties under this section, the board may refer violations of this chapter to the appropriate prosecuting attorney for charges under RCW 18.43.120. [1989 c 175 § 62; 1986 c 102 § 3; 1985 c 7 § 45; 1982 c 37 § 1; 1975 1st ex.s. c 30 § 49; 1947 c 283 § 14; Rem. Supp. 1947 § 8306-31. Prior: 1935 c 167 § 11; RRS § 8306-11.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.43.120 Violations and penalties. Any person who shall practice, or offer to practice, engineering or land surveying in this state without being registered in accordance with the provisions of the chapter, or any person presenting or attempting to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, or any person who shall falsely impersonate any other registrant, or any person who shall attempt to use the expired or revoked certificate of registration, or any person who shall violate any of the provisions of this chapter shall be guilty of a gross misdemeanor.

It shall be the duty of all officers of the state or any political subdivision thereof, to enforce the provisions of this chapter. The attorney general shall act as legal adviser of the board, and render such legal assistance as may be necessary in carrying out the provisions of this chapter. [1986 c 102 § 4; 1947 c 283 § 15; Rem. Supp. 1947 § 8306-32. Prior: 1935 c 167 § 14; RRS § 8306-14.]

Forgery: RCW 9A.60.020.

18.43.130 Excepted services—Fees. This chapter shall not be construed to prevent or affect:

- (1) The practice of any other legally recognized profession or trade; or
- (2) The practice of a person not a resident and having no established place of business in this state, practicing or

offering to practice herein the profession of engineering or land surveying, when such practice does not exceed in the aggregate more than thirty days in any calendar year: PROVIDED, Such person has been determined by the board to be legally qualified by registration to practice the said profession in his or her own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this chapter. The person shall request such a determination by completing an application prescribed by the board and accompanied by a fee determined by the director. Upon approval of the application, the board shall issue a permit authorizing temporary practice; or

(3) The practice of a person not a resident and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice herein for more than thirty days in any calendar year the profession of engineering or land surveying, if he or she shall have filed with the board an application for a certificate of registration and shall have paid the fee required by this chapter: PROVIDED, That such person is legally qualified by registration to practice engineering or land surveying in his or her own state or country in which the requirements and qualifications of obtaining a certificate of registration are not lower than those specified in this chapter. Such practice shall continue only for such time as the board requires for the consideration of the application for registration; or

(4) The work of an employee or a subordinate of a person holding a certificate of registration under this chapter, or an employee of a person practicing lawfully under provisions of this section: PROVIDED, That such work does not include final design or decisions and is done under the direct responsibility, checking, and supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under the provisions of this section; or

(5) The work of a person rendering engineering or land surveying services to a corporation, as an employee of such corporation, when such services are rendered in carrying on the general business of the corporation and such general business does not consist, either wholly or in part, of the rendering of engineering services to the general public: PROVIDED, That such corporation employs at least one person holding a certificate of registration under this chapter or practicing lawfully under the provisions of this chapter; or

(6) The practice of officers or employees of the government of the United States while engaged within the state in the practice of the profession of engineering or land surveying for said government; or

(7) Nonresident engineers employed for the purpose of making engineering examinations; or

(8) The practice of engineering in this state by a corporation or joint stock association: PROVIDED, That

(a) Such corporation shall file with the board an application for certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether such corporation is qualified in accordance with the provisions of this chapter to practice engineering in this state;

(b) Such corporation shall file with the board a certified copy of a resolution of the board of directors of the corporation which shall designate a person holding a certificate of

registration under this chapter as responsible for the practice of engineering by said corporation in this state and shall provide that full authority to make all final engineering decisions on behalf of said corporation with respect to work performed by the corporation in this state shall be granted and delegated by the board of directors to the person so designated in said resolution: PROVIDED, That the filing of such resolution shall not relieve the corporation of any responsibility or liability imposed upon it by law or by contract;

(c) Such corporation shall file with the board a designation in writing setting forth the name or names of a person or persons holding certificates of registration under this chapter who shall be in responsible charge of each project and each major branch of the engineering activities in which the corporation shall specialize in this state. In the event there shall be a change in the person or persons in responsible charge of any project or major branch of the engineering activities, such changes shall be designated in writing and filed with the board within thirty days after the effective date of such changes;

(d) Upon the filing with the board of the application for certificate for authorization, certified copy of resolution, affidavit and designation of persons specified in subparagraphs (a), (b), and (c) of this section the board shall issue to such corporation a certificate of authorization to practice engineering in this state upon a determination by the board that:

(i) The bylaws of the corporation contain provisions that all engineering decisions pertaining to any project or engineering activities in this state shall be made by the specified engineer in responsible charge, or other responsible engineers under his or her direction or supervision;

(ii) The application for certificate of authorization states the type, or types, of engineering practiced, or to be practiced by such corporation;

(iii) A current certified financial statement accurately reflecting the financial condition of the corporation has been filed with the board and is available for public inspection;

(iv) The applicant corporation has the ability to provide through qualified engineering personnel, professional services or creative work requiring engineering experience, and that with respect to the engineering services which the corporation undertakes or offers to undertake such personnel have the ability to apply special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects;

(v) The application for certificate of authorization states the professional records of the designated person or persons who shall be in responsible charge of each project and each major branch of engineering activities in which the corporation shall specialize;

(vi) The application for certificate of authorization states the experience of the corporation, if any, in furnishing engineering services during the preceding five year period and states the experience of the corporation, if any, in the

furnishing of all feasibility and advisory studies made within the state of Washington;

(vii) The applicant corporation meets such other requirements related to professional competence in the furnishing of engineering services as may be established and promulgated by the board in furtherance of the objectives and provisions of this chapter; and

Upon a determination by the board based upon an evaluation of the foregoing findings and information that the applicant corporation is possessed of the ability and competence to furnish engineering services in the public interest.

The board may in the exercise of its discretion refuse to issue or may suspend and/or revoke a certificate of authorization to a corporation where the board shall find that any of the officers, directors, incorporators, or the stockholders holding a majority of stock of such corporation has committed misconduct or malpractice as defined in RCW 18.43.105 or has been found personally responsible for misconduct or malpractice under the provisions of subsections (f) and (g) hereof.

The certificate of authorization shall specify the major branches of engineering of which the corporation has designated a person or persons in responsible charge as provided in subsection (8)(c) of this section.

(e) In the event a corporation, organized solely by a group of engineers, each holding a certificate of registration under this chapter, applies for a certificate of authorization, the board may, in its discretion, grant a certificate of authorization to such corporation based on a review of the professional records of such incorporators, in lieu of the required qualifications set forth in this subsection. In the event the ownership of such corporation shall be altered, the corporation shall apply for a revised certificate of authorization, based upon the professional records of the owners, if exclusively engineers or, otherwise, under the qualifications required by subparagraphs (a), (b), (c), and (d) hereof.

(f) Any corporation authorized to practice engineering under this chapter, together with its directors and officers for their own individual acts, are responsible to the same degree as an individual registered engineer, and must conduct its business without misconduct or malpractice in the practice of engineering as defined in this chapter.

(g) Any corporation which has been duly certified under the provisions of this chapter and has engaged in the practice of engineering shall have its certificate of authorization either suspended or revoked by the board if, after a proper hearing, the board shall find that the corporation has committed misconduct or malpractice as defined in RCW 18.43.105. In such case any individual engineer holding a certificate of registration under this chapter, involved in such malpractice or misconduct, shall have his or her certificate of registration suspended or revoked also.

(h) All plans, specifications, designs, and reports when issued in connection with work performed by a corporation under its certificate of authorization shall be prepared by or under the responsible charge of and shall be signed by and shall be stamped with the official seal of a person holding a certificate of registration under this chapter.

(i) For each certificate of authorization issued under the provisions of this subsection (8) of this section there shall be paid an initial fee determined by the director as provided in

RCW 43.24.086 and an annual renewal fee determined by the director as provided in RCW 43.24.086.

(9) The practice of engineering and/or land surveying in this state by partnership: PROVIDED, That

(a) A majority of the members of the partnership are engineers or architects or land surveyors duly certificated by the state of Washington or by a state, territory, possession, district, or foreign country meeting the reciprocal provisions of RCW 18.43.100: PROVIDED, That at least one of the members is a professional engineer or land surveyor holding a certificate issued by the director under the provisions of RCW 18.43.070; and

(b) Except where all members of the partnership are professional engineers or land surveyors or a combination of professional engineers and land surveyors or where all members of the partnership are either professional engineers or land surveyors in combination with an architect or architects all of which are holding certificates of qualification therefor issued under the laws of the state of Washington, the partnership shall file with the board an instrument executed by a partner on behalf of the partnership designating the persons responsible for the practice of engineering by the partnership in this state and in all other respects such person so designated and such partnership shall meet the same qualifications and shall be subject to the same requirements and the same penalties as those pertaining to corporations and to the responsible persons designated by corporations as provided in subsection (8) of this section.

For each certificate of authorization issued under the provisions of this subsection (9) of this section there shall be paid an initial fee determined by the director as provided in RCW 43.24.086 and an annual renewal fee determined by the director as provided in RCW 43.24.086. [1991 c 19 § 6; 1985 c 7 § 46; 1975 1st ex.s. c 30 § 50; 1965 ex.s. c 126 § 2; 1961 c 142 § 5; 1959 c 297 § 7; 1947 c 283 § 16; Rem. Supp. 1947 § 8306-33. Prior: 1935 c 167 § 2; RRS § 8306-2.]

18.43.140 Injunctive relief, proof—Board's immunity from liability—Prosecutions. The board is authorized to apply for relief by injunction without bond, to restrain a person from the commission of any act which is prohibited by this chapter. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. The members of the board shall not be personally liable for their action in any such proceeding or in any other proceeding instituted by the board under the provisions of this chapter. The board in any proper case shall cause prosecution to be instituted in any county or counties where any violation of this chapter occurs, and shall aid in the prosecution of the violator. [1959 c 297 § 3.]

18.43.150 Disposition of fees—Earnings. (Effective until July 1, 1993.) All fees collected under the provisions of RCW 18.43.050, 18.43.080 and 18.43.130 shall be divided and twenty percent paid into the state general fund and eighty percent paid into the professional engineers' account, which account is hereby established in the state treasury to be used to carry out the purposes and provisions of RCW

18.43.050, 18.43.060, 18.43.080, 18.43.100, 18.43.110, 18.43.120, 18.43.130, 18.43.140 and all other duties required for operation and enforcement of this chapter. All earnings of investments of balances in the professional engineers' account shall be credited to the general fund. [1985 c 57 § 5; 1965 ex.s. c 126 § 3.]

Effective date—1985 c 57: See note following RCW 18.04.105.

18.43.150 Disposition of fees. (Effective July 1, 1993.) All fees collected under the provisions of RCW 18.43.050, 18.43.060, 18.43.080, 18.43.100, and 18.43.130 and fines collected under RCW 18.43.110 shall be paid into the professional engineers' account, which account is hereby established in the state treasury to be used to carry out the purposes and provisions of RCW 18.43.050, 18.43.060, 18.43.080, 18.43.100, 18.43.110, 18.43.120, 18.43.130, 18.43.140 and all other duties required for operation and enforcement of this chapter. [1991 c 277 § 2; 1985 c 57 § 5; 1965 ex.s. c 126 § 3.]

Effective date—1991 c 277: See note following RCW 18.85.220.

Effective date—1985 c 57: See note following RCW 18.04.105.

18.43.900 Short title. This chapter shall be known and may be cited as the "Professional Engineers' Registration Act". [1947 c 283 § 19.]

18.43.910 Severability—1947 c 283. If any section of this chapter shall be declared unconstitutional or invalid, such adjudication shall not invalidate any other provision or provisions thereof. [1947 c 283 § 17.]

18.43.920 Severability—1959 c 297. If any section of this act or part thereof shall be declared unconstitutional or invalid, such adjudication shall not invalidate any other provision or provisions thereof. [1959 c 297 § 8.]

18.43.930 Severability—1961 c 142. If any section of this act or part thereof shall be adjudged unconstitutional or invalid, such adjudication shall not invalidate any other provision or provisions thereof. [1961 c 142 § 6.]

Chapter 18.44

ESCROW AGENT REGISTRATION ACT

Sections

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18.44.010 Definitions. Unless the context otherwise requires terms used in this chapter shall have the following meanings:

- (1) "Department" means the department of licensing.
- (2) "Director" means the director of licensing, or his duly authorized representative.
- (3) "Escrow" means any transaction wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he is to act, to a grantee, grantor, promisee, promisor, obligee,

obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.

(4) "Escrow agent" means any sole proprietorship, firm, association, partnership, or corporation engaged in the business of performing for compensation the duties of the third person referred to in RCW 18.44.010(3) above.

(5) "Certificated escrow agent" means any sole proprietorship, firm, association, partnership, or corporation holding a certificate of registration as an escrow agent under the provisions of this chapter.

(6) "Person" unless a different meaning appears from the context, includes an individual, a firm, association, partnership or corporation, or the plural thereof, whether resident, nonresident, citizen or not.

(7) "Escrow officer" means any natural person handling escrow transactions and licensed as such by the director.

(8) "Escrow commission" means the escrow commission of the state of Washington created by RCW 18.44.208.

(9) "Controlling person" is any person who owns or controls ten percent or more of the beneficial ownership of any escrow agent, regardless of the form of business organization employed and regardless of whether such interest stands in such person's true name or in the name of a nominee. [1985 c 7 § 47; 1979 c 158 § 42; 1977 ex.s. c 156 § 1; 1971 ex.s. c 245 § 1; 1965 c 153 § 1.]

18.44.020 Registration—Required—Exceptions. It shall be unlawful for any person to engage in business as an escrow agent within this state unless such person possesses a valid certificate of registration issued by the director pursuant to this chapter: PROVIDED, That the registration and licensing requirements of this chapter shall not apply to:

(1) Any person doing business under the law of this state or the United States relating to banks, trust companies, mutual savings banks, savings and loan associations, credit unions, insurance companies, title insurance companies, the duly authorized agents of title insurance companies the business of which agents is exclusively devoted to the title insurance business, or any federally approved agency or lending institution under the National Housing Act.

(2) Any person licensed to practice law in this state while engaged in the performance of his professional duties.

(3) Any company, broker, or agent subject to the jurisdiction of the director while performing acts in the course of or incidental to sales or purchases of real or personal property handled or negotiated by such company, broker, or agent: PROVIDED, HOWEVER, That no compensation is received for escrow services.

(4) Any transaction in which money or other property is paid to, deposited with, or transferred to a joint control agent for disbursal or use in payment of the cost of labor, material, services, permits, fees, or other items of expense incurred in the construction of improvements upon real property.

(5) Any receiver, trustee in bankruptcy, executor, administrator, guardian, or other person acting under the supervision or order of any superior court of this state or of any federal court. [1977 ex.s. c 156 § 2; 1971 ex.s. c 245 § 2; 1967 ex.s. c 76 § 1; 1965 c 153 § 2.]

18.44.030 Registration—Application, requisites. An application for registration as an escrow agent shall be in writing in such form as is prescribed by the director, and shall be verified on oath by the applicant. If the applicant is a corporation, the application shall include a list of the officers and directors of such corporation, and their addresses; if the applicant is a firm or partnership, the application shall include a list of the names and addresses of the partners. The application shall include a consent to service of process, in such form as the director shall prescribe, and payment of the fee required by RCW 18.44.080. [1977 ex.s. c 156 § 3; 1965 c 153 § 3.]

18.44.040 Registration—Filing requirements. Each applicant shall, at the time of applying for registration, file with the director:

(1) The applicant's business form and place of organization.

(2) In the event the applicant is doing business under an assumed name, a certified copy of the certificate of assumed name as filed with the county clerk in the county or counties in which the applicant does business or proposes to do business, as provided in chapter 19.80 RCW.

(3) The qualification and business history including a commercial type credit and character report from a recognized credit reporting bureau satisfactory to the director on the applicant, principal officers, controlling person, or partners.

(4) Such proof as the director may require concerning the honesty, veracity, and good reputation, as well as the identity of the applicant, principal officers, controlling person, or partners. Identification of the applicant, principal officers, or partners shall include but not be limited to fingerprints.

(5) Whether the applicant, principal officers, or partners have been convicted of any crime within the preceding ten years which relate directly to the business or duties of escrow agents, or have suffered a judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion.

(6) The identity of the natural person designated as the escrow officer to supervise the agent's escrow activity.

(7) Any other information the director may reasonably require. [1977 ex.s. c 156 § 4; 1971 ex.s. c 245 § 3; 1965 c 153 § 4.]

18.44.050 Fidelity bond—Errors and omissions policy. At the time of filing an application as an escrow agent, or any renewal or reinstatement thereof, the applicant shall satisfy the director that it has obtained the following as evidence of financial responsibility:

(1) A fidelity bond providing coverage in the aggregate amount of two hundred thousand dollars covering each corporate officer, partner, escrow officer, and employee of the applicant engaged in escrow transactions; and

(2) An errors and omissions policy issued to the escrow agent providing coverage in the minimum aggregate amount of fifty thousand dollars or, alternatively, cash or securities in the principal amount of fifty thousand dollars deposited in an approved depository on condition that they be available for payment of any claim payable under an equivalent errors

and omissions policy in that amount and pursuant to rules and regulations adopted by the department for that purpose.

For the purposes of this section, a "fidelity bond" shall mean a primary commercial blanket bond or its equivalent satisfactory to the director and written by an insurer authorized to transact surety business in the state of Washington. Such bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the employees or officers as defined in the bond, acting alone or in collusion with others. Said bond shall be for the sole benefit of the escrow agent and under no circumstances whatsoever shall the bonding company be liable under the bond to any other party. The bond shall name the escrow agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the escrow agent.

For the purposes of this section, an "errors and omissions policy" shall mean a group or individual insurance policy satisfactory to the director and issued by an insurer authorized to transact insurance business in the state of Washington. Such policy shall provide coverage for unintentional errors and omissions of the escrow agent and its employees, and may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the escrow agent.

Except as provided in RCW 18.44.360, the fidelity bond and the errors and omissions policy required by this section shall be kept in full force and effect as a condition precedent to the escrow agent's authority to transact escrow business in this state, and the escrow agent shall supply the director with satisfactory evidence thereof upon request. [1979 c 70 § 1; 1977 ex.s. c 156 § 5; 1971 ex.s. c 245 § 4; 1965 c 153 § 5.]

18.44.060 Cancellation of bond, new bond required.

In the event of cancellation of a bond the director shall require the filing of a new bond. Failure to deposit such new bond after notification by the director that one is required shall be sufficient grounds for the suspension or revocation of the certificate of registration. [1965 c 153 § 6.]

18.44.065 Advertisement, statement, or reference to existence of financial responsibility requirements prohibited. No escrow agent, officer, or employee shall publish or otherwise place before the public any advertisement, announcement, or statement which uses or makes reference to the existence of the financial responsibility requirements of this chapter, including but not limited to references to "bonded" or "insured".

No firm or organization engaged in escrow transactions, whether or not such firm is doing business in a corporate form, shall use in the name of such firm any reference to the financial responsibility requirements of this chapter, including but not limited to "bonded" or "insured". [1977 ex.s. c 156 § 18.]

18.44.067 Change in business or branch office location. Notice in writing shall be given to the director and to the insurer providing coverage under RCW 18.44.050 as now or hereafter amended of any change of business location or of branch office location. Upon the surrender of the original registration for the agent or the registration applicable to a branch office and a payment of a fee, the director shall issue a new certificate covering the new location. [1977 ex.s. c 156 § 19.]

18.44.070 Records and accounts—Segregation and disbursements of funds. Every certificated escrow agent shall keep adequate records of all transactions handled by or through the agent including itemization of all receipts and disbursements of each transaction, which records shall be open to inspection by the director or the director's authorized representatives.

Every certificated agent shall keep a separate escrow fund account in a recognized Washington state depository authorized to receive funds, in which shall be kept separate and apart and segregated from the agent's own funds, all funds or moneys of clients which are being held by the agent pending the closing of a transaction and such funds shall be deposited not later than the first banking day following receipt thereof.

An escrow agent, unless exempted by RCW 18.44.020(2), shall not make disbursements on any escrow account without first receiving deposits directly relating to the account in amounts at least equal to the disbursements. An escrow agent shall not make disbursements until the next business day after the business day on which the funds are deposited unless the deposit is made in cash, by interbank electronic transfer, or in a form that permits conversion of the deposit to cash on the same day the deposit is made. The deposits shall be in one of the following forms:

(1) Cash;

(2) Interbank electronic transfers such that the funds are unconditionally received by the escrow agent or the agent's depository;

(3) Checks, negotiable orders of withdrawal, money orders, cashier's checks, and certified checks that are payable in Washington state and drawn on financial institutions located in Washington state; or

(4) Checks, negotiable orders of withdrawal, money orders, and any other item that has been finally paid as described in RCW 62A.4-213 before any disbursement; or

(5) Any depository check, including any cashier's check, certified check, or teller's check, which is governed by the provisions of the Federal Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq.

The word "item" means any instrument for the payment of money even though it is not negotiable, but does not include money.

Violation of this section shall subject an escrow agent to penalties as prescribed in Title 9A RCW and remedies as provided in chapter 19.86 RCW and shall constitute grounds for suspension or revocation of the registration or license of any certified escrow agent. [1990 c 203 § 1; 1988 c 178 § 1; 1977 ex.s. c 156 § 6; 1965 c 153 § 7.]

Severability—1988 c 178: "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 178 § 4.]

18.44.080 Fees. The director shall charge and collect the following fees:

(1) For filing an original or a renewal application for registration as an escrow agent, annual fees for the first office or location and for each additional office or location.

(2) For filing an application for a change of address, for each certificate of registration and for each escrow officer license being so changed.

(3) For filing an application for a duplicate of a certificate of registration or of an escrow officer license lost, stolen, destroyed, or for replacement.

(4) For providing administrative support to the escrow commission.

All fees under this chapter shall be set by the director in accordance with RCW 43.24.086.

All fees received by the director under this chapter shall be paid by him into the state treasury to the credit of the general fund. [1985 c 340 § 1; 1977 ex.s. c 156 § 7; 1971 ex.s. c 245 § 5; 1965 c 153 § 8.]

18.44.090 Certificate of registration—Issuance. Upon the filing of the application for registration as an escrow agent on a form provided by the director and satisfying the requirements as set forth in this chapter, the director shall issue and deliver to the applicant a certificate of registration to engage in the business of an escrow agent at the location set forth in the certificate. [1977 ex.s. c 156 § 8; 1965 c 153 § 9.]

18.44.100 Certificate of registration—Duration—Posting. An escrow agent's certificate or registration shall remain in effect until surrendered, revoked, suspended, or until it expires, and shall at all times be kept conspicuously posted in all places of business of the agent. [1965 c 153 § 10.]

18.44.110 Certificate of registration—Expiration and renewal. Each escrow agent's certificate shall expire at noon on the thirty-first day of December of any calendar year. Registration may be renewed by filing an application and paying the annual registration fee for the next succeeding calendar year. [1985 c 340 § 2; 1965 c 153 § 11.]

18.44.120 Certificate of registration—Reinstatement. An escrow agent's certificate which has not been renewed may be reinstated at any time prior to the thirtieth day of January following its expiration, upon the payment to the director of the annual registration fees then in default and a penalty equal to one-half of the annual registration fees then in default. [1965 c 153 § 12.]

18.44.130 Termination of certificate—Effect upon preexisting escrows—Notice to principals. The revocation, suspension, surrender or expiration of an escrow agent's certificate shall not impair or affect preexisting escrows accepted by the agent prior to such revocation, suspension, surrender or expiration: PROVIDED, That the escrow agent shall within five work days provide written notice to all

principals of such preexisting escrows of the agent's loss of registration. The notice shall include as a minimum the reason for the loss of registration, the estimated date for completing the escrow, and the condition of the agent's bond and whether it is in effect or whether notice of cancellation has been given. The notice shall afford the principals the right to withdraw the escrow without monetary loss. [1977 ex.s. c 156 § 9; 1965 c 153 § 13.]

18.44.140 Engaging in business without certificate—Penalty. Any person required by this chapter to obtain a certificate of registration who engages in business as an escrow agent without applying for and receiving the certificate of registration required by this chapter, or wilfully continues to act as an escrow agent after surrender or revocation of his certificate, is guilty of a misdemeanor punishable by imprisonment for not more than ninety days, or by a fine of not more than two hundred fifty dollars, or by both such fine and imprisonment. [1965 c 153 § 14.]

Date for initial compliance: "All persons doing business within this state as an escrow agent as defined in this act, who may be required by this act to register with the department, shall comply with the provisions hereof not later than December 31, 1965." [1965 c 153 § 15.]

18.44.145 Referral fees prohibited. (1) "Real property lender" as used in this section means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, or partnership that makes loans secured by real property located in this state.

(2) No real property lender, escrow agent, or officer or employee of any escrow agent or real property lender may give or agree to pay or give any money, service, or object of value to any real estate agent or broker, to any real property lender, or to any officer or employee of any agent, broker, or lender in return for the referral of any real estate escrow services. Nothing in this subsection prohibits the payment of fees or other compensation permitted under the federal Real Estate Settlement Procedures Act as amended (12 U.S.C. sections 2601 through 2617).

(3) A violation of this section constitutes a violation of RCW 19.86.020, and any person harmed in his or her business or property is entitled to the remedies provided under RCW 19.86.090. [1988 c 178 § 3.]

Severability—1988 c 178: See note following RCW 18.44.070.

18.44.150 Enforcement officials. The attorney general and the prosecuting attorneys of the several counties shall be responsible for the enforcement of this chapter. [1965 c 153 § 16.]

18.44.160 Remedies—Injunction—Restraining order. Whenever it shall appear that any person, required by this chapter to register with the department, is conducting business as an escrow agent without having applied for and obtained a certificate of registration, or that any certificated escrow agent is conducting business in a manner deemed unsafe or injurious to the public or any party having business relations with such escrow agent as a contracting party to an escrow agreement as defined in RCW 18.44.010, or in violation of any of the provisions of this chapter, the

attorney general or the prosecuting attorney of the appropriate county may, after such investigation as may be necessary, apply to the appropriate court for an order enjoining the person from engaging in or continuing to engage in the activity violative of this chapter, and upon a showing that such person has engaged, or is about to engage, in any such activity, a permanent or temporary injunction, restraining order, or other appropriate order may be issued by the court. [1977 ex.s. c 156 § 10; 1965 c 153 § 17.]

18.44.170 Remedies—Affecting corporate franchise. Upon petition by the attorney general, the court may, in its discretion, order the dissolution, or suspension or forfeiture of franchise, of any corporation for repeated or flagrant violation of this chapter or the terms of any order of injunction hereunder. [1965 c 153 § 18.]

18.44.175 Violations—Cease and desist orders—Injunction—Restraining order. If the director determines after notice and hearing that a person has:

- (1) Violated any provision of this chapter; or
- (2) Directly, or through an agent or employee, engaged in any false, deceptive, or misleading
 - (a) advertising or promotional activity, or
 - (b) business practices; or
- (3) Violated any lawful order, rule, or regulation of the director; the director may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the director will carry out the purposes of this chapter.

If the director makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the director, whenever possible by telephone or otherwise, shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held to determine whether or not the order becomes permanent.

If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule or order under this chapter, the director, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule, regulation, or order under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall be granted and a receiver or conservator may be appointed. The director shall not be required to post a bond in any court proceedings. [1977 ex.s. c 156 § 20.]

18.44.180 Proof of registration prerequisite to action for fee. No person engaged in the business or acting in the capacity of an escrow agent may bring or maintain any action in any court of this state for the collection or compensation for the performances of any services entered upon after December 31, 1965, for which registration is required under this chapter without alleging and proving that

he was a duly certificated escrow agent at the time of commencement of such services. [1965 c 153 § 19.]

18.44.190 Receivership. Upon application by the director or any other interested party and upon a showing that the interest of the creditors so requires, the superior court may appoint a receiver to take over, operate, or liquidate any escrow office in this state. [1971 ex.s. c 245 § 6.]

18.44.200 Escrow officer required for handling transactions—Exceptions—Responsibility of supervising escrow agent. No escrow agent shall engage in the business of handling escrow transactions unless such transactions are supervised by a licensed "escrow officer": PROVIDED, That (1) in the case of a partnership, one licensed partner shall act on behalf of the partnership; (2) in the case of a corporation, one licensed officer thereof shall act on behalf of the corporation; and (3) each branch office shall be required to have at least one licensed escrow officer designated by the escrow agent. Responsibility for the conduct of any escrow agent, escrow officers, or branch escrow officers covered by this chapter shall rest with the escrow officer having direct supervision of such person's escrow activities. The branch escrow officer shall bear responsibility for persons operating under each branch escrow officer's supervision at a branch escrow office. [1977 ex.s. c 156 § 11; 1971 ex.s. c 245 § 7.]

18.44.208 Escrow commission—Members—Terms—Compensation and travel expenses. There is established an escrow commission of the state of Washington, to consist of the director of licensing as chairman, and five members who shall act as advisors to the director as to the needs of the escrow profession, including but not limited to the design and conduct of tests to be administered to applicants for escrow licenses, the schedule of license fees to be applied to the escrow licensees, educational programs, audits and investigations of the escrow profession designed to protect the consumer, and such other matters determined appropriate. Such members shall be appointed by the governor, each of whom shall have been a resident of this state for at least five years and shall have at least five years experience in the practice of escrow as an escrow agent or as a person in responsible charge of escrow transactions.

The members of the first commission shall serve for the following terms: One member for one year, one member for two years, one member for three years, one member for four years, and one member for five years, from the date of their appointment, or until their successors are duly appointed and qualified. Every member of the commission shall receive a certificate of appointment from the governor and before beginning the member's term of office shall file with the secretary of state a written oath or affirmation for the faithful discharge of the member's official duties. On the expiration of the term of each member, the governor shall appoint a successor to serve for a term of five years or until the member's successor has been appointed and qualified.

The governor may remove any member of the commission for cause. Vacancies in the commission for any reason shall be filled by appointment for the unexpired term.

Members shall be compensated in accordance with RCW 43.03.240, and shall be reimbursed for their travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060. [1985 c 340 § 3; 1984 c 287 § 36.]

Legislative findings—Severability—Effective date—1984 c 287:
See notes following RCW 43.03.220.

18.44.215 Compensation and travel expenses of commission members. The escrow commission members shall each be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses as provided for state officials and employees in RCW 43.03.050 and 43.03.060, when called into session by the director or when otherwise engaged in the business of the commission. [1984 c 287 § 37; 1977 ex.s. c 156 § 29.]

Legislative findings—Severability—Effective date—1984 c 287:
See notes following RCW 43.03.220.

18.44.220 Escrow officers—Examination—Fee—Qualifications. Any person desiring to be an escrow officer must successfully pass an examination. The person shall make application for an escrow officer examination on a form provided by the director and pay an examination fee. The applicant shall satisfy the director that the applicant is at least eighteen years old and is a resident of the state of Washington. [1985 c 340 § 4; 1977 ex.s. c 156 § 13; 1971 ex.s. c.245 § 9.]

18.44.240 Escrow officer examination—Subjects—Annual. The escrow officer examination shall encompass the following:

- (1) Appropriate knowledge of the English language, including reading, writing, and arithmetic;
- (2) An understanding of the principles of real estate conveyancing, the general purposes and legal effects of deeds, mortgages, deeds of trust, contracts of sale, exchanges, rental and optional agreements, leases, earnest money agreements, personal property transfers, and encumbrances;
- (3) An understanding of the obligations between principal and agent; and
- (4) An understanding of the meaning and nature of encumbrances upon real property.

The examination shall be in such form as prescribed by the director and approved by the commission, and shall be given at least annually. [1977 ex.s. c 156 § 14; 1971 ex.s. c 245 § 11.]

18.44.250 Director—Educational conferences—Examinations. The director shall have the authority to hold educational conferences for the benefit of the industry and shall conduct examinations for licenses as an escrow officer. [1977 ex.s. c 156 § 15; 1971 ex.s. c 245 § 12.]

18.44.260 Denial, suspension, or revocation of registration or license—Grounds. The director may, upon notice to the escrow agent and to the insurer providing coverage under RCW 18.44.050 as now or hereafter amended, by order deny, suspend, or revoke the certificate of registration or license of any escrow agent or escrow officer

if he finds that the applicant or any partner, officer, director, controlling person, or employee is guilty of the following:

(1) Obtaining a license or registration by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director.

(2) Violating any of the provisions of this chapter or any lawful rules or regulations made by the director pursuant thereto.

(3) The commission of a crime against the laws of this or any other state or government, involving moral turpitude or dishonest dealings.

(4) Knowingly committing or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relying upon the word, representation, or conduct of the licensee or agent or any partner, officer, director, controlling person, or employee acts to his injury or damage.

(5) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title to his own use or to the use of his principal or of any other person, when delivered to him in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion.

(6) Failing, upon demand, to disclose any information within his knowledge to, or to produce any document, book, or record in his possession for inspection of, the director or his authorized representatives.

(7) Committing any act of fraudulent or dishonest dealing, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter.

(8) Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal. [1977 ex.s. c 156 § 16; 1971 ex.s. c 245 § 13.]

18.44.270 Application of administrative procedure act. The proceedings for revocation, suspension, or refusal to renew or accept an application for renewal of an escrow agent's registration or escrow officer license, and any appeal therefrom or review thereof shall be governed by the provisions of chapter 34.05 RCW. [1977 ex.s. c 156 § 17; 1971 ex.s. c 245 § 14.]

18.44.280 Investigation of violations—Procedure—Powers of director. The director may:

(1) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule, regulation, or order under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter; or

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the director determines, as to all facts and circumstances concerning the matter to be investigated.

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by

him may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the administrative procedure act, chapter 34.05 RCW. [1977 ex.s. c 156 § 21.]

18.44.290 Escrow officer's license—Application—Form—Timely filing—Proof of moral character, etc. Any person desiring to be an escrow officer shall meet the requirements of RCW 18.44.220 as provided in this chapter. The applicant shall make application endorsed by a certificated escrow agent to the director on a form to be prescribed and furnished by the director. Such application must be received by the director within one year of passing the escrow officer examination. With this application the applicant shall:

- (1) Pay a license fee as set forth in this chapter; and
- (2) Furnish such proof as the director may require concerning his honesty, truthfulness, good reputation, and identity, including but not limited to fingerprints. [1977 ex.s. c 156 § 22.]

18.44.300 Escrow officer's license—Fees—Renewal. Any person desiring to be an escrow officer must include with the application a license fee. Every escrow officer license issued under the provisions of this chapter expires on the date one year from the date of issue which date will henceforth be the renewal date. An annual license renewal fee in the same amount must be paid on or before each renewal date: PROVIDED, That licenses issued or renewed prior to September 21, 1977 shall use the existing renewal date as the date of issue. If the application for a renewal license is not received by the director on or before the renewal date such license is expired. The license may be reinstated at any time prior to the next succeeding renewal date following its expiration upon the payment to the director of the annual renewal fee then in default. Acceptance by the director of an application for renewal after the renewal date shall not be a waiver of the delinquency. Licenses not renewed within one year of the renewal date then in default shall be canceled. A new license may be obtained by satisfying the procedures and qualifications for initial licensing, including where applicable successful completion of examinations. [1985 c 340 § 5; 1977 ex.s. c 156 § 23.]

18.44.310 Escrow officer's license—Retention and display by agent—Termination—Inactive licenses. The

license of an escrow officer shall be retained and displayed at all times by the certificated escrow agent, and when the officer ceases to represent the agent, the license shall cease to be in force. Notice of such termination shall be given by the next regular business day by the escrow agent to the director and such notice shall be accompanied by and include the surrender of the escrow officer's license. Failure to notify the director of such termination after demand by the affected escrow officer shall work a forfeiture of the escrow agent's certificate of registration.

The director may hold the escrow officer's license inactive upon application of the escrow officer: PROVIDED, That the escrow officer shall pay the annual renewal fee. Such license may be activated upon application of a certificated escrow agent on a form provided by the director and the payment of a fee. The director shall thereupon issue a new license for the unexpired term if such escrow officer is otherwise entitled thereto. An escrow officer's first license shall not be issued inactive. [1989 c 51 § 1; 1985 c 340 § 6; 1977 ex.s. c 156 § 24.]

18.44.320 Rules and regulations—Enforcement—Hearings—Denial, suspension, or revocation of registration or licenses—Powers of director. The director may issue rules and regulations to govern the activities of certificated escrow agents and escrow officers. The director shall enforce all laws, rules, and regulations relative to the registration of escrow agents and licensing of escrow officers. The director may hold hearings and suspend or revoke the registration or licenses of violators and may deny, suspend, or revoke the authority of an escrow officer to act as the designated escrow officer of a person who commits violations of this chapter or of the rules and regulations.

Except as specifically provided in this chapter, the rules adopted and the hearings conducted shall be in accordance with the provisions of chapter 34.05 RCW, the administrative procedure act. [1977 ex.s. c 156 § 25.]

18.44.330 Escrow agent branch offices—Application to establish—Requirements. An escrow agent shall not operate an escrow business in a location other than the location set forth on the agent's certificate of registration issued by the director. The escrow agent may apply to the director for authority to establish one or more branch offices under the same name as the main office.

Any person desiring to operate a branch escrow office shall make application on a form provided by the director and pay a fee as set forth in this chapter. Such application shall identify the natural person designated as the escrow officer to supervise the agent's escrow activity at the escrow agent branch office.

No escrow agent branch office certificate of registration shall be issued until the applicant has satisfied the director that the escrow activity of said branch meets all financial responsibility requirements governing the conduct of escrow activity. [1977 ex.s. c 156 § 26.]

18.44.340 Escrow agent branch offices—Issuance of certificate. Upon the filing of the application for an escrow agent branch office and satisfying the requirements of this chapter, the director shall issue and deliver to the applicant

a certificate of registration to engage in the business of an escrow agent at the branch location set forth on the certificate. [1977 ex.s. c 156 § 27.]

18.44.350 Certificates and licenses—Form and size—Contents. Each escrow agent and escrow agent branch office certificate of registration and each escrow officer license, when issued, shall be in the form and size prescribed by the director and shall state in addition to any other matter required by the director:

- (1) The name of the licensee or registrant;
- (2) The name under which the applicant will do business;
- (3) The address at which the applicant will do business;
- (4) The expiration date of the license or registration; and
- (5) In the case of a corporation, partnership, or branch office, the name of the natural person who is designated to act as the escrow officer on behalf thereof. [1977 ex.s. c 156 § 28.]

18.44.360 Waiver of bond or policy where not reasonably available—Determination procedure—Waiver period. The director shall, within thirty days after the written request of the escrow commission, hold a public hearing to determine whether the fidelity bond and/or the errors and omissions policy specified in RCW 18.44.050 as now or hereafter amended is reasonably available to a substantial number of certificated escrow agents. If the director determines and the insurance commissioner concurs that such bond and/or policy is not reasonably available, the director shall waive the requirements for such bond and/or policy for a fixed period of time. [1988 c 178 § 2; 1977 ex.s. c 156 § 30.]

Severability—1988 c 178: See note following RCW 18.44.070.

18.44.370 Mutual corporation for insuring where bond or policy not reasonably available. After a written determination by the director, with the consent of the insurance commissioner, that the fidelity bond and/or the errors and omissions policy required under RCW 18.44.050 as now or hereafter amended is cost-prohibitive, or after a determination as provided in RCW 18.44.360 that such bond or policy is not reasonably available, upon the request of an association comprised of certificated escrow agents, the director, with the consent of the insurance commissioner, may authorize such association to organize a mutual corporation pursuant to chapter 24.06 RCW, exempt from the provisions of Title 48 RCW, for the purpose of insuring or self-insuring against claims arising out of escrow transactions, if, in the director's judgment, there is a substantial likelihood that the corporation will operate for the benefit of the public and if the corporation shall have established rules, procedures, and reserves which satisfy the director that it will operate in a financially responsible manner which provides a substantial probability that it shall be able to pay any claims made against the corporation, up to the limits of financial responsibility as provided in RCW 18.44.050, as now or hereafter amended. The director, with the consent of the insurance commissioner, may limit the authority of the corporation to the insuring or self-insuring of claims which would be within the coverage specified in RCW 18.44.050.

The director, with the consent of the insurance commissioner, may revoke the authority of the corporation to transact insurance or self-insurance if he determines, pursuant to chapter 34.05 RCW, that the corporation is not acting in a financially responsible manner or for the benefit of the public. [1987 c 471 § 4; 1977 ex.s. c 156 § 31.]

Severability—1987 c 471: "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 471 § 11.]

Effective date—1987 c 471: "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 July 1, 1987." [1987 c 471 § 13.]

18.44.375 Waiver of errors and omissions policy requirement—Criteria. The following criteria will be considered by the director when deciding whether to grant a licensed escrow agent a waiver from the errors and omissions policy requirement under RCW 18.44.050:

(1) Whether the director has determined pursuant to RCW 18.44.360 that an errors and omissions policy is not reasonably available to a substantial number of licensed escrow agents;

(2) Whether purchasing an errors and omissions policy would be cost-prohibitive for the licensed escrow agent requesting the exemption;

(3) Whether a licensed escrow agent has wilfully violated the provisions of chapter 18.44 RCW, which violation thereby resulted in the termination of the agent's certificate, or engaged in any other conduct resulting in the termination of the escrow certificate;

(4) Whether a licensed escrow agent has paid claims directly or through an errors and omissions carrier, exclusive of costs and attorney fees, in excess of ten thousand dollars in the calendar year preceding the year for which the waiver is requested;

(5) Whether a licensed escrow agent has paid claims directly or through an errors or omissions insurance carrier, exclusive of costs and attorney fees, totaling in excess of twenty thousand dollars in the three calendar years preceding the calendar year for which the exemption is requested; and

(6) Whether the licensed escrow agent has been convicted of a crime involving honesty or moral turpitude.

These criteria are not intended to be a wholly inclusive list of factors to be applied by the director when considering the merits of a licensed escrow agent's request for a waiver of the required errors and omissions policy. [1987 c 471 § 5.]

Effective date—Severability—1987 c 471: See notes following RCW 18.44.370.

18.44.380 Waiver of errors and omissions policy requirement—Affidavit. A request for a waiver of the required errors and omissions policy may be accomplished under the statute by submitting to the director an affidavit that substantially addresses the following:

REQUEST FOR WAIVER OF
ERRORS AND OMISSIONS POLICY

I,, residing at, City of, County of, State of Washington, declare the following:

(1) The state escrow commission has determined that an errors and omissions policy is not reasonably available to a substantial number of licensed escrow officers; and

(2) Purchasing an errors and omissions policy is cost-prohibitive at this time; and

(3) I have not engaged in any conduct that resulted in the termination of my escrow certificate; and

(4) I have not paid, directly or through an errors and omissions policy, claims in excess of ten thousand dollars, exclusive of costs and attorneys' fees, during the calendar year preceding submission of this affidavit; and

(5) I have not paid, directly or through an errors and omissions policy, claims, exclusive of costs and attorneys' fees, totaling in excess of twenty thousand dollars in the three calendar years immediately preceding submission of this affidavit; and

(6) I have not been convicted of a crime involving honesty or moral turpitude during the calendar year preceding submission of this application.

THEREFORE, in consideration of the above, I,, respectfully request that the director of licensing grant this request for a waiver of the requirement that I purchase and maintain an errors and omissions policy covering my activities as an escrow agent licensed by the state of Washington for the period from, 19. . ., to, 19. . . Submitted this day of day of, 19. . .

.....
(signature)

State of Washington, }
County of King } ss.

I certify that I know or have satisfactory evidence that, signed this instrument and acknowledged it to be free and voluntary act for the uses and purposes mentioned in the instrument.

Dated
Signature of
Notary Public
(Seal or stamp) Title
My appointment expires

[1987 c 471 § 10.]

Effective date—Severability—1987 c 471: See notes following RCW 18.44.370.

18.44.385 Waiver of errors and omissions policy requirement—Determination. The director shall, within thirty days following submission of a written petition for waiver of the insurance requirements found in RCW 18.44.050, issue a written determination granting or rejecting an applicant's request for waiver. [1987 c 471 § 6.]

Effective date—Severability—1987 c 471: See notes following RCW 18.44.370.

18.44.390 Waiver of errors and omissions policy requirement—Certificate of waiver. Upon granting a waiver of insurance requirements found in RCW 18.44.050, the director shall issue a certificate of waiver, which certificate shall be mailed to the escrow agent who requested the waiver. [1987 c 471 § 7.]

Effective date—Severability—1987 c 471: See notes following RCW 18.44.370.

18.44.395 Waiver of errors and omissions policy requirement—Denial. Upon determining that a licensed escrow agent is to be denied a waiver of the errors and omissions policy requirements of RCW 18.44.050, the director shall within thirty days of the denial of an escrow agent's request for same, provide to the escrow agent a written explanation of the reasons for the director's decision to deny the requested waiver. [1987 c 471 § 8.]

Effective date—Severability—1987 c 471: See notes following RCW 18.44.370.

18.44.398 Waiver of errors and omissions policy requirement—Application by escrow license applicant. Nothing in RCW 18.44.050 and 18.44.375 through 18.44.395 shall be construed as prohibiting a person applying for an escrow license from applying for a certificate of waiver of the errors and omissions policy requirement when seeking an escrow license. [1987 c 471 § 9.]

Effective date—Severability—1987 c 471: See notes following RCW 18.44.370.

18.44.900 Construction—1965 c 153. Nothing in this chapter shall be so construed as to authorize any escrow agent, or his employees or agents, to engage in the practice of law, and nothing in this chapter shall be so construed as to impose any additional liability on any depository authorized by this chapter and the receipt or acquittance of the persons so paid by such depository shall be a valid and sufficient release and discharge of such depository. [1965 c 153 § 20.]

18.44.910 Short title. This chapter shall be known and cited as the "Escrow Agent Registration Act". [1965 c 153 § 21.]

18.44.920 Severability—1971 ex.s. c 245. 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. [1971 ex.s. c 245 § 15.]

18.44.921 Severability—1977 ex.s. c 156. 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 156 § 33.]

18.44.922 Severability—1979 c 70. 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 70 § 2.]

Chapter 18.45

FURNITURE AND BEDDING INDUSTRY

Sections

- 18.45.010 Definitions.
- 18.45.020 Administration of chapter.
- 18.45.440 Inspection of premises, records, materials—Powers of secretary.
- 18.45.450 Condemnation of articles, materials—Grounds—Disposition.
- 18.45.470 Condemned articles—Failure to relinquish—Penalty.

18.45.010 Definitions.

Reviser's note: RCW 18.45.010 was both amended and repealed during the 1979 legislative sessions, each without reference to the other. The repeal took effect on June 30, 1982. This section has been decodified for publication purposes pursuant to RCW 1.12.025.

18.45.020 Administration of chapter.

Reviser's note: RCW 18.45.020 was both amended and repealed during the 1979 legislative sessions, each without reference to the other. The repeal took effect on June 30, 1982. This section has been decodified for publication purposes pursuant to RCW 1.12.025.

18.45.440 Inspection of premises, records, materials—Powers of secretary.

Reviser's note: RCW 18.45.440 was both amended and repealed during the 1979 legislative sessions, each without reference to the other. The repeal took effect on June 30, 1982. This section has been decodified for publication purposes pursuant to RCW 1.12.025.

18.45.450 Condemnation of articles, materials—Grounds—Disposition.

Reviser's note: RCW 18.45.450 was both amended and repealed during the 1979 legislative sessions, each without reference to the other. The repeal took effect on June 30, 1982. This section has been decodified for publication purposes pursuant to RCW 1.12.025.

18.45.470 Condemned articles—Failure to relinquish—Penalty.

Reviser's note: RCW 18.45.470 was both amended and repealed during the 1979 legislative sessions, each without reference to the other. The repeal took effect on June 30, 1982. This section has been decodified for publication purposes pursuant to RCW 1.12.025.

Chapter 18.46

MATERNITY HOMES

Sections

- 18.46.005 Purpose.
- 18.46.010 Definitions.
- 18.46.020 License required.
- 18.46.030 Application for license—Fee.
- 18.46.040 License—Issuance—Renewal—Limitations—Display.
- 18.46.050 License—Denial, suspension, revocation.
- 18.46.060 Rules and regulations.
- 18.46.070 Rules and regulations—Time for compliance.
- 18.46.080 Inspection of maternity homes—Approval of new facilities.
- 18.46.090 Information confidential.
- 18.46.110 Fire protection—Duties of director of community development.
- 18.46.120 Operating without license—Penalty.
- 18.46.130 Operating without license—Injunction.
- 18.46.140 Application of chapter to homes operated by certain religious organizations.
- 18.46.900 Severability—1951 c 168.

Abortion: Chapter 9.02 RCW.

Crimes relating to pregnancy and childbirth: RCW 9A.32.060.

Filing certificate of birth: RCW 70.58.080.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

18.46.005 Purpose. The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of maternity homes, which, in the light of advancing knowledge, will promote safe and adequate care and treatment of the individuals therein. [1951 c 168 § 1.]

18.46.010 Definitions. (1) "Maternity home" means any home, place, hospital or institution in which facilities are maintained for the care of four or more women, not related by blood or marriage to the operator, during pregnancy or during or within ten days after delivery: PROVIDED, HOWEVER, That this chapter shall not apply to any hospital approved by the American College of Surgeons, American Osteopathic Association or its successor.

(2) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(3) "Department" means the state department of health. [1991 c 3 § 100; 1985 c 213 § 8; 1979 c 141 § 32; 1951 c 168 § 2. Prior: 1943 c 214 § 1; Rem. Supp. 1943 § 6130-47.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

18.46.020 License required. After July 1, 1951 no person shall operate a maternity home in this state without a license under this chapter. [1951 c 168 § 3. Prior: 1943 c 214 § 2; Rem. Supp. 1943 § 6130-48.]

18.46.030 Application for license—Fee. An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires, which may include affirmative evidence of ability to comply with rules and regulations as are lawfully prescribed hereunder. Each application for license or renewal of license shall be accompanied by a license fee as established by the department under RCW 43.20B.110: PROVIDED, That no fee shall be required of charitable or nonprofit or government-operated institutions. [1987 c 75 § 4; 1982 c 201 § 5; 1951 c 168 § 4.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

18.46.040 License—Issuance—Renewal—Limitations—Display. Upon receipt of an application for a license and the license fee, the licensing agency shall issue a license if the applicant and the maternity home facilities meet the requirements established under this chapter. A license, unless suspended or revoked, shall be renewable annually. Applications for renewal shall be on forms provided by the department and shall be filed in the department not less than ten days prior to its expiration. Each application for renewal shall be accompanied by a license fee as established by the department under RCW 43.20B.110. Each license shall be issued only for the

premises and persons named in the application and shall not be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises. [1987 c 75 § 5; 1982 c 201 § 6; 1951 c 168 § 5. Prior: 1943 c 214 § 3; Rem. Supp. 1943 § 6130-49.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

18.46.050 License—Denial, suspension, revocation.

The department may deny, suspend, or revoke a license in any case in which it finds that there has been failure or refusal to comply with the requirements established under this chapter or the rules adopted under it.

RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1991 c 3 § 101; 1989 c 175 § 63; 1985 c 213 § 9; 1951 c 168 § 6.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

18.46.060 Rules and regulations. The department, after consultation with representatives of maternity home operators, state medical association, Washington Osteopathic Association, state nurses association, state hospital association, and any other representatives as the department may deem necessary, shall adopt, amend, and promulgate such rules and regulations with respect to all maternity homes in the promotion of safe and adequate medical and nursing care of inmates in the maternity home and the sanitary, hygienic and safe condition of the maternity home in the interest of the health, safety and welfare of the people. [1985 c 213 § 10; 1951 c 168 § 7.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

18.46.070 Rules and regulations—Time for compliance. Any maternity home which is in operation at the time of promulgation of any applicable rules or regulations under this chapter shall be given a reasonable time, under the particular circumstances, not to exceed three months from the date of such promulgation, to comply with the rules and regulations established under this chapter. [1951 c 168 § 8.]

18.46.080 Inspection of maternity homes—Approval of new facilities. The department shall make or cause to be made an inspection and investigation of all maternity homes, and every inspection may include an inspection of every part of the premises. The department may make an examination of all records, methods of administration, the general and special dietary and the stores and methods of supply. The board may prescribe by regulation that any licensee or applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall before commencing such alterations, addition, or new construction submit plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to compliance with regulations and standards herein authorized. Necessary conferenc-

es and consultations may be provided. [1951 c 168 § 9. Prior: 1943 c 214 § 4; Rem. Supp. 1943 § 6130-50.]

18.46.090 Information confidential. All information received by the department through filed reports, inspection, or as otherwise authorized under this chapter shall not be disclosed publicly in any manner as to identify individuals or maternity homes except in a proceeding involving the question of licensure. [1951 c 168 § 10.]

18.46.110 Fire protection—Duties of director of community development. Fire protection with respect to all maternity homes to be licensed hereunder, shall be the responsibility of the director of community development, through the director of fire protection, who shall adopt by reference, such recognized standards as may be applicable to nursing homes, places of refuge, and maternity homes for the protection of life against the cause and spread of fire and fire hazards. The department upon receipt of an application for a license, shall submit to the director of community development, through the director of fire protection, in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the director of community development, through the director of fire protection, or his or her deputy, shall make an inspection of the maternity home to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the director of community development, through the director of fire protection, he or she shall promptly make a written report to the department as to the manner in which the premises may qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department, applicant or licensee shall notify the director of community development, through the director of fire protection, upon completion of any requirements made by him or her, and the director of community development, through the director of fire protection, or his or her deputy, shall make a reinspection of such premises. Whenever the maternity home to be licensed meets with the approval of the director of community development, through the director of fire protection, he or she shall submit to the department, a written report approving same with respect to fire protection before a license can be issued. The director of community development, through the director of fire protection, shall make or cause to be made such inspection of such maternity homes as he or she deems necessary.

In cities which have in force a comprehensive building code, the regulation of which is equal to the minimum standards of the code for maternity homes adopted by the director of community development, through the director of fire protection, the building inspector and the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection and shall approve the premises before a license can be issued.

In cities where such building codes are in force, the director of community development, through the director of fire protection, may, upon request by the chief fire official, or the local governing body, or of a taxpayer of such city, assist in the enforcement of any such code pertaining to maternity homes. [1986 c 266 § 82; 1951 c 168 § 12.]

Severability—1986 c 266: See note following RCW 38.52.005.
State fire protection: Chapter 48.48 RCW.

18.46.120 Operating without license—Penalty. Any person operating or maintaining any maternity home without a license under this chapter shall be guilty of a misdemeanor. Each day of a continuing violation after conviction shall be considered a separate offense. [1951 c 168 § 13.]

18.46.130 Operating without license—Injunction. Notwithstanding the existence or use of any other remedy, the department may in the manner provided by law, upon the advice of the attorney general who shall represent the department in all proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the operation or maintenance of a maternity home not licensed under this chapter. [1951 c 168 § 14.]

Injunctions: Chapter 7.40 RCW.

18.46.140 Application of chapter to homes operated by certain religious organizations. Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial and nursing care of residents or patients in any maternity home as defined in this chapter, conducted for or by members of a recognized religious sect, denomination, or organization which in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion, nor shall the existence of any of the above conditions militate against the licensing of such home or institution. [1951 c 168 § 15.]

18.46.900 Severability—1951 c 168. If any provision of this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1951 c 168 § 17.]

Chapter 18.50 MIDWIFERY

Sections

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Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.50.003 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

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

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of health.

(3) "Midwife" means a midwife licensed under this chapter.

(4) "Physician" means a physician licensed under chapter 18.57 or 18.71 RCW. [1991 c 3 § 102; 1987 c 467 § 1; 1981 c 53 § 2.]

Effective date—1981 c 53: "Sections 1, 2, 5, 6, 8, 9, 10, 11, and 13 through 17 of this act shall take effect January 15, 1982." [1981 c 53 § 19.] For codification of 1981 c 53, see Codification Tables, Volume 0.

18.50.010 Practicing midwifery defined—Gratuitous services—Duty to consult with physician. Any person shall be regarded as practicing midwifery within the meaning of this chapter who shall render medical aid for a fee or compensation to a woman during prenatal, intrapartum, and postpartum stages or who shall advertise as a midwife by signs, printed cards, or otherwise. Nothing shall be construed in this chapter to prohibit gratuitous services. It shall be the duty of a midwife to consult with a physician whenever there are significant deviations from normal in either the mother or the infant. [1991 c 3 § 103; 1987 c 467 § 2; 1981 c 53 § 5; 1917 c 160 § 8; RRS § 10181. Formerly RCW 18.50.010, 18.50.030, part, and 18.50.090.]

Effective date—1981 c 53: See note following RCW 18.50.005.

18.50.020 License required. Any person who shall practice midwifery in this state after July 1, 1917, shall first obtain from the secretary a license so to do, and the said secretary is authorized to grant such license after examination of the applicant as hereinafter provided. [1991 c 3 § 104; 1917 c 160 § 1; RRS § 10174.]

18.50.030 Exemptions—Practice of religion—Treatment by prayer. This chapter shall not be construed to interfere in any way with the practice of religion, nor be

held to apply to or regulate any kind of treatment by prayer. [1917 c 160 § 12; RRS § 10185. FORMER PART OF SECTION: 1917 c 160 § 8, part; RRS § 10181, part, now codified in RCW 18.50.010.]

Gratuitous services exempted: RCW 18.50.010.

18.50.032 Exemptions—Registered nurses and nurse midwives. Registered nurses and nurse midwives certified by the board of nursing under chapter 18.88 RCW shall be exempt from the requirements and provisions of this chapter. [1981 c 53 § 10.]

Effective date—1981 c 53: See note following RCW 18.50.005.

18.50.034 Exemptions—Persons enrolled in midwifery programs. Nothing in this chapter shall be construed to apply to or interfere in any way with the practice of midwifery by a person who is enrolled in a program of midwifery approved and accredited by the secretary: PROVIDED, That the performance of such services is only pursuant to a regular course of instruction or assignment from the student's instructor, and that such services are performed only under the supervision and control of a person licensed in the state of Washington to perform services encompassed under this chapter. [1991 c 3 § 105; 1981 c 53 § 11.]

Effective date—1981 c 53: See note following RCW 18.50.005.

18.50.040 Candidates for examination—Application—Eligibility—Student midwife permits. (1) Any person seeking to be examined shall present to the secretary, at least forty-five days before the commencement of the examination, a written application on a form or forms provided by the secretary setting forth under affidavit such information as the secretary may require and proof the candidate has received a high school degree or its equivalent; that the candidate is twenty-one years of age or older; that the candidate has received a certificate or diploma from a midwifery program accredited by the secretary and licensed under chapter 28C.10 RCW, when applicable, or a certificate or diploma in a foreign institution on midwifery of equal requirements conferring the full right to practice midwifery in the country in which it was issued. The diploma must bear the seal of the institution from which the applicant was graduated. Foreign candidates must present with the application a translation of the foreign certificate or diploma made by and under the seal of the consulate of the country in which the certificate or diploma was issued.

(2) The candidate shall meet the following conditions:

(a) Obtaining a minimum period of midwifery training for at least three years including the study of the basic nursing skills that the department shall prescribe by rule. However, if the applicant is a registered nurse under chapter 18.88 RCW, a licensed practical nurse under chapter 18.78 RCW, or has had previous nursing education or practical midwifery experience, the required period of training may be reduced depending upon the extent of the candidate's qualifications as determined under rules adopted by the department. In no case shall the training be reduced to a period of less than two years.

(b) Meeting minimum educational requirements which shall include studying obstetrics; neonatal pediatrics; basic

sciences; female reproductive anatomy and physiology; behavioral sciences; childbirth education; community care; obstetrical pharmacology; epidemiology; gynecology; family planning; genetics; embryology; neonatology; the medical and legal aspects of midwifery; nutrition during pregnancy and lactation; breast feeding; nursing skills, including but not limited to injections, administering intravenous fluids, catheterization, and aseptic technique; and such other requirements prescribed by rule.

(c) For a student midwife during training, undertaking the care of not less than fifty women in each of the prenatal, intrapartum, and early postpartum periods, but the same women need not be seen through all three periods. A student midwife may be issued a permit upon the satisfactory completion of the requirements in (a), (b), and (c) of this subsection and the satisfactory completion of the licensure examination required by RCW 18.50.060. The permit permits the student midwife to practice under the supervision of a midwife licensed under this chapter, a physician or a certified nurse-midwife licensed under the authority of chapter 18.88 RCW. The permit shall expire within one year of issuance and may be extended as provided by rule.

(d) Observing an additional fifty women in the intrapartum period before the candidate qualifies for a license.

(3) Notwithstanding subsections (1) and (2) of this section, the department shall adopt rules to provide credit toward the educational requirements for licensure before July 1, 1988, of nonlicensed midwives, including rules to provide:

(a) Credit toward licensure for documented deliveries;

(b) The substitution of relevant experience for classroom time; and

(c) That experienced lay midwives may sit for the licensing examination without completing the required coursework.

The training required under this section shall include training in either hospitals or alternative birth settings or both with particular emphasis on learning the ability to differentiate between low-risk and high-risk pregnancies. [1991 c 3 § 106; 1987 c 467 § 3; 1986 c 299 § 24; 1981 c 53 § 6; 1917 c 160 § 2; RRS § 10175.]

Severability—Effective date—1986 c 299: See RCW 28C.10.900 and 28C.10.902.

Effective date—1981 c 53: See note following RCW 18.50.005.

18.50.045 Midwifery education programs—Accreditation. The secretary shall promulgate standards by rule under chapter 34.05 RCW for accrediting midwifery educational programs. The standards shall cover the provision of adequate clinical and didactic instruction in all subjects and noncurriculum matters under this section including, but not limited to, staffing and teacher qualifications. In developing the standards, the secretary shall be advised by and receive the recommendations of the midwifery advisory committee. [1991 c 3 § 107; 1981 c 53 § 7.]

18.50.050 Admission of candidate to examination—Fee—Reexamination. If the application is approved and the candidate shall have deposited an examination fee determined by the secretary as provided in RCW 43.70.250 with the secretary, the candidate shall be admitted to the examination, and in case of failure to pass the examination, may be

reexamined at any regular examination within one year without the payment of an additional fee, said fee to be retained by the secretary after failure to pass the second examination. [1991 c 3 § 108; 1985 c 7 § 48; 1975 1st ex.s. c 30 § 51; 1917 c 160 § 3; RRS § 10176.]

Limitation on increases in midwifery fees: RCW 43.24.086.

18.50.060 Examinations—Times and places—Subjects—Issuance of license. (1) The secretary is hereby authorized and empowered to execute the provisions of this chapter and shall offer examinations in midwifery at least twice a year at such times and places as the secretary may select. The examinations shall be written and shall be in the English language.

(2) The secretary, with the assistance of the midwifery advisory committee, shall develop or approve a licensure examination in the subjects that the secretary determines are within the scope of and commensurate with the work performed by a licensed midwife. The examination shall be sufficient to test the scientific and practical fitness of candidates to practice midwifery. All application papers shall be deposited with the secretary and there retained for at least one year, when they may be destroyed.

(3) If the examination is satisfactorily completed, the secretary shall issue to such candidate a license entitling the candidate to practice midwifery in the state of Washington. [1991 c 3 § 109; 1987 c 467 § 4; 1981 c 53 § 8; 1979 c 158 § 43; 1917 c 160 § 4; RRS § 10177.]

Effective date—1981 c 53: See note following RCW 18.50.005.

18.50.065 Credentialing by endorsement. An applicant holding a credential in another state may be credentialed to practice in this state without examination if the secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1991 c 332 § 32.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

18.50.102 Annual registration—Renewal fee—Delinquent renewals. Every person licensed to practice midwifery shall register with the secretary annually and pay an annual renewal registration fee determined by the secretary as provided in RCW 43.70.250 on or before the licensee's birth anniversary date. The license of the person shall be renewed for a period of one year. Any failure to register and pay the annual renewal registration fee shall render the license invalid. The license shall be reinstated upon written application to the secretary, payment to the state of a penalty fee determined by the secretary as provided in RCW 43.70.250, and payment to the state of all delinquent annual license renewal fees. Any person who fails to renew his or her license for a period of three years shall not be entitled to renew such license under this section. Such person, in order to obtain a license to practice midwifery in this state, shall file a new application under this chapter, along with the required fee. The secretary, in the secretary's discretion, may permit the applicant to be licensed without examination if satisfied that the applicant meets all the requirements for licensure in this state and is

competent to engage in the practice of midwifery. [1991 c 3 § 110; 1985 c 7 § 49; 1981 c 53 § 13.]

Effective date—1981 c 53: See note following RCW 18.50.005.

Limitation on increases in midwifery fees: RCW 43.24.086.

18.50.105 Inform patient of qualifications of midwife—Form. The secretary, with the advice of the midwifery advisory committee, shall develop a form to be used by a midwife to inform the patient of the qualifications of a licensed midwife. [1991 c 3 § 111; 1981 c 53 § 12.]

18.50.108 Written plan for consultation, emergency transfer, and transport. Every licensed midwife shall develop a written plan for consultation with other health care providers, emergency transfer, transport of an infant to a newborn nursery or neonatal intensive care nursery, and transport of a woman to an appropriate obstetrical department or patient care area. The written plan shall be submitted annually together with the license renewal fee to the department. [1981 c 53 § 14.]

Effective date—1981 c 53: See note following RCW 18.50.005.

18.50.115 Administration of drugs and medications. A midwife licensed under this chapter may obtain and administer prophylactic ophthalmic medication, postpartum oxytocic, vitamin K, Rho immune globulin (human), and local anesthetic and may administer such other drugs or medications as prescribed by a physician. A pharmacist who dispenses such drugs to a licensed midwife shall not be liable for any adverse reactions caused by any method of use by the midwife.

The secretary, after consultation with representatives of the midwife advisory committee, the board of pharmacy, and the board of medical examiners, may issue regulations which authorize licensed midwives to purchase and use legend drugs and devices in addition to the drugs authorized in this chapter. [1991 c 3 § 112; 1987 c 467 § 6.]

18.50.126 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 31; 1986 c 259 § 75.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.50.130 "Certificate" and "license" synonymous. The words "certificate" and "license" shall be known as interchangeable terms in this chapter. [1917 c 160 § 11; RRS § 10184.]

18.50.135 Rules. The secretary shall promulgate rules under chapter 34.05 RCW as are necessary to carry out the purposes of this chapter. [1991 c 3 § 113; 1981 c 53 § 15.]

Effective date—1981 c 53: See note following RCW 18.50.005.

18.50.140 Midwifery advisory committee—Generally. The midwifery advisory committee is created. The committee shall be composed of one physician who is a practicing obstetrician; one practicing physician; one

certified nurse midwife licensed under chapter 18.88 RCW; three midwives licensed under this chapter; and one public member, who shall have no financial interest in the rendering of health services. The committee may seek other consultants as appropriate, including persons trained in childbirth education and perinatology or neonatology.

The members are appointed by the secretary and serve at the pleasure of the secretary but may not serve more than five years consecutively. The terms of office shall be staggered. Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now or hereafter amended. [1991 c 3 § 114; 1987 c 467 § 5; 1981 c 53 § 3.]

18.50.150 Midwifery advisory committee—Advice and recommendations—Transmittal to legislature. The midwifery advisory committee shall advise and make recommendations to the secretary on issues including, but not limited to, continuing education, mandatory reexamination, and peer review. The secretary shall transmit the recommendations to the social and health services committee of the senate and the human services committee of the house of representatives on an annual basis. [1991 c 3 § 115; 1981 c 53 § 4.]

18.50.900 Repeal and saving. All acts or parts of acts inconsistent with the provisions of this chapter may be and the same are hereby repealed: PROVIDED, This chapter shall not repeal the provisions of the vital statistics laws of the state, but shall be deemed as additional and cumulative provisions. [1917 c 160 § 10.]

Chapter 18.51 NURSING HOMES

Sections

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- 18.51.530 Notice of change of ownership or management.
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- 18.51.910 Nursing home advisory council—Termination.
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Boarding homes: Chapter 18.20 RCW.

Employment of dental hygienist without supervision of dentist authorized: RCW 18.29.056.

Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.

Maternity homes: Chapter 18.46 RCW.

Resident care, operating standards: Chapter 74.42 RCW.

18.51.005 Purpose. The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of nursing homes, which, in the light of advancing knowledge, will promote safe and adequate care and treatment of the individuals therein. An important secondary purpose is the improvement of nursing home practices by educational methods so that such practices eventually exceed the minimum requirements of the basic law and its original standards. [1951 c 117 § 1.]

18.51.007 Legislative intent. It is the intent of the legislature in enacting *this 1975 amendatory act to establish (1) a system for the imposition of prompt and effective sanctions against nursing homes in violation of the laws and regulations of this state relating to patient care; (2) an inspection and reporting system to insure that nursing homes are in compliance with state statutes and regulations pertaining to patient care; and (3) a mechanism to insure that licenses are issued to or retained by only those nursing

homes that meet state standards for resident health and safety. [1981 1st ex.s. c 2 § 14; 1975 1st ex.s. c 99 § 3.]

***Reviser's note:** "This 1975 amendatory act" [1975 1st ex.s. c 99] consists of RCW 18.51.007, 18.51.055, 18.51.065, and 18.51.190 through 18.51.290, amendments to RCW 18.51.050 and 18.51.060, and the repeal of RCW 18.51.090, 18.51.120, and 18.51.130.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.010 Definitions. (1) "Nursing home" means any home, place or institution which operates or maintains facilities providing convalescent or chronic care, or both, for a period in excess of twenty-four consecutive hours for three or more patients not related by blood or marriage to the operator, who by reason of illness or infirmity, are unable properly to care for themselves. Convalescent and chronic care may include but not be limited to any or all procedures commonly employed in waiting on the sick, such as administration of medicines, preparation of special diets, giving of bedside nursing care, application of dressings and bandages, and carrying out of treatment prescribed by a duly licensed practitioner of the healing arts. It may also include care of mentally incompetent persons. It may also include community-based care. Nothing in this definition shall be construed to include general hospitals or other places which provide care and treatment for the acutely ill and maintain and operate facilities for major surgery or obstetrics, or both. Nothing in this definition shall be construed to include any boarding home, guest home, hotel or related institution which is held forth to the public as providing, and which is operated to give only board, room and laundry to persons not in need of medical or nursing treatment or supervision except in the case of temporary acute illness. The mere designation by the operator of any place or institution as a hospital, sanitarium, or any other similar name, which does not provide care for the acutely ill and maintain and operate facilities for major surgery or obstetrics, or both, shall not exclude such place or institution from the provisions of this chapter: PROVIDED, That any nursing home providing psychiatric treatment shall, with respect to patients receiving such treatment, comply with the provisions of RCW 71.12.560 and 71.12.570.

(2) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(3) "Secretary" means the secretary of the department of social and health services.

(4) "Department" means the state department of social and health services.

(5) "Community-based care" means but is not limited to the following:

- (a) Home delivered nursing services;
- (b) Personal care;
- (c) Day care;
- (d) Nutritional services, both in-home and in a communal dining setting;
- (e) Habilitation care; and
- (f) Respite care. [1983 c 236 § 1; 1981 1st ex.s. c 2 § 15; 1973 1st ex.s. c 108 § 1; 1953 c 160 § 1; 1951 c 117 § 2.]

Construction—1983 c 236: "Nothing in this 1983 act affects the provisions of chapter 70.38 RCW." [1983 c 236 § 3.] This applies to the 1983 c 236 amendments to RCW 18.51.010 and 18.51.091.

Severability—1981 1st ex.s. c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 1st ex.s. c 2 § 28.]

Effective dates—1981 1st ex.s. c 2: "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 1, 2, 3, and 10 through 26 of this act shall take effect on July 1, 1981. Section 4 of this act shall take effect on July 1, 1983. Sections 5 through 9 of this act shall take effect on July 1, 1984." [1981 1st ex.s. c 2 § 27.]

The above two annotations apply to 1981 1st ex.s. c 2. For codification of that act, see Codification Tables, Volume 0.

18.51.030 License required. After July 1, 1951 no person shall operate or maintain a nursing home in this state without a license under this chapter. [1951 c 117 § 4.]

18.51.040 Application for license. An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires, which may include affirmative evidence of ability to comply with the rules and regulations as are lawfully prescribed hereunder. [1953 c 160 § 3; 1951 c 117 § 5.]

18.51.050 License—Issuance, renewal—Fee—Display. Upon receipt of an application for license, the department shall issue a license if the applicant and the nursing home facilities meet the requirements established under this chapter, except that the department shall issue a temporary license to a court-appointed receiver for a period not to exceed six months from the date of appointment. Prior to the issuance or renewal of the license, the licensee shall pay a license fee as established by the department. No fee shall be required of government operated institutions or court-appointed receivers. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department, but no license issued pursuant to this chapter shall exceed thirty-six months in duration. When a change of ownership occurs, the entity becoming the licensed operating entity of the facility shall pay a fee established by the department at the time of application for the license. The previously determined date of license expiration shall not change. The department shall establish license fees at an amount adequate to reimburse the department in full for all costs of its licensing activities for nursing homes, adjusted to cover the department's cost of reimbursing such fees through medicaid.

All applications and fees for renewal of the license shall be submitted to the department not later than thirty days prior to the date of expiration of the license. All applications and fees for change of ownership licenses shall be submitted to the department not later than sixty days before the date of the proposed change of ownership. Each license shall be issued only to the operating entity and those persons named in the license application. The license is valid only for the operation of the facility at the location specified in the license application. Licenses are not transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises. [1991 sp.s. c 8 § 1; 1989 c 372 §

1; 1985 c 284 § 4; 1981 2nd ex.s. c 11 § 2; 1981 1st ex.s. c 2 § 17; 1975 1st ex.s. c 99 § 1; 1971 ex.s. c 247 § 2; 1953 c 160 § 4; 1951 c 117 § 6.]

Effective date—1991 sp.s. c 8: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 8 § 21.]

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.054 Denial of license. The department may deny a license to any applicant if the department finds that the applicant or any partner, officer, director, managerial employee, or owner of five percent or more of the applicant:

(1) Operated a nursing home without a license or under a revoked or suspended license; or

(2) Knowingly or with reason to know made a false statement of a material fact (a) in an application for license or any data attached thereto, or (b) in any matter under investigation by the department; or

(3) Refused to allow representatives or agents of the department to inspect (a) all books, records, and files required to be maintained or (b) any portion of the premises of the nursing home; or

(4) Willfully prevented, interfered with, or attempted to impede in any way (a) the work of any authorized representative of the department or (b) the lawful enforcement of any provision of this chapter or chapter 74.42 RCW; or

(5) Has a history of significant noncompliance with federal or state regulations in providing nursing home care. In deciding whether to deny a license under this section, the factors the department considers shall include the gravity and frequency of the noncompliance. [1989 c 372 § 7; 1985 c 284 § 1.]

18.51.060 Penalties—Grounds. (1) In any case in which the department finds that a licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee failed or refused to comply with the requirements of this chapter or of chapter 74.42 RCW, or the standards, rules and regulations established under them or, in the case of a Medicaid contractor, failed or refused to comply with the Medicaid requirements of Title XIX of the social security act, as amended, and regulations promulgated thereunder, the department may take any or all of the following actions:

(a) Suspend, revoke, or refuse to renew a license;

(b) Order stop placement;

(c) Assess monetary penalties of a civil nature;

(d) Deny payment to a nursing home for any Medicaid resident admitted after notice to deny payment. Residents who are Medicaid recipients shall not be responsible for payment when the department takes action under this subsection;

(e) Appoint temporary management as provided in subsection (7) of this section.

(2) The department may suspend, revoke, or refuse to renew a license, assess monetary penalties of a civil nature, or both, in any case in which it finds that the licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee:

(a) Operated a nursing home without a license or under a revoked or suspended license; or

(b) Knowingly or with reason to know made a false statement of a material fact in his application for license or any data attached thereto, or in any matter under investigation by the department; or

(c) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained or any portion of the premises of the nursing home; or

(d) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter or of chapter 74.42 RCW; or

(e) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or of chapter 74.42 RCW or the standards, rules, and regulations adopted under them; or

(f) Failed to report patient abuse or neglect in violation of chapter 70.124 RCW; or

(g) Fails to pay any civil monetary penalty assessed by the department pursuant to this chapter within ten days after such assessment becomes final.

(3) The department shall deny payment to a nursing home having a Medicaid contract with respect to any Medicaid-eligible individual admitted to the nursing home when:

(a) The department finds the nursing home not in compliance with the requirements of Title XIX of the social security act, as amended, and regulations promulgated thereunder, and the facility has not complied with such requirements within three months; in such case, the department shall deny payment until correction has been achieved; or

(b) The department finds on three consecutive standard surveys that the nursing home provided substandard quality of care; in such case, the department shall deny payment for new admissions until the facility has demonstrated to the satisfaction of the department that it is in compliance with Medicaid requirements and that it will remain in compliance with such requirements.

(4)(a) Civil penalties collected under this section or under chapter 74.42 RCW shall be deposited into a special fund administered by the department to be applied to the protection of the health or property of residents of nursing homes found to be deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(b) Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day a nursing home is or was out of compliance. Civil monetary penalties shall not exceed three thousand dollars per violation. Each day upon which the same or a substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

(c) Any civil penalty assessed under this section or chapter 74.46 RCW shall be a nonreimbursable item under chapter 74.46 RCW.

(5)(a) The department shall order stop placement on a nursing home, effective upon oral or written notice, when the department determines:

(i) The nursing home no longer substantially meets the requirements of chapter 18.51 or 74.42 RCW, or in the case of medicaid contractors, the requirements of Title XIX of the social security act, as amended, and any regulations promulgated under such statutes; and

(ii) The deficiency or deficiencies in the nursing home:

(A) Jeopardize the health and safety of the residents, or

(B) Seriously limit the nursing home's capacity to provide adequate care.

(b) When the department has ordered a stop placement, the department may approve a readmission to the nursing home from a hospital when the department determines the readmission would be in the best interest of the individual seeking readmission.

(c) The department shall terminate the stop placement when:

(i) The provider states in writing that the deficiencies necessitating the stop placement action have been corrected; and

(ii) The department staff confirms in a timely fashion not to exceed fifteen working days that:

(A) The deficiencies necessitating stop placement action have been corrected, and

(B) The provider exhibits the capacity to maintain adequate care and service.

(d) A nursing home provider shall have the right to an informal review to present written evidence to refute the deficiencies cited as the basis for the stop placement. A request for an informal review must be made in writing within ten days of the effective date of the stop placement.

(e) A stop placement shall not be delayed or suspended because the nursing home requests a hearing pursuant to chapter 34.05 RCW or an informal review. The stop placement shall remain in effect until:

(i) The department terminates the stop placement; or

(ii) The stop placement is terminated by a final agency order, after a hearing, pursuant to chapter 34.05 RCW.

(6) If the department determines that an emergency exists as a result of a nursing home's failure or refusal to comply with requirements of this chapter or, in the case of a Medicaid contractor, its failure or refusal to comply with Medicaid requirements of Title XIX of the social security act, as amended, and rules adopted thereunder, the department may suspend the nursing home's license and order the immediate closure of the nursing home, the immediate transfer of residents, or both.

(7) If the department determines that the health or safety of residents is immediately jeopardized as a result of a nursing home's failure or refusal to comply with requirements of this chapter or, in the case of a medicaid contractor, its failure or refusal to comply with medicaid requirements of Title XIX of the social security act, as amended, and rules adopted thereunder, the department may appoint temporary management to:

(a) Oversee the operation of the facility; and

(b) Ensure the health and safety of the facilities residents while:

(i) Orderly closure of the facility occurs; or

(ii) The deficiencies necessitating temporary management are corrected.

(8) The department shall by rule specify criteria as to when and how the sanctions specified in this section shall be applied. Such criteria shall provide for the imposition of incrementally more severe penalties for deficiencies that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of the residents. [1989 c 372 § 8; 1987 c 476 § 23; 1981 1st ex.s. c 2 § 18; 1979 ex.s. c 228 § 10; 1975 1st ex.s. c 99 § 2; 1953 c 160 § 5; 1951 c 117 § 7.]

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.065 Denial, suspension, revocation of license—Hearing (as amended by 1989 c 175). ~~((All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty shall become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested. All hearings hereunder and judicial review of such determinations shall be in accordance with the administrative procedure act, chapter 34.04 RCW.))~~ RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. RCW 43.20A.215 governs notice of a civil fine and provides the right to an adjudicative proceeding. [1989 c 175 § 64; 1981 1st ex.s. c 2 § 19; 1975 1st ex.s. c 99 § 16.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.51.065 Penalties—Hearing (as amended by 1989 c 372). (1) All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty shall become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested. All orders of the department imposing stop placement, temporary management, emergency closure, emergency transfer, or license suspension, shall be effective immediately upon notice. Orders of the department imposing denial of payment shall become final twenty days after the same has been served, unless a hearing is requested, except that such orders shall be effective immediately upon notice and pending any hearing when the department determines the deficiencies jeopardize the health and safety of the residents or seriously limit the nursing home's capacity to provide adequate care. All hearings hereunder and judicial review of such determinations shall be in accordance with the administrative procedure act, chapter ((34.04)) 34.05 RCW, except that all orders of the department imposing stop placement, temporary management, emergency closure, emergency transfer, or license suspension shall be effective pending any hearing, and except that chapter 34.05 RCW shall have no application to receivership, which is instituted by direct petition to superior court as provided for in RCW 18.51.410 through 18.51.520. [1989 c 372 § 9; 1981 1st ex.s. c 2 § 19; 1975 1st ex.s. c 99 § 16.]

Reviser's note: RCW 18.51.065 was amended twice during the 1989 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.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.070 Rules and regulations. The department, after consultation with the nursing home advisory council and the board of health, shall adopt, amend, and promulgate such rules, regulations, and standards with respect to all nursing homes to be licensed hereunder as may be designed to further the accomplishment of the purposes of this chapter in promoting safe and adequate medical and nursing care of individuals in nursing homes and the sanitary, hygienic and safe conditions of the nursing home in the interest of public health, safety, and welfare. [1979 ex.s. c 211 § 64; 1951 c 117 § 8.]

Effective date—1979 ex.s. c 211: "Section 64 of this 1979 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 30, 1979]." [1979 ex.s. c 211 § 71.] "Section 64 of this 1979 act" is the 1979 ex.s. c 211 amendment to RCW 18.51.070.

18.51.091 Inspection of nursing homes and community-based services—Notice of violations—Approval of alterations or new facilities. The department shall make or cause to be made at least one inspection of each nursing home prior to license renewal and shall inspect community-based services as part of the licensing renewal survey. The inspection shall be made without providing advance notice of it. Every inspection may include an inspection of every part of the premises and an examination of all records, methods of administration, the general and special dietary and the stores and methods of supply. Those nursing homes that provide community-based care shall establish and maintain separate and distinct accounting and other essential records for the purpose of appropriately allocating costs of the providing of such care: PROVIDED, That such costs shall not be considered allowable costs for reimbursement purposes under chapter 74.46 RCW. Following such inspection or inspections, written notice of any violation of this law or the rules and regulations promulgated hereunder, shall be given the applicant or licensee and the department. The notice shall describe the reasons for the facility's noncompliance. The department may prescribe by regulations that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, submit its plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. [1987 c 476 § 24; 1983 c 236 § 2; 1981 2nd ex.s. c 11 § 3; 1979 ex.s. c 211 § 63.]

Construction—1983 c 236: See note following RCW 18.51.010.

Effective date—1979 ex.s. c 211: See RCW 74.42.920.

Nursing home standards: Chapter 74.42 RCW.

18.51.100 Nursing home advisory council—Members—Terms. (Effective until June 30, 1993.) The governor shall appoint a nursing home advisory council. The council shall be comprised of:

- (1) Five members of the general public who are not owners or employees of a nursing home or engaged by a nursing home. Of these five members, one shall be a representative of senior citizens, one shall be a representative of a health care consumer group, and one shall be a licensed certified public accountant;
- (2) Three members who are nursing home operators, one of whom shall operate a nonprofit nursing home;
- (3) One member of the association of nursing home administrators;
- (4) One member of the state medical association; and
- (5) One member of the state nurses association.

The governor shall choose one of the five members from the general public to be chairman of the advisory nursing home council. Each member of the council shall receive travel expenses in accordance with RCW 43.03.050

and 43.03.060. Each member shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term and the terms of office of the members first taking office shall expire, as designated at the time of appointment, two at the end of the first year, three at the end of the second year, three at the end of the third year, and two at the end of the fourth year after the date of appointment. Thereafter all appointments shall be for four years. The council shall meet as frequently as the chairman deems necessary, but not less than quarterly each year. Upon request by four or more members, it shall be the duty of the chairman to call a meeting of the council. [1984 c 287 § 39; 1979 ex.s. c 211 § 65; 1971 ex.s. c 85 § 1; 1951 c 117 § 11.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

18.51.110 Nursing home advisory council—Duties. (Effective until June 30, 1993.) The advisory nursing home council shall:

- (1) Consult with the legislature and the department in matters of policy affecting administration of nursing homes, and in the development of rules, regulations, pertaining to nursing homes; and
- (2) Review and make recommendations with respect to rules, regulations, and standards pertaining to nursing homes prior to their adoption and promulgation by the department as specified herein. [1979 ex.s. c 211 § 66; 1951 c 117 § 12.]

Effective date—1979 ex.s. c 211: See RCW 74.42.920.

18.51.140 Fire protection—Duties of director of community development. Standards for fire protection and the enforcement thereof, with respect to all nursing homes to be licensed hereunder, shall be the responsibility of the director of community development, through the director of fire protection, who shall adopt such recognized standards as may be applicable to nursing homes for the protection of life against the cause and spread of fire and fire hazards. The department upon receipt of an application for a license, shall submit to the director of community development, through the director of fire protection, in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the director of community development, through the director of fire protection, or his or her deputy, shall make an inspection of the nursing home to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the director of community development, through the director of fire protection, he or she shall promptly make a written report to the nursing home and the department as to the manner and time allowed in which the premises must qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department, applicant or licensee shall notify the director of community development, through the director of fire protection, upon completion of any requirements made by him or her, and the director of community development, through the director of fire

protection, or his or her deputy, shall make a reinspection of such premises. Whenever the nursing home to be licensed meets with the approval of the director of community development, through the director of fire protection, he or she shall submit to the department, a written report approving same with respect to fire protection before a full license can be issued. The director of community development, through the director of fire protection, shall make or cause to be made inspections of such nursing homes at least annually.

In cities which have in force a comprehensive building code, the provisions of which are determined by the director of community development, through the director of fire protection, to be equal to the minimum standards of the code for nursing homes adopted by the director of community development, through the director of fire protection, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the director of community development, through the director of fire protection, or his or her deputy and they shall jointly approve the premises before a full license can be issued. [1986 c 266 § 83; 1953 c 160 § 9; 1951 c 117 § 15.]

Severability—1986 c 266: See note following RCW 38.52.005.

State fire protection: Chapter 48.48 RCW.

18.51.145 Building inspections—Authority of director of community development. Inspections of nursing homes by local authorities shall be consistent with the requirements of chapter 19.27 RCW, the state building code. Findings of a serious nature shall be coordinated with the department and the director of community development, through the director of fire protection, for determination of appropriate actions to ensure a safe environment for nursing home residents. The director of community development, through the director of fire protection, shall have exclusive authority to determine appropriate corrective action under this section. [1986 c 266 § 84; 1983 1st ex.s. c 67 § 45; 1981 1st ex.s. c 2 § 16.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1983 1st ex.s. c 67: See RCW 74.46.905.

Effective dates—1983 1st ex.s. c 67: See note following RCW 74.46.901.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

Conflict with federal requirements and this section: RCW 74.46.840.

18.51.150 Operating without license—Penalty. Any person operating or maintaining any nursing home without a license under this chapter shall be guilty of a misdemeanor and each day of a continuing violation after conviction shall be considered a separate offense. [1951 c 117 § 16.]

18.51.160 Operating without license—Injunction. Notwithstanding the existence or use of any other remedy, the department, may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the operation or maintenance of a nursing home without a license under this chapter. [1951 c 117 § 17.]

Injunctions: Chapter 7.40 RCW.

18.51.170 Application of chapter to homes or institutions operated by certain religious organizations. Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any nursing home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or for any nursing home or institution operated for the exclusive care of members of a convent as defined in RCW 84.36.800 or rectory, monastery, or other institution operated for the care of members of the clergy. [1977 c 48 § 1; 1951 c 117 § 21.]

18.51.180 Out-patient services—Authorized—Defined. A nursing home may, pursuant to rules and regulations adopted by the department of social and health services, offer out-patient services to persons who are not otherwise patients at such nursing home. Any certified nursing home offering out-patient services may receive payments from the federal medicare program for such services as are permissible under that program.

Out-patient services may include any health or social care needs, except surgery, that could feasibly be offered on an out-patient basis. [1973 1st ex.s. c 71 § 1.]

18.51.185 Out-patient services—Cost studies—Vendor rates. The department of social and health services shall assist the nursing home industry in researching the costs of out-patient services allowed under RCW 18.51.180. Such cost studies shall be utilized by the department in the determination of reasonable vendor rates for nursing homes offering such services to insure an adequate return to the nursing homes and a cost savings to the state as compared to the cost of institutionalization. [1973 1st ex.s. c 71 § 2.]

18.51.190 Complaint of violation—Request for inspection—Notice—Confidentiality. Any person may request an inspection of any nursing home subject to licensing under this chapter in accordance with the provisions of this chapter by giving notice to the department of an alleged violation of applicable requirements of state law. The complainant shall be encouraged to submit a written, signed complaint following a verbal report. The substance of the complaint shall be provided to the licensee no earlier than at the commencement of the inspection. Neither the substance of the complaint provided the licensee nor any copy of the complaint or record published, released, or otherwise made available to the licensee shall disclose the name of any individual complainant or other person mentioned in the complaint, except the name or names of any duly authorized officer, employee, or agent of the department conducting the investigation or inspection pursuant to this chapter, unless such complainant specifically requests the release of such name or names. [1981 1st ex.s. c 2 § 20; 1975 1st ex.s. c 99 § 4.]

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.200 Preliminary review of complaint—On-site investigation. Upon receipt of a complaint, the department shall make a preliminary review of the complaint. Unless the department determines that the complaint is wilfully intended to harass a licensee or is without any reasonable basis, or unless the department has sufficient information that corrective action has been taken, it shall make an on-site investigation within a reasonable time after the receipt of the complaint or otherwise ensure complaints are responded to. In either event, the complainant shall be promptly informed of the department's proposed course of action. If the complainant requests the opportunity to do so, the complainant or his representative, or both, may be allowed to accompany the inspector to the site of the alleged violations during his tour of the facility, unless the inspector determines that the privacy of any patient would be violated thereby. [1981 1st ex.s. c 2 § 21; 1975 1st ex.s. c 99 § 5.]

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.210 Authority to enter and inspect nursing home—Advance notice—Defense. (1) Any duly authorized officer, employee, or agent of the department may enter and inspect any nursing home, including, but not limited to, interviewing residents and reviewing records, at any time to enforce any provision of this chapter. Inspections conducted pursuant to complaints filed with the department shall be conducted in such a manner as to ensure maximum effectiveness. No advance notice shall be given of any inspection conducted pursuant to this chapter unless previously and specifically authorized by the secretary or required by federal law.

(2) Any public employee giving such advance notice in violation of this section shall be suspended from all duties without pay for a period of not less than five nor more than fifteen days.

(3) In any hearing held pursuant to this chapter, it shall be a defense to a violation relating to the standard of care to be afforded public patients to show that the department does not provide reasonable funds to meet the cost of reimbursement standard allegedly violated. [1981 1st ex.s. c 2 § 22; 1975 1st ex.s. c 99 § 6.]

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.220 Retaliation or discrimination against complainant prohibited, penalty—Presumption. (1) No licensee shall discriminate or retaliate in any manner against a patient or employee in its nursing home on the basis or for the reason that such patient or employee or any other person has initiated or participated in any proceeding specified in this chapter. A licensee who violates this section is subject to a civil penalty of not more than three thousand dollars.

(2) Any attempt to expel a patient from a nursing home, or any type of discriminatory treatment of a patient by whom, or upon whose behalf, a complaint has been submitted to the department or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the

licensee in retaliation for the filing of the complaint. [1987 c 476 § 25; 1975 1st ex.s. c 99 § 7.]

18.51.230 General inspection prior to license renewal—Required—Advance notice prohibited. The department shall, in addition to any inspections conducted pursuant to complaints filed pursuant to RCW 18.51.190, conduct at least one general inspection prior to license renewal of all nursing homes in the state without providing advance notice of such inspection. Periodically, such inspection shall take place in part between the hours of 7 p.m. and 5 a.m. or on weekends. [1981 2nd ex.s. c 11 § 4; 1975 1st ex.s. c 99 § 10.]

18.51.240 Alterations or additions—Preliminary inspection and approval. The department may prescribe by regulations that any licensee or applicant desiring to make specific types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, submit its plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. [1981 1st ex.s. c 2 § 23; 1975 1st ex.s. c 99 § 11.]

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.250 Nursing homes without violations—Public agencies referring patients to be notified—Priority. On or before February 1st of each year, the department shall notify all public agencies which refer patients to nursing homes of all of the nursing homes in the area found upon inspection within the previous twelve-month period to be without violations. Public agencies shall give priority to such nursing homes in referring publicly assisted patients. [1975 1st ex.s. c 99 § 12.]

18.51.260 Citations for violation of RCW 18.51.060 to be posted. Each citation for a violation specified in RCW 18.51.060 which is issued pursuant to this section and which has become final, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the director, until the violation is corrected to the satisfaction of the department up to a maximum of one hundred twenty days. The citation or copy shall be posted in a place or places in plain view of the patients in the nursing home, persons visiting those patients, and persons who inquire about placement in the facility. [1987 c 476 § 26; 1975 1st ex.s. c 99 § 13.]

18.51.270 Annual report of citations for violations—Publication—Contents. The department shall annually publish a report listing all licensees by name and address, indicating (1) the number of citations and the nature of each citation issued to each licensee during the previous twelve-month period and the status of any action taken pursuant to each citation, including penalties assessed, and (2) the nature and status of action taken with respect to each uncorrected violation for which a citation is outstanding.

The report shall be available to the public, at cost, at all offices of the department. [1975 1st ex.s. c 99 § 14.]

18.51.280 Chapter cumulative. The remedies provided by this chapter are cumulative, and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party, and no judgment under this chapter shall preclude any party from obtaining additional relief based upon the same facts. [1975 1st ex.s. c 99 § 8.]

18.51.290 Writings deemed public record—Open to public inspection. Any writing received, owned, used, or retained by the department in connection with the provisions of this chapter is a public record and, as such, is open to public inspection. Copies of such records provided for public inspection shall comply with RCW 42.17.260(1). The names of duly authorized officers, employees, or agents of the department shall be included. [1980 c 184 § 4; 1975 1st ex.s. c 99 § 9.]

Conflict with federal requirements—1980 c 184: See RCW 74.42.630.

18.51.300 Retention and preservation of records of patients. Unless specified otherwise by the department, a nursing home shall retain and preserve all records which relate directly to the care and treatment of a patient for a period of no less than ten years following the most recent discharge of the patient; except the records of minors, which shall be retained and preserved for a period of no less than three years following attainment of the age of eighteen years, or ten years following such discharge, whichever is longer.

If a nursing home ceases operations, it shall make immediate arrangements, as approved by the department, for preservation of its records.

The department shall by regulation define the type of records and the information required to be included in the records to be retained and preserved under this section; which records may be retained in photographic form pursuant to chapter 5.46 RCW. [1981 1st ex.s. c 2 § 24; 1975 1st ex.s. c 175 § 2.]

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.310 Comprehensive plan for utilization review—Licensing standards—Regulations. (1) The department shall establish, in compliance with federal and state law, a comprehensive plan for utilization review as necessary to safeguard against unnecessary utilization of care and services and to assure quality care and services provided to nursing facility residents.

(2) The department shall adopt licensing standards suitable for implementing the civil penalty system authorized under this chapter and chapter 74.46 RCW.

(3) No later than July 1, 1981, the department shall adopt all those regulations which meet all conditions necessary to fully implement the civil penalty system authorized by this chapter, chapter 74.42 RCW, and chapter 74.46 RCW. [1991 sp.s. c 8 § 2; 1981 2nd ex.s. c 11 § 5; 1981 1st ex.s. c 2 § 12; 1980 c 184 § 5; 1979 ex.s. c 211 § 67; 1977 ex.s. c 244 § 1.]

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

Conflict with federal requirements—1980 c 184: See RCW 74.42.630.

Effective date—1979 ex.s. c 211: See RCW 74.42.920.

18.51.320 Contact with animals—Rules. (1) A nursing home licensee shall give each patient a reasonable opportunity to have regular contact with animals. The licensee may permit appropriate animals to live in the facilities and may permit appropriate animals to visit if the animals are properly supervised.

(2) The department shall adopt rules for the care, type, and maintenance of animals in nursing home facilities. [1984 c 127 § 2.]

Intent—1984 c 127: "The legislature finds that the senior citizens of this state, particularly those living in low-income public housing or in nursing homes, often lead lonely and harsh lives. The legislature recognizes that the warmth and companionship provided by pets can significantly improve the quality of senior citizens' lives. This legislation is intended to insure that senior citizens and persons in nursing homes will not be deprived of access to pets." [1984 c 127 § 1.]

18.51.350 Conflict with federal requirements. If any part of this chapter is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this chapter. [1981 2nd ex.s. c 11 § 1.]

18.51.400 Receivership—Legislative findings. The legislature finds that the closure of a nursing home can have devastating effects on residents and, under certain circumstances, courts should consider placing nursing homes in receivership. As receivership has long existed as a remedy to preserve assets subject to litigation and to reorganize troubled affairs, the legislature finds that receivership is to be used to correct problems associated with either the disregard of residents' health, safety, or welfare or with the possible closure of the nursing home for any reason. [1987 c 476 § 9.]

18.51.410 Receivership—Petition to establish—Grounds. A petition to establish a receivership shall allege that one or more of the following conditions exist and that the current operator has demonstrated an inability or unwillingness to take actions necessary to immediately correct the conditions alleged:

(1) The facility is operating without a license;

(2) The facility has not given the department prior written notice of its intent to close and has not made arrangements within thirty days before closure for the orderly transfer of its residents: PROVIDED, That if the facility has given the department prior written notice but the department has not acted with all deliberate speed to transfer the facility's residents, this shall bar the filing of a petition under this subsection;

(3) The health, safety, or welfare of the facility's residents is immediately jeopardized;

(4) The facility demonstrates a pattern and practice of violating chapter 18.51 or 74.42 RCW and rules adopted thereunder such that the facility has demonstrated a repeated inability to maintain minimum patient care standards; or

(5) The facility demonstrates a pattern and practice of violating a condition level as defined by the federal government under the authority of Title XIX of the social security act.

The department may file a petition in the superior court in the county in which the nursing home is located or in the superior court of Thurston county. The current or former operator or licensee and the owner of the nursing home, if different than the operator or licensee, shall be made a party to the action. The court shall grant the petition if it finds, by a preponderance of the evidence, that one or more of the conditions listed in subsections (1) through (5) of this section exists and, subject to RCW 18.51.420, that the current operator is unable or unwilling to take actions necessary to immediately correct the conditions. [1989 c 372 § 10; 1987 c 476 § 10.]

18.51.420 Receivership—Defenses to petition. It shall be a defense to the petition to establish a receivership that the conditions alleged do not in fact exist. It shall not be a defense to the petition to allege that the respondent did not possess knowledge of the alleged condition or could not have been reasonably expected to know about the alleged condition. In a petition that alleges that the health, safety, or welfare of the residents of the facility is at issue, it shall not be a defense to the petition that the respondent had not been afforded a reasonable opportunity to correct the alleged condition. [1987 c 476 § 11.]

18.51.430 Receivership—Persons qualified to act as receiver. A petition for receivership shall include the name of the candidate for receiver. The department shall maintain a list of qualified persons to act as receivers, however, no person may be considered to be qualified to be a receiver who:

- (1) Is the owner, licensee, or administrator of the facility;
- (2) Is affiliated with the facility;
- (3) Has a financial interest in the facility at the time the receiver is appointed; or
- (4) Has owned or operated a nursing home that has been ordered into receivership.

If a receiver is appointed, he or she may be drawn from the list but need not be, but an appointee shall have experience in providing long-term health care and a history of satisfactory operation of a nursing home. Preference may be granted to persons expressing an interest in permanent operation of the facility. [1989 c 372 § 3; 1987 c 476 § 12.]

18.51.440 Receivership—Judicial hearing. Upon receipt of a petition for receivership, the court shall hear the matter within fourteen days. Temporary relief may be obtained under chapter 7.40 RCW and other applicable laws. In all actions arising under RCW 18.51.410 through 18.51.530, the posting of a certified copy of the summons and petition in a conspicuous place in the nursing home shall

constitute service of those documents upon the respondent. [1989 c 372 § 11; 1987 c 476 § 13.]

18.51.450 Receivership—Appointment of receiver. Upon agreement of the candidate for receiver to the terms of the receivership and any special instructions of the court, the court may appoint that person as receiver of the nursing home if the court determines it is likely that a permanent operator will be found or conditions will be corrected without undue risk of harm to the patients. Appointment of a receiver may be in lieu of or in addition to temporary removal of some or all of the patients in the interests of their health, security, or welfare. A receiver shall be appointed for a term not to exceed six months, but a term may be extended for good cause shown. [1987 c 476 § 14.]

18.51.460 Receivership—Termination—Conditions. (1) The receivership shall terminate:

- (a) When all deficiencies have been eliminated and the court determines that the facility has the management capability to ensure continued compliance with all requirements; or
- (b) When all residents have been transferred and the facility closed.

(2) Upon the termination of a receivership, the court may impose conditions to assure the continued compliance with chapters 18.51 and 74.42 RCW, and, in the case of medicaid contractors, continued compliance with Title XIX of the social security act, as amended, and regulations promulgated thereunder. [1989 c 372 § 12; 1987 c 476 § 15.]

18.51.470 Receivership—Accounting of acts and expenditures by receiver. The receiver shall render to the court an accounting of acts performed and expenditures made during the receivership. Nothing in this section relieves a court-appointed receiver from the responsibility of making all reports and certifications to the department required by law and regulation relating to the receiver's operation of the nursing home, the care of its residents, and participation in the medicaid program, if any. [1987 c 476 § 16.]

18.51.480 Receivership—Compensation, liability—Revision of medicaid reimbursement rate. If a receiver is appointed, the court shall set reasonable compensation for the receiver to be paid from operating revenues of the nursing home. The receiver shall be liable in his or her personal capacity only for negligent acts, intentional acts, or a breach of a fiduciary duty to either the residents of the facility or the current or former licensee or owner of the facility.

The department may revise the nursing home's medicaid reimbursement rate, consistent with reimbursement principles in chapter 74.46 RCW and rules adopted under that chapter, if revision is necessary to cover the receiver's compensation and other reasonable costs associated with the receivership and transition of control. Rate revision may also be granted if necessary to cover start-up costs and costs of repairs, replacements, and additional staff needed for patient health, security, or welfare. The property return on investment

components of the medicaid rate shall be established for the receiver consistent with reimbursement principles in chapter 74.46 RCW. The department may also expedite the issuance of necessary licenses, contracts, and certifications, temporary or otherwise, necessary to carry out the purposes of receivership. [1987 c 476 § 17.]

18.51.490 Receivership—Powers of receiver. Upon appointment of a receiver, the current or former licensee or operator and managing agent, if any, shall be divested of possession and control of the nursing home in favor of the receiver who shall have full responsibility and authority to continue operation of the home and the care of the residents. The receiver may perform all acts reasonably necessary to carry out the purposes of receivership, including, but not limited to:

(1) Protecting the health, security, and welfare of the residents;

(2) Remedying violations of state and federal law and regulations governing the operation of the home;

(3) Hiring, directing, managing, and discharging all consultants and employees for just cause; discharging the administrator of the nursing home; recognizing collective bargaining agreements; and settling labor disputes;

(4) Receiving and expending in a prudent manner all revenues and financial resources of the home; and

(5) Making all repairs and replacements needed for patient health, security, and welfare: PROVIDED, That expenditures for repairs or replacements in excess of five thousand dollars shall require approval of the court which shall expedite approval or disapproval for such expenditure.

Upon order of the court, a receiver may not be required to honor leases, mortgages, secured transactions, or contracts if the rent, price, or rate of interest was not a reasonable rent, price, or rate of interest at the time the contract was entered into or if a material provision of the contract is unreasonable. [1987 c 476 § 18.]

18.51.500 Receivership—Financial assistance—Use of revenues and proceeds of facility. Upon order of the court, the department shall provide emergency or transitional financial assistance to a receiver not to exceed thirty thousand dollars. The receiver shall file with the court an accounting for any money expended. Any emergency or transitional expenditure made by the department on behalf of a nursing home not certified to participate in the Medicaid Title XIX program shall be recovered from revenue generated by the facility which revenue is not obligated to the operation of the facility. An action to recover such sums may be filed by the department against the former licensee or owner at the time the expenditure is made, regardless of whether the facility is certified to participate in the Medicaid Title XIX program or not.

In lieu of filing an action, the department may file a lien on the facility or on the proceeds of the sale of the facility. Such a lien shall take priority over all other liens except for liens for wages to employees. The owner of the facility shall be entitled to the proceeds of the facility or the sale of the facility to the extent that these exceed the liabilities of the facility, including liabilities to the state, receiver,

employees, and contractors, at the termination of the receivership.

Revenues relating to services provided by the current or former licensee, operator, or owner and available operating funds belonging to such licensee, operator, or owner shall be under the control of the receiver. The receiver shall consult the court in cases of extraordinary or questionable debts incurred prior to his or her appointment and shall not have the power to close the home or sell any assets of the home without prior court approval.

Priority shall be given to debts and expenditures directly related to providing care and meeting the needs of patients. Any payment made to the receiver shall discharge the obligation of the payor to the owner of the facility. [1989 c 372 § 4; 1987 c 476 § 19.]

18.51.510 Receivership—State medical assistance. If the nursing home is providing care to recipients of state medical assistance, the receiver shall become the medicaid contractor for the duration of the receivership period and shall assume all reporting and other responsibilities required by applicable laws and regulations. The receiver shall be responsible for the refund of medicaid rate payments in excess of costs during the period of the receivership. [1987 c 476 § 20.]

18.51.520 Receivership—Foreclosures and seizures not allowed. No seizure, foreclosure, or interference with nursing home revenues, supplies, real property, improvements, or equipment may be allowed for the duration of the receivership without prior court approval. [1987 c 476 § 21.]

18.51.530 Notice of change of ownership or management. At least sixty days before the effective date of any change of ownership, change of operating entity, or change of management of a nursing home, the current operating entity shall notify separately and in writing, each resident of the home or the resident's guardian of the proposed change. The notice shall include the identity of the proposed new owner, operating entity, or managing entity and the names, addresses, and telephone numbers of departmental personnel to whom comments regarding the change may be directed. If the proposed new owner, operating entity, or managing entity is a corporation, the notice shall include the names of all officers and the registered agent in the state of Washington. If the proposed new owner, operating entity, or managing entity is a partnership, the notice shall include the names of all general partners. This section shall apply regardless of whether the current operating entity holds a medicaid provider contract with the department and whether the operating entity intends to enter such a contract. [1987 c 476 § 22.]

18.51.900 Severability—1951 c 117. If any provision of this act or the application thereof to any person or circumstance 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. [1951 c 117 § 22.]

18.51.910 Nursing home advisory council—Termination. The nursing home advisory council and its powers and duties shall be terminated on June 30, 1992, as provided in RCW 18.51.911. [1990 c 297 § 3; 1988 c 288 § 4; 1986 c 270 § 3; 1983 c 197 § 24. Formerly RCW 43.131.301.]

18.51.911 Nursing home advisory council—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1993:

(1) Section 11, chapter 117, Laws of 1951, section 1, chapter 85, Laws of 1971 ex. sess., section 65, chapter 211, Laws of 1979 ex. sess., section 39, chapter 287, Laws of 1984 and RCW 18.51.100; and

(2) Section 12, chapter 117, Laws of 1951, section 66, chapter 211, Laws of 1979 ex. sess. and RCW 18.51.110. [1990 c 297 § 4; 1988 c 288 § 5; 1986 c 270 § 4; 1983 c 197 § 50. Formerly RCW 43.131.302.]

Chapter 18.52

NURSING HOME ADMINISTRATORS

Sections

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18.52.040	Board of nursing home administrators—Created—Membership.
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18.52.140	Penalty for unlicensed acts.
18.52.160	Examinations—Times and places—Meetings of board.
18.52.900	Severability—1970 ex.s. c 57.

Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.

18.52.010 Short title—Intent. This chapter shall be known as the "Nursing Home Administrator Licensing Act" and is intended to establish and provide for the enforcement of standards for the licensing of nursing home administrators. The legislature finds that the quality of patient care in nursing homes is directly related to the competence of the nursing home administrators. It is the intent of this chapter that licensed nursing home administrators continually maintain (1) the suitable character required and (2) the capacity to consider the available resources and personnel of the facility subject to their authority and come to reasonable decisions implementing patient care. [1977 ex.s. c 243 § 1; 1970 ex.s. c 57 § 1.]

18.52.020 Definitions. When used in this chapter, unless the context otherwise clearly requires:

(1) "Board" means the state board of nursing home administrators representative of the professions and institu-

tions concerned with the care of the chronically ill and infirm aged patients.

(2) "Secretary" means the secretary of health or the secretary's designee.

(3) "Nursing home" means any facility or portion thereof licensed under state law as a nursing home.

(4) "Nursing home administrator" means an individual qualified by education, experience, training, and examination to administer a nursing home. A nursing home administrator administering a nursing home must be in active administrative charge as defined by the board. Nothing in this definition or this chapter shall be construed to prevent any person, so long as he or she is otherwise qualified, from obtaining and maintaining a license even though he or she has not administered or does not continue to administer a nursing home. [1992 c 53 § 1; 1991 c 3 § 116; 1979 c 158 § 44; 1970 ex.s. c 57 § 2.]

18.52.025 Authority of secretary of health. In addition to any other authority provided by law, the secretary shall have the following authority:

(1) To set all fees required in this chapter in accordance with RCW 43.70.250 which may include fees for approval of continuing competency, supervision of practical experience, all applications, verification, renewal, examination, and late penalties;

(2) To establish forms necessary to administer this chapter;

(3) To issue a license to any applicant who has met the education, training, and examination requirements for licensure and deny a license to applicants who do not meet the minimum qualifications for licensure, except that proceedings concerning the denial of licenses based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(4) To employ clerical, administrative, and investigative staff as needed to implement and administer this chapter and to employ individuals including those licensed under this chapter to serve as examiners or consultants as necessary to implement and administer this chapter; and

(5) To maintain the official department record of all applicants and licensees. [1992 c 53 § 2.]

18.52.030 Management and supervision of nursing homes by licensed administrators required. Nursing homes operating within this state shall be under the active, overall administrative charge and supervision of an on-site full-time administrator licensed as provided in this chapter. No person acting in any capacity, unless the holder of a nursing home administrator's license issued under this chapter, shall be charged with the overall responsibility to make decisions or direct actions involved in managing the internal operation of a nursing home, except as specifically delegated in writing by the administrator to identify a responsible person to act on the administrator's behalf when the administrator is absent. The administrator shall review the decisions upon the administrator's return and amend the decisions if necessary. The board shall define by rule the parameters for on-site full-time administrators in nursing homes with small resident populations and nursing homes in rural areas, or separately licensed facilities collocated on the

same campus, as well as provide for the administrative requirements for nursing homes that are temporarily without administrators. [1992 c 53 § 3; 1970 ex.s. c 57 § 3.]

18.52.040 Board of nursing home administrators—Created—Membership. The state board of nursing home administrators shall consist of nine members appointed by the governor. Four members shall be persons licensed under this chapter who have at least four years actual experience in the administration of a licensed nursing home in this state immediately preceding appointment to the board and who are not employed by the state or federal government.

Four members shall be representatives of the health care professions providing medical or nursing services in nursing homes who are privately or self-employed; or shall be persons employed by educational institutions who have special knowledge or expertise in the field of health care administration, health care education or long-term care or both, or care of the aged and chronically ill.

One member shall be a resident of a nursing home or a family member of a resident or a person eligible for medicare. No member who is a nonadministrator representative shall have any direct or family financial interest in nursing homes while serving as a member of the board. The governor shall consult with and seek the recommendations of the appropriate state-wide business and professional organizations and societies primarily concerned with long term health care facilities in the course of considering his appointments to the board. Board members currently serving shall continue to serve until the expiration of their appointments. [1992 c 53 § 4; 1975 1st ex.s. c 97 § 1; 1970 ex.s. c 57 § 4.]

18.52.050 Board—Generally. Members of the board shall be citizens of the United States and residents of this state. All administrator members of the board shall be holders of licenses under this chapter. The terms of all members shall be five years. Any board member may be removed for just cause including a finding of fact of unprofessional conduct or impaired practice. The governor may appoint a new member to fill any vacancy on the board for the remainder of the unexpired term. No board member may serve more than two consecutive terms, whether full or partial. Board members shall serve until their successors are appointed. Board members shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. The board may elect annually a chair and vice-chair to direct the meetings of the board. The board shall meet at least four times each year and may hold additional meetings as called by the secretary or the chair. [1992 c 53 § 5; 1970 ex.s. c 57 § 5.]

18.52.051 Board—Authority. In addition to any authority provided by law, the board shall have the following authority:

- (1) To adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;
- (2) To prepare and administer or approve the preparation and administration of examinations for licensure;

- (3) To conduct a hearing on an appeal of a denial of license based on the applicant's failure to meet the minimum qualifications for licensure. The hearing shall be conducted pursuant to chapter 34.05 RCW;

- (4) To establish by rule the procedures for an appeal of an examination failure;

- (5) To adopt rules implementing a continuing competency program;

- (6) To issue subpoenas, statements of charges, statements of intent to deny licenses, and orders, and to delegate in writing to a designee to issue subpoenas; and

- (7) To issue temporary license permits under circumstances defined by the board. [1992 c 53 § 6.]

18.52.066 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 32.]

Severability—1987 c 150: See RCW 18.122.901.

18.52.070 Qualifications of licensees—Examinations. (Effective until July 1, 1993.) Upon the secretary's receipt of an application and examination fee determined by the secretary as provided in RCW 43.70.250, and completed application forms provided by the secretary, a nursing home administrator's license shall be issued to any person who:

- (1) Is at least twenty-one years of age and of good moral character.

- (2) Has presented evidence satisfactory to the board of practical experience, education, and training which, when evaluated according to criteria developed by the board, is equivalent to two years of experience in the operation of a nursing home: PROVIDED, That after January 1, 1980, no license shall be issued to any applicant unless such applicant has either successfully completed at least two years of formal education beyond the high school level or holds an associate degree from a recognized institution of higher learning: PROVIDED FURTHER, That the educational degree required by this subsection may be waived for individuals who present evidence satisfactory to the board of sufficient practical experience.

- (3) Has passed an examination administered by the board which shall be designed to test the candidate's competence to administer a nursing home on the basis of the candidate's formal instruction and training or actual experience: PROVIDED HOWEVER, That nothing in this chapter or the rules under this chapter shall be construed to require an applicant for a license or provisional license as a nursing home administrator who is certified by any well established and generally recognized church or religious denomination which teaches reliance on spiritual means alone for healing as having been approved to administer institutions certified by such church or denomination for the care and treatment of the sick in accordance with its teachings, to demonstrate proficiency in any medical techniques or to meet any medical educational qualifications or medical standards not in accord with the remedial care and treatment provided in such institutions: PROVIDED FURTHER, That any such individual shall demonstrate in the process of application for the examination his or her membership in such church or

religious denomination and his or her license shall indicate the limited extent of his or her authority to act as an administrator.

(4) The initial administrator members of the board shall be selected and appointed by the governor to meet the requirements of subsection (1) of this section and of RCW 18.52.040 and 18.52.050. The three nonadministrator members of the first board shall administer to the initial administrator members an appropriate examination, and the initial administrator members shall thereafter be issued their licenses under this chapter as nursing home administrators. The three nonadministrator members of the first board may exercise the powers of the board to carry out licensing of the initial administrator members, regardless of the normal quorum or procedural requirements for board action. The licensing of the initial administrator members of the first board shall be carried out within thirty days after appointment of the board, and in all events prior to April 1, 1970. [1991 c 3 § 118; 1984 c 279 § 65; 1977 ex.s. c 243 § 2; 1975 1st ex.s. c 30 § 52; 1970 ex.s. c 57 § 7.]

Severability—1984 c 279: See RCW 18.130.901.

18.52.071 Qualifications of licensees. The department shall issue a license to any person applying for a nursing home administrator's license after July 1, 1993, who meets the following requirements:

(1) Successful completion of the requirements for a baccalaureate degree from a recognized institution of higher learning: PROVIDED, That if education requirements are adopted by the federal government, the board may adopt rules requiring educational qualifications to meet those requirements;

(2) Successful completion of a practical experience requirement as determined by the board;

(3) Successful completion of examinations administered or approved by the board, or both, which shall be designed to test the candidate's competence to administer a nursing home;

(4) At least twenty-one years of age; and

(5) Not having engaged in unprofessional conduct as defined in RCW 18.130.180 or being unable to practice with reasonable skill and safety as defined in RCW 18.130.170. The board shall establish by rule what constitutes adequate proof of meeting the above requirements.

A limited license indicating the limited extent of authority to administer institutions certified by such church or denomination teaching religious or spiritual means for healing through prayer, shall be issued to individuals demonstrating membership in such church or denomination. However, nothing in this chapter shall be construed to require an applicant certified by any well established and generally recognized church or religious denomination teaching reliance on spiritual means alone to demonstrate proficiency in any medical techniques or to meet any medical educational qualifications or medical standards not in accord with the remedial care and treatment provided in such institutions. [1992 c 53 § 7.]

18.52.110 Relicensure. (1) Every holder of a nursing home administrator's license shall reregister on dates specified by the secretary. Such relicensure shall be granted

upon receipt of a fee determined by the secretary as provided in RCW 43.70.250, and upon fulfilling the continuing competency requirement. In the event that any license is not reregistered, the secretary may charge up to double the relicensure fee. In the event that the license of an individual is not relicensed within two years from the most recent date for relicensure it shall lapse and such individual must again apply for licensing and meet all requirements of this chapter for a new applicant. The board may prescribe rules for maintenance of a license at a reduced fee for temporary or permanent withdrawal or retirement from the active practice of nursing home administration.

(2) A condition of relicensure shall be the presentation of proof by the applicant that the board requirement for continuing competency related to the administration of nursing homes has been met. [1992 c 53 § 8; 1991 c 3 § 120; 1984 c 279 § 69; 1975 1st ex.s. c 30 § 54; 1971 ex.s. c 266 § 9; 1970 ex.s. c 57 § 11.]

Severability—1984 c 279: See RCW 18.130.901.

18.52.130 Recognition of out-of-state licensees. The secretary may issue a nursing home administrator's license to anyone who holds a current administrator's license from another jurisdiction upon receipt of an application fee and an annual license fee, as provided in RCW 43.70.250, if the standards for licensing in such other jurisdiction are substantially equivalent to those prevailing in this state, and that the applicant is otherwise qualified as determined by the board. [1992 c 53 § 9; 1991 c 3 § 121; 1985 c 7 § 50; 1975 1st ex.s. c 30 § 55; 1970 ex.s. c 57 § 13.]

18.52.140 Penalty for unlicensed acts. It shall be unlawful and constitute a gross misdemeanor for any person to act or serve in the capacity of a nursing home administrator unless he or she is the holder of a nursing home administrator's license issued in accordance with the provisions of this chapter: PROVIDED HOWEVER, That persons carrying out functions and duties delegated by a licensed administrator as defined in RCW 18.52.030 shall not be construed to be committing any unlawful act under this chapter. [1992 c 53 § 10; 1970 ex.s. c 57 § 14.]

18.52.160 Examinations—Times and places—Meetings of board. The board shall meet as often as may be necessary to carry out the duties of the board under this chapter. Examinations shall be administered at intervals not less than semiannually and at such times and places as may be determined by the board. There shall not be a limit upon the number of times a candidate may take the required examination. [1984 c 279 § 71; 1970 ex.s. c 57 § 17.]

Severability—1984 c 279: See RCW 18.130.901.

18.52.900 Severability—1970 ex.s. c 57. If any provision of this 1970 act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall 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 declared to be severable. [1970 ex.s. c 57 § 20.]

Chapter 18.52C NURSING POOLS

Sections

- 18.52C.010 Legislative intent.
- 18.52C.020 Definitions.
- 18.52C.030 Registration required.
- 18.52C.040 Duties of nursing pool—Application of uniform disciplinary act.
- 18.52C.050 Registration prerequisite to state reimbursement.

18.52C.010 Legislative intent. The legislature intends to protect the public's right to high quality health care by assuring that nursing pools employ, procure or refer competent and qualified nursing personnel, and that such nursing personnel are provided to health care facilities in a way to meet the needs of residents and patients. [1988 c 243 § 1.]

18.52C.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Secretary" means the secretary of the department of health.

(2) "Health care facility" means a nursing home, hospital, hospice care facility, home health care agency, hospice agency, or other entity for the delivery of health care services.

(3) "Nursing home" means any nursing home facility licensed pursuant to chapter 18.52 RCW.

(4) "Nursing pool" means any person engaged in the business of providing, procuring, or referring health care personnel for temporary employment in health care facilities, such as licensed nurses or practical nurses, and nursing assistants. "Nursing pool" does not include an individual who only engages in providing his or her own services.

(5) "Person" includes an individual, firm, corporation, partnership, or association. [1991 c 3 § 130; 1988 c 243 § 2.]

18.52C.030 Registration required. A person who operates a nursing pool shall register the pool with the secretary. Each separate location of the business of a nursing pool shall have a separate registration.

The secretary, by rule, shall establish forms and procedures for the processing of nursing pool registration applications, including the payment of registration fees pursuant to RCW 43.70.250. An application for a nursing pool registration shall include at least the following information:

(1) The names and addresses of the owner or owners of the nursing pool; and

(2) If the owner is a corporation, copies of its articles of incorporation and current bylaws, together with the names and addresses of its officers and directors.

A registration issued by the secretary in accordance with this section shall remain effective for a period of one year from the date of its issuance unless the registration is revoked or suspended pursuant to RCW 18.52C.040(4), or unless the nursing pool is sold or ownership or management is transferred, in which case the registration of the nursing pool shall be voided and the new owner or operator shall apply for a new registration. [1991 c 3 § 131; 1988 c 243 § 3.]

(1992 Ed.)

18.52C.040 Duties of nursing pool—Application of uniform disciplinary act. (1) The nursing pool shall document that each temporary employee or referred independent contractor provided or referred to health care facilities currently meets the minimum state credentialing requirements.

(2) The nursing pool shall not require, as a condition of employment or referral, that employees or independent contractors of the nursing pool recruit new employees or independent contractors for the nursing pool from among the permanent employees of the health care facility to which the nursing pool employee or independent contractor has been assigned or referred.

(3) The nursing pool shall carry professional and general liability insurance to insure against any loss or damage occurring, whether professional or otherwise, as the result of the negligence of its employees, agents or independent contractors for acts committed in the course of their employment with the nursing pool: PROVIDED, That a nursing pool that only refers self-employed, independent contractors to health care facilities shall carry professional and general liability insurance to cover its own liability as a nursing pool which refers self-employed, independent contractors to health care facilities: AND PROVIDED FURTHER, That it shall require, as a condition of referral, that self-employed, independent contractors carry professional and general liability insurance to insure against loss or damage resulting from their own acts committed in the course of their own employment by a health care facility.

(4) The uniform disciplinary act, chapter 18.130 RCW, shall govern the issuance and denial of registration and the discipline of persons registered under this chapter. The secretary shall be the disciplinary authority under this chapter. [1991 c 3 § 132; 1988 c 243 § 4.]

18.52C.050 Registration prerequisite to state reimbursement. No state agency shall allow reimbursement for the use of temporary health care personnel from nursing pools that are not registered pursuant to this chapter: PROVIDED, That individuals directly retained by a health care facility without intermediaries may be reimbursed. [1988 c 243 § 5.]

Chapter 18.53 OPTOMETRY

Sections

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Reviser's note: Certain powers and duties of the department of licensing and the director of licensing transferred to the department of health and the secretary of health. See RCW 43.70.220.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Rebating by practitioners of healing professions prohibited: Chapter 19.68 RCW.

18.53.003 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.53.005 Legislative finding and declaration. The legislature finds and declares that the practice of optometry is a learned profession and affects the health, welfare and safety of the people of this state, and should be regulated in the public interest and limited to qualified persons licensed and authorized to practice under the provisions of chapters 18.53 and 18.54 RCW. [1981 c 58 § 1; 1975 1st ex.s. c 69 § 1.]

18.53.010 Definition—Scope of practice. (1) The practice of optometry is defined as the examination of the human eye, the examination and ascertaining any defects of the human vision system and the analysis of the process of vision. The practice of optometry may include, but not necessarily be limited to, the following:

(a) The employment of any objective or subjective means or method including the use of drugs topically applied to the eye for diagnostic and therapeutic purposes by those licensed under this chapter and who meet the requirements of subsections (2) and (3) of this section, and the use of any diagnostic instruments or devices for the examination or analysis of the human vision system, the measurement of the powers or range of human vision, or the determination of the refractive powers of the human eye or its functions in general; and

(b) The prescription and fitting of lenses, prisms, therapeutic or refractive contact lenses and the adaption or adjustment of frames and lenses used in connection therewith; and

(c) The prescription and provision of visual therapy, therapeutic aids and other optical devices, and the treatment with topically applied drugs by those licensed under this chapter and who meet the requirements of subsections (2) and (3) of this section; and

(d) The ascertainment of the perceptive, neural, muscular or pathological condition of the visual system; and

(e) The adaptation of prosthetic eyes.

(2) Those persons using drugs for diagnostic purposes in the practice of optometry shall have a minimum of sixty hours of didactic and clinical instruction in general and ocular pharmacology as applied to optometry, and for therapeutic purposes, an additional minimum of seventy-five hours of didactic and clinical instruction as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to use drugs for diagnostic and therapeutic purposes. Such course or courses shall be the fiscal responsibility of the participating and attending optometrist.

(3) The board shall establish a schedule of drugs for diagnostic and treatment purposes limited to the practice of optometry, and no person licensed pursuant to this chapter shall prescribe, dispense, purchase, possess, or administer drugs except as authorized and to the extent permitted by the board.

(4) The board shall develop a means of identification and verification of optometrists certified to use therapeutic drugs for the purpose of issuing prescriptions as authorized by this section. [1989 c 36 § 1; 1981 c 58 § 2; 1975 1st ex.s. c 69 § 2; 1919 c 144 § 1; RRS § 10147. Prior: 1909 c 235 § 1.]

18.53.021 License required. It is a violation of RCW 18.130.190 for any person to practice optometry in this state without first obtaining a license from the secretary of health. [1991 c 3 § 133; 1987 c 150 § 38.]

Severability—1987 c 150: See RCW 18.122.901.

18.53.030 Temporary permit—When issued. The board may at its discretion, issue a permit to practice optometry during the interim between examinations, to any person who has filed an application for examination which has been accepted by the board as admitting the applicant to the next examination. Such permit shall be valid only until the date of the next examination and shall not be issued sooner than thirty days following any regular examination, and no permit shall be issued to any person who has failed before the board, nor where a certificate has been revoked. [1986 c 259 § 80; 1919 c 144 § 8; RRS § 10153.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.53.035 Credentialing by endorsement. An applicant holding a credential in another state may be credentialed to practice in this state without examination if the board determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1991 c 332 § 30.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

18.53.040 Exemptions—Exceptions—Limitation. Nothing in this chapter shall be construed to pertain in any manner to the practice of any regularly qualified oculist or

physician, who is regularly licensed to practice medicine in the state of Washington, or to any person who is regularly licensed to practice as a dispensing optician in the state of Washington, nor to any person who in the regular course of trade, sells or offers for sale, spectacles or eyeglasses as regular merchandise without pretense of adapting them to the eyes of the purchaser, and not in evasion of this chapter: PROVIDED, That any such regularly qualified oculist or physician or other person shall be subject to the provisions of subdivisions (10) through (15) of RCW 18.53.140, in connection with the performance of any function coming within the definition of the practice of optometry as defined in this chapter: PROVIDED FURTHER, HOWEVER, That in no way shall this section be construed to permit a dispensing optician to practice optometry as defined in *this 1975 amendatory act. [1975 1st ex.s. c 69 § 15; 1937 c 155 § 3; 1919 c 144 § 15; Rem. Supp. 1937 § 10159. Prior: 1909 c 235 § 13.]

***Reviser's note:** "This 1975 amendatory act" [1975 1st ex.s. c 69] consists of RCW 18.53.005, 18.53.155, 18.53.200, 18.53.911, amendments to RCW 18.53.010, 18.53.020, 18.53.040, 18.53.060, 18.53.070, 18.53.100, 18.53.140, 18.53.190, 18.54.050, 18.54.070, 18.54.080, 18.54.140 and the repeal of RCW 18.53.090.

18.53.050 Certificate renewal—Suspension for failure to pay. Every registered optometrist shall annually or on the date specified by the secretary pay to the state treasurer a renewal fee, to be determined by the secretary as provided in RCW 43.70.250, and failure to pay such fee within the prescribed time shall cause the suspension of his or her certificate. [1991 c 3 § 134; 1985 c 7 § 51; 1983 c 168 § 8; 1981 c 277 § 8; 1975 1st ex.s. c 30 § 56; 1971 ex.s. c 266 § 10; 1955 c 275 § 1; 1919 c 144 § 13; RRS § 10158.]

Severability—1983 c 168: See RCW 18.120.910.

18.53.055 License renewal—Reinstatement after revocation, suspension. In the event of revocation of license for nonpayment of required renewal fees, reinstatement may be effected by payment of accumulated unpaid renewal fees accruing from the date of suspension of license to the date of reinstatement. Funds realized from such reinstatements shall be distributed as provided in RCW 18.53.050. [1955 c 275 § 2.]

18.53.060 License applicants—Eligibility—Qualifications—Examinations—Exception. From and after January 1, 1940, in order to be eligible for examination for registration, a person shall be a citizen of the United States of America, who shall have a preliminary education of or equal to four years in a state accredited high school and has completed a full attendance course in a regularly chartered school of optometry maintaining a standard which is deemed sufficient and satisfactory by the optometry board, who is a person of good moral character, who is not afflicted with any contagious or infectious disease, who has a visual acuity in at least one eye, of a standard known as 20/40 under correction: PROVIDED, That from and after January 1, 1975, in order to be eligible for examination for a license, a person shall have the following qualifications:

(1) Be a graduate of a state accredited high school or its equivalent;

(2) Have a diploma or other certificate of completion from an accredited college of optometry or school of optometry, maintaining a standard which is deemed sufficient and satisfactory by the optometry board, conferring its degree of doctor of optometry or its equivalent, maintaining a course of four scholastic years in addition to preprofessional college level studies, and teaching substantially all of the following subjects: General anatomy, anatomy of the eyes, physiology, physics, chemistry, pharmacology, biology, bacteriology, general pathology, ocular pathology, ocular neurology, ocular myology, psychology, physiological optics, optometrical mechanics, clinical optometry, visual field charting and orthoptics, general laws of optics and refraction and use of the ophthalmoscope, retinoscope and other clinical instruments necessary in the practice of optometry;

(3) Be of good moral character; and

(4) Have no contagious or infectious disease.

Such person shall file an application for an examination and license with said board at any time thirty days prior to the time fixed for such examination, or at a later date if approved by the board, and such application must be on forms approved by the board, and properly attested, and if found to be in accordance with the provisions of this chapter shall entitle the applicant upon payment of the proper fee, to take the examination prescribed by the board. Such examination shall not be out of keeping with the established teachings and adopted textbooks of the recognized schools of optometry, and shall be confined to such subjects and practices as are recognized as essential to the practice of optometry. All candidates without discrimination, who shall successfully pass the prescribed examination, shall be registered by the board and shall, upon payment of the proper fee, be issued a license. The optometry board, at its discretion, may waive all or a portion of the written examination for any applicant who has satisfactorily passed the examination given by the National Board of Examiners in Optometry. Any license to practice optometry in this state issued by the secretary, and which shall be in full force and effect at the time of passage of *this 1975 amendatory act, shall be continued. [1991 c 3 § 135; 1975 1st ex.s. c 69 § 4; 1937 c 155 § 1; 1919 c 144 § 5; Rem. Supp. 1937 § 10150. Prior: 1909 c 235 § 7. Formerly RCW 18.53.060 and 18.53.080.]

***Reviser's note:** "This 1975 amendatory act," see note following RCW 18.53.040.

18.53.070 Examination application and registration fees. The fees for application for examination and for issuing a certificate of registration shall be determined by the secretary as provided in RCW 43.70.250, which shall be paid to the secretary as he or she shall prescribe. [1991 c 3 § 136; 1985 c 7 § 52; 1981 c 260 § 5. Prior: 1975 1st ex.s. c 69 § 5; 1975 1st ex.s. c 30 § 57; 1919 c 144 § 9; RRS § 10151; prior: 1909 c 235 § 7.]

18.53.100 Disciplinary action—Grounds. The following constitutes grounds for disciplinary action under chapter 18.130 RCW:

(1) Any form of fraud or deceit used in securing a license; or

(2) Any unprofessional conduct, of a nature likely to deceive or defraud the public; or

(3) The employing either directly or indirectly of any person or persons commonly known as "cappers" or "steerers" to obtain business; or

(4) To employ any person to solicit from house to house, or to personally solicit from house to house; or

(5) Advertisement in any way in which untruthful, improbable or impossible statements are made regarding treatments, cures or values; or

(6) The use of the term "eye specialist" in connection with the name of such optometrist; or

(7) Inability to demonstrate, in a manner satisfactory to the secretary or the board of optometry, their practical ability to perform any function set forth in RCW 18.53.010 which they utilize in their practice. [1991 c 3 § 137; 1986 c 259 § 81; 1975 1st ex.s. c 69 § 6; 1919 c 144 § 11; RRS § 10156. Prior: 1909 c 235 §§ 11, 12.]

Savings—1986 c 259 §§ 81, 85: "The repeal of RCW 18.53.020 and the amendment of RCW 18.53.100 by this act shall not be construed as affecting any rights and duties which matured, penalties which were incurred, and proceedings which were begun before June 11, 1986." [1986 c 259 § 86.]

Severability—1986 c 259: See note following RCW 18.130.010.

Alcoholism, intoxication, and drug addiction treatment: Chapter 70.96A RCW.

False advertising: Chapter 9.04 RCW.

Violation of Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.53.101 Application of uniform disciplinary act.

The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter and chapter 18.54 RCW. [1987 c 150 § 36; 1986 c 259 § 78.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.53.140 Unlawful acts. It shall be unlawful for any person:

(1) To sell or barter, or offer to sell or barter any license issued by the secretary; or

(2) To purchase or procure by barter any license with the intent to use the same as evidence of the holder's qualification to practice optometry; or

(3) To alter with fraudulent intent in any material regard such license; or

(4) To use or attempt to use any such license which has been purchased, fraudulently issued, counterfeited or materially altered as a valid license; or

(5) To practice optometry under a false or assumed name, or as a representative or agent of any person, firm or corporation with which the licensee has no connection: PROVIDED, Nothing in this chapter nor in the optometry law shall make it unlawful for any lawfully licensed optometrist or association of lawfully licensed optometrists to practice optometry under the name of any lawfully licensed optometrist who may transfer by inheritance or otherwise the right to use such name; or

(6) To practice optometry in this state either for him or herself or any other individual, corporation, partnership, group, public or private entity, or any member of the

licensed healing arts without having at the time of so doing a valid license issued by the secretary of health; or

(7) To in any manner barter or give away as premiums either on his own account or as agent or representative for any other purpose, firm or corporation, any eyeglasses, spectacles, lenses or frames; or

(8) To use drugs in the practice of optometry, except those topically applied for diagnostic or therapeutic purposes; or

(9) To use advertising whether printed, radio, display, or of any other nature, which is misleading or inaccurate in any material particular, nor shall any such person in any way misrepresent any goods or services (including but without limitation, its use, trademark, grade, quality, size, origin, substance, character, nature, finish, material, content, or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted; or

(10) To advertise the "free examination of eyes," "free consultation," "consultation without obligation," "free advice," or any words or phrases of similar import which convey the impression to the public that eyes are examined free or of a character tending to deceive or mislead the public, or in the nature of "bait advertising;" or

(11) To use an advertisement of a frame or mounting which is not truthful in describing the frame or mounting and all its component parts. Or advertise a frame or mounting at a price, unless it shall be depicted in the advertisement without lenses inserted, and in addition the advertisement must contain a statement immediately following, or adjacent to the advertised price, that the price is for frame or mounting only, and does not include lenses, eye examination and professional services, which statement shall appear in type as large as that used for the price, or advertise lenses or complete glasses, viz.: frame or mounting with lenses included, at a price either alone or in conjunction with professional services; or

(12) To use advertising, whether printed, radio, display, or of any other nature, which inaccurately lays claim to a policy or continuing practice of generally underselling competitors; or

(13) To use advertising, whether printed, radio, display or of any other nature which refers inaccurately in any material particular to any competitors or their goods, prices, values, credit terms, policies or services; or

(14) To use advertising whether printed, radio, display, or of any other nature, which states any definite amount of money as "down payment" and any definite amount of money as a subsequent payment, be it daily, weekly, monthly, or at the end of any period of time. [1991 c 3 § 138; 1989 c 36 § 2; 1986 c 259 § 82; 1981 c 58 § 3; 1979 c 158 § 47; 1975 1st ex.s. c 69 § 7; 1945 c 78 § 1; 1935 c 134 § 1; 1919 c 144 § 7; Rem. Supp. 1945 § 10152. Cf. 1909 c 235 § 5.]

Severability—1986 c 259: See note following RCW 18.130.010.

False advertising: Chapter 9.04 RCW.

Violation of Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.53.145 Unlawful advertising of indemnity benefits. It shall be unlawful for any licensee subject to the provisions of chapter 18.53 RCW to advertise to the effect

that benefits in the form of indemnity will accrue to subscribers of health care service contracts for services performed by the licensee for a subscriber when the licensee is neither a health care service contractor nor a participant. A violation of this section shall be punishable as provided in RCW 18.53.140(10). [1969 c 143 § 2.]

18.53.150 Violations generally—Penalty. Any person violating this chapter is guilty of a misdemeanor. [1986 c 259 § 83; 1919 c 144 § 22; RRS § 10163. Prior: 1909 c 235 § 12.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.53.160 Public aid ocular services—Discrimination prohibited. All agencies of the state and its subdivisions, and all commissions, clinics and boards administering relief, public assistance, public welfare assistance, social security, health insurance, or health service under the laws of this state, shall accept the services of licensed optometrists for any service covered by their licenses relating to any person receiving benefits from said agencies or subdivisions and shall pay for such services in the same way as practitioners of other professions may be paid for similar services. None of the said governmental agencies, or agents, officials or employees thereof, including the public schools, in the performance of their duties shall in any way show discrimination among licensed ocular practitioners. [1949 c 149 § 1; Rem. Supp. 1949 § 9991a.]

18.53.165 Discrimination prohibited—Legislative finding and declaration. The legislature finds and declares that the costs of health care to the people are rising disproportionately to other costs and that there is a paramount concern that the right of the people to obtain access to health care in all its facets is being impaired thereby. For this reason, the reliance on the mechanism of insurance, whether profit or nonprofit, is the only effective manner in which the large majority of the people can attain access to quality health care, and it is therefore declared to be in the public interest that health care insurance be regulated to assure that all the people have access to health care rendered by whatever means, and to the greatest extent possible. RCW 18.53.165 through 18.53.190 and 18.53.901, prohibiting discrimination against the legally recognized and licensed profession of optometrists, is necessary in the interest of the public health, welfare and safety. [1973 c 48 § 1.]

18.53.170 Discrimination prohibited—Acceptance of services by state agencies and subdivisions. Notwithstanding any other provision of law, the state and its political subdivisions shall accept the services of licensed optometrists for any service covered by their licenses with relation to any person receiving benefits, salaries, wages, or any other type of compensation from the state, its agencies or subdivisions. [1973 c 48 § 2.]

18.53.175 Discrimination prohibited—State agencies and subdivisions—Officials and employees. The state and its political subdivisions, and all officials, agents, employees, or representatives thereof, are prohibited from in any way

discriminating against licensed optometrists in performing and receiving compensation for services covered by their licenses. [1973 c 48 § 3.]

18.53.180 Discrimination prohibited—Agreements or contracts by state and subdivisions. Notwithstanding any other provision of law, the state and its political subdivisions, and all officials, agents, employees, or representatives thereof, are prohibited from entering into any agreement or contract with any individual, group, association, or corporation which in any way, directly or indirectly, discriminates against licensed optometrists in performing and receiving compensation for services covered by their licenses. [1973 c 48 § 4.]

18.53.185 Discrimination prohibited—Costs immaterial. Notwithstanding any other provision of law, for the purpose of RCW 18.53.165 through 18.53.180 and 18.53.190 it is immaterial whether the cost of any policy, plan, agreement, or contract be deemed additional compensation for services, or otherwise. [1973 c 48 § 5.]

18.53.190 Discrimination prohibited—Application of law. RCW 18.53.165 through 18.53.185 shall apply to all agreements, renewals, or contracts issued on or after June 7, 1973.

Health care service contracts having a participant agreement with a majority of the licensed optometrists within its service area may provide benefits to persons or groups of persons through contracts which allow a subscriber to utilize on an equal participation basis the services of any participant provided in the contract, and such contracts shall not be discriminatory. [1975 1st ex.s. c 69 § 8; 1973 c 48 § 6.]

18.53.200 Privileged communications. The information and records of a licensed optometrist pertaining to a patient shall be privileged communications, the same as now or hereafter may exist in the relationship of physician and patient and shall not be released or subjected to disclosure without the consent of the patient or as otherwise required by law. [1975 1st ex.s. c 69 § 14.]

Privileged communications—Physician and patient: RCW 5.60.060.

18.53.900 Short title—1919 c 144. This act shall be known, and may be referred to as, "The Optometry Law". [1919 c 144 § 20.]

18.53.901 Severability—1973 c 48. If any provision of this 1973 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. [1973 c 48 § 7.]

18.53.910 Severability—1919 c 144. Any question of unconstitutionality arising concerning any of the sections or provisions of this act shall in no wise affect any other section or provision of the act. [1919 c 144 § 18.]

18.53.911 Severability—1975 1st ex.s. c 69. 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 69 § 17.]

18.53.912 Severability—1981 c 58. 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 58 § 4.]

18.53.920 Repeal—1919 c 144. All acts and parts of acts inconsistent with this act are hereby repealed. [1919 c 144 § 19.]

Chapter 18.54 OPTOMETRY BOARD

Sections

18.54.005	Regulation of health care professions—Criteria.
18.54.010	Definitions.
18.54.020	Examining committee reconstituted as optometry board.
18.54.030	Composition—Appointments—Qualifications—Terms—Vacancies.
18.54.040	Officers.
18.54.050	Meetings.
18.54.060	Quorum.
18.54.070	Powers and duties—Examinations—Rules.
18.54.076	Application of uniform disciplinary act.
18.54.090	Administrative procedures—Minimum fees.
18.54.130	Compensation and travel expenses of members.
18.54.140	Board may draw from health professions account.
18.54.150	Devolution of powers relating to revocation of certificates.
18.54.900	Short title.
18.54.910	Severability—1963 c 25.
18.54.920	RCW 43.24.060, 43.24.110, and 43.24.120 not applicable to optometry.

Reviser's note: Powers and duties of the department of licensing and the director of licensing transferred to the department of health and the secretary of health. See RCW 43.70.220.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.54.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.54.010 Definitions. Unless the context clearly indicates otherwise, the terms used in this chapter take their meanings as follows:

- (1) "Board" means the optometry board;
- (2) "License" means a certificate or permit to practice optometry as provided in *RCW 18.53.020 as amended from time to time;
- (3) "Members" means members of the optometry board. [1963 c 25 § 1.]

***Reviser's note:** RCW 18.53.020 was repealed by 1986 c 259 § 85.

18.54.020 Examining committee reconstituted as optometry board. The examining committee, heretofore created pursuant to RCW 43.24.060, is reorganized and reconstituted as the optometry board. [1963 c 25 § 2.]

RCW 43.24.060, 43.24.110, and 43.24.120 not applicable to optometry: RCW 18.54.920.

18.54.030 Composition—Appointments—Qualifications—Terms—Vacancies. The initial composition of the optometry board includes the three members of the examining committee for optometry plus two more optometrists to be appointed by the governor.

The governor must make all appointments to the optometry board. Only optometrists who are citizens of the United States, residents of this state, having been licensed to practice and practicing optometry in this state for a period of at least four years immediately preceding the effective date of appointment, and who have no connection with any school or college embracing the teaching of optometry or with any optical supply business may be appointed.

The governor may set the terms of office of the initial board at his discretion, to establish the following perpetual succession: The terms of the initial board include one position for one year, two for two years and two for three years; and upon the expiration of the terms of the initial board, all appointments are for three years.

In addition to the members specified in this section, the governor shall appoint a consumer member of the board, who shall serve for a term of three years.

In the event that a vacancy occurs on the board in the middle of an appointee's term, the governor must appoint a successor for the unexpired portion of the term only. [1984 c 279 § 54; 1963 c 25 § 3.]

Severability—1984 c 279: See RCW 18.130.901.

18.54.040 Officers. The board must elect a chairman and secretary from its members, to serve for a term of one year or until their successors are elected and qualified. [1963 c 25 § 4.]

18.54.050 Meetings. The board must meet at least once yearly or more frequently upon call of the chairman or the secretary of health at such times and places as the chairman or the secretary of health may designate by giving three days' notice or as otherwise required by RCW 42.30.075. [1991 c 3 § 139; 1989 c 175 § 65; 1979 c 158 § 48; 1975 1st ex.s. c 69 § 9; 1963 c 25 § 5.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1975 1st ex.s. c 69: See RCW 18.53.911.

18.54.060 Quorum. Three members constitute a quorum for the transaction of business of the board. [1963 c 25 § 6.]

18.54.070 Powers and duties—Examinations—Rules. The board has the following powers and duties:

(1) The board shall prepare the necessary lists of examination questions, conduct examinations, either written or oral or partly written and partly oral, and shall certify to the secretary of health all lists, signed by all members conducting the examination, of all applicants for licenses who have successfully passed the examination and a separate list of all applicants for licenses who have failed to pass the examination, together with a copy of all examination questions used, and the written answers to questions on written examinations submitted by each of the applicants.

(2) The board shall adopt rules and regulations to promote safety, protection and the welfare of the public, to

carry out the purposes of this chapter, to aid the board in the performance of its powers and duties, and to govern the practice of optometry. [1991 c 3 § 140; 1986 c 259 § 84; 1979 c 158 § 49; 1975 1st ex.s. c 69 § 10; 1963 c 25 § 7.]

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1975 1st ex.s. c 69: See RCW 18.53.911.

18.54.076 Application of uniform disciplinary act.

The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter and chapter 18.53 RCW. [1987 c 150 § 37; 1986 c 259 § 79.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.54.090 Administrative procedures—Minimum fees. The board is an administrative agency of the state of Washington, and the provisions of the administrative procedure act, chapter 34.05 RCW as amended from time to time, govern the conduct and proceedings of the board. Nothing in this chapter shall be construed to give the board the power to set or recommend a minimum schedule of fees to be charged by licensed optometrist. [1963 c 25 § 9.]

18.54.130 Compensation and travel expenses of members. Members of the board are entitled to receive their travel expenses in accordance with RCW 43.03.050 and 43.03.060. Each member of the board will also be compensated in accordance with RCW 43.03.240. [1984 c 287 § 41; 1975-'76 2nd ex.s. c 34 § 39; 1967 c 188 § 3; 1963 c 25 § 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.

18.54.140 Board may draw from health professions account. Notwithstanding any other provisions of law, rule or regulation, the board may draw from the health professions account on vouchers approved by the secretary of health, so much money as is necessary to carry into effect, to administer, and to enforce the provisions of this chapter. [1991 c 3 § 141; 1983 c 168 § 9; 1979 c 158 § 50; 1975 1st ex.s. c 69 § 12; 1963 c 25 § 14.]

Severability—1983 c 168: See RCW 18.120.910.

Severability—1975 1st ex.s. c 69: See RCW 18.53.911.

Health professions account: RCW 43.70.320.

18.54.150 Devolution of powers relating to revocation of certificates. All powers previously vested in the director of licenses under the provisions of RCW 18.53.100 are vested in the optometry board. [1963 c 25 § 15.]

18.54.900 Short title. This act may be known and cited as the "optometry board act." [1963 c 25 § 16.]

18.54.910 Severability—1963 c 25. 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 provisions to other persons or circumstances is not affected. [1963 c 25 § 17.]

18.54.920 RCW 43.24.060, 43.24.110, and 43.24.120 not applicable to optometry. The provisions of RCW 43.24.060, 43.24.110 and 43.24.120 are not applicable to the licensing and regulation of the practice of optometry. [1963 c 25 § 18.]

Examining committee reconstituted as optometry board: RCW 18.54.020.

Chapter 18.55 OCULARISTS

Sections

18.55.005	Regulation of health care professions—Criteria.
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18.55.050	Licenses or registrations—Renewal.
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18.55.075	Scope of practice.
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18.55.095	Authority of secretary.
18.55.105	Out-of-state applicants.
18.55.900	Severability—1980 c 101.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.55.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.55.007 License required. No person may practice or represent himself or herself as an ophthalmologist without first having a valid license to do so. [1987 c 150 § 40.]

Severability—1987 c 150: See RCW 18.122.901.

18.55.010 Licensing—Exemptions—Limitations. (1) Nothing in this chapter shall:

(a) Be construed to limit or restrict a duly licensed physician or employees working under the personal supervision of a duly licensed physician from the practices enumerated in this chapter;

(b) Be construed to prohibit an unlicensed person from performing mechanical work upon inert matter in an ophthalmologist's office or laboratory;

(c) Be construed to authorize or permit a licensee under this chapter to hold himself or herself out as being able to, or to offer to, or to undertake to attempt, by any manner of means, to examine or exercise eyes, or diagnose, treat, correct, relieve, operate, or prescribe for disease or any visual deficiency.

(2) Each practitioner duly licensed pursuant to chapters 18.53, 18.57, and 18.71 RCW shall have all the rights and privileges which may accrue under this chapter to ophthalmologists licensed under this chapter. [1980 c 101 § 1.]

18.55.015 Intent. The legislature finds it necessary to regulate the practice of ocularist to protect the public health, safety, and welfare. The legislature intends that only individuals who meet and maintain minimum standards of competence and conduct may provide service to the public. [1991 c 180 § 1.]

18.55.020 Definitions. The terms defined in this section shall have the meaning ascribed to them wherever appearing in this chapter, unless a different meaning is specifically used to such term in such statute.

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of health.

(3) "Ocularist" means a person licensed under this chapter.

(4) "Advisory committee" means the state ocularist advisory committee.

(5) "Apprentice" means a person designated an apprentice in the records of the secretary to receive from a licensed ocularist training and direct supervision in the work of an ocularist.

(6) "Stock-eye" means an ocular stock prosthesis that has not been originally manufactured or altered by the ocularist or service provider selling or fitting, or both, said prosthesis to a patient or customer. "Altered" means either taking away or adding materials, or colorization, or otherwise changing the prosthesis' appearance, function, or fit in the socket or on the implant of the patient or customer.

(7) "Modified stock-eye" means a stock-eye, as defined in subsection (6) of this section, that has been altered in some manner by the ocularist or service provider selling or fitting, or both, said prosthesis to a patient or customer. "Altered" is as defined in subsection (6) of this section. A modified stock-eye cannot be defined as either a "custom" or "impression-fitted" eye or prosthesis by adding material that incorporates an impression-surface of the patient or customer socket or implant surfaces.

(8) "Custom-eye" means an original, newly manufactured eye or prosthesis that has been specifically crafted by an ocularist or authorized service provider for the patient or customer to whom it is sold or provided. The "custom-eye" may be either an impression-fitted eye (an impression of the socket or implant surfaces) or an empirical/wax pattern-fitted method eye, or a combination of either, as delineated in the ocularist examination. [1991 c 180 § 2; (1991 c 3 § 142 repealed by 1991 sp.s. c 11 § 2); 1980 c 101 § 2.]

18.55.030 Licenses—Issuance—Time for renewal—Expiration. Upon receipt of an application for a license and the license fee as determined by the secretary, the secretary shall issue a license if the applicant meets the requirements established under this chapter. The license, unless suspended or revoked, shall be renewed annually. All licenses issued under the provisions of this chapter shall expire on the 1st day of July. [1991 c 3 § 143; 1980 c 101 § 3.]

18.55.040 License applicants—Qualifications—Examination. No applicant shall be licensed under this chapter until the applicant pays an examination fee determined by the secretary, as provided in RCW 43.70.250, and

certifies under oath after furnishing satisfactory documentation, that the applicant:

(1) Is eighteen years or more of age;

(2) Has graduated from high school or has received a general equivalency degree;

(3) Is of good moral character; and

(4)(a) Had at least ten thousand hours of apprenticeship training under the direct supervision of a licensed ocularist; or

(b) Successfully completed a prescribed course in ocularist training programs approved by the secretary; or

(c) Has had at least ten thousand hours of apprenticeship training under the direct supervision of a practicing ocularist, or has the equivalent experience as a practicing ocularist, or any combination of training and supervision, not in the state of Washington; and

(5) Successfully passes an examination conducted or approved by the secretary. [1991 c 180 § 4; (1991 c 3 § 144 repealed by 1991 sp.s. c 11 § 2); 1985 c 7 § 53; 1980 c 101 § 4.]

18.55.045 Examination. The secretary may approve an examination prepared or administered by a private testing agency or association of licensing authorities. The examination shall determine if the applicant has a thorough knowledge of the principles governing the practice of an ocularist. [1991 c 180 § 5.]

18.55.050 Licenses or registrations—Renewal. Every individual licensed or registered under this chapter shall pay an annual license or registration renewal fee determined by the secretary, as provided by RCW 43.70.250, on or before the expiration date established by the secretary. An application for renewal shall be on the form provided by the secretary and shall be filed with the department of health not less than ten days prior to its expiration. Each application for renewal shall be accompanied by a renewal fee in an amount to be determined by the secretary. Any license or registration not renewed as provided in this section shall be invalid.

The secretary may provide by rule the procedures that may allow for the reinstatement of a license or registration upon payment of the renewal fee and a late renewal penalty fee. [1991 c 180 § 6; (1991 c 3 § 145 repealed by 1991 sp.s. c 11 § 2); 1985 c 7 § 54; 1980 c 101 § 7.]

18.55.060 Apprentices. (1) A person wishing to work as an apprentice ocularist shall submit to the secretary the registration fee and completed application form signed by the applicant and the licensed ocularist who shall be responsible for the acts of the apprentice in the performance of his or her work in the apprenticeship program.

(2) Apprentices shall complete their ten thousand hours of apprenticeship within eight years and shall not work longer as an apprentice unless the secretary determines, after a hearing, that the apprentice was prevented by causes beyond his or her control from completing the apprenticeship and becoming a licensee hereunder in eight years.

(3) No licensee under this chapter may have more than two apprentices in training at one time. [1991 c 180 § 7; 1991 c 3 § 146; 1980 c 101 § 5.]

Reviser's note: This section was amended by 1991 c 3 § 146 and by 1991 c 180 § 7, 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).

18.55.066 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 39; 1986 c 259 § 89.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.55.075 Scope of practice. An ocularist designs, fabricates, and fits ocular prosthetic appliances. An ocularist is authorized to perform the necessary procedures to provide an ocular prosthetic service for the patient in the ocularist's office or laboratory on referral of a physician. A referral is not required for the replacement of an ocular prosthetic appliance. The ocularist is authorized to make judgment on the needed care, replacement, and use of an ocular prosthetic appliance. The ocularist is authorized to design, fabricate, and fit human prosthetics in the following categories:

- (1) Stock and custom prosthetic eyes;
- (2) Stock and custom therapeutic scleral shells;
- (3) Stock and custom therapeutic painted iris shells;
- (4) External orbital and facial prosthetics; and
- (5) Ocular conformers: PROVIDED, That nothing

herein shall be construed to allow the fitting or fabricating of contact lenses. [1991 c 180 § 3.]

18.55.085 Unprofessional conduct. An ocularist or authorized service provider shall explain to patients or customers exactly which type of prosthesis or service they are receiving or purchasing. Failure to do so, or misrepresentation of said services, constitutes unprofessional conduct under this chapter and chapter 18.130 RCW. [1991 c 180 § 9.]

18.55.095 Authority of secretary. In addition to any other authority provided by law, the secretary may:

- (1) Adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;
- (2) Establish forms necessary to administer this chapter;
- (3) Issue a license to any applicant who has met the education, training, and examination requirements for licensure and deny a license to applicants who do not meet the minimum qualifications for licensure. Proceedings concerning the denial of licenses based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;
- (4) Employ clerical, administrative, and investigative staff as needed to implement and administer this chapter and hire individuals, including those licensed under this chapter, to serve as examiners or consultants as necessary to implement and administer this chapter;
- (5) Maintain the official departmental record of all applicants and licensees;
- (6) Determine the minimum education and experience requirements for licensure, including but not limited to approval of educational programs;

(7) Prepare and administer or approve the preparation and administration of examinations for licensure; and

(8) Establish and implement by rule a continuing competency program. [1991 c 180 § 8.]

18.55.105 Out-of-state applicants. An applicant holding a credential in another state may be credentialed to practice in this state without examination if the secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1991 c 180 § 12.]

18.55.900 Severability—1980 c 101. 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. [1980 c 101 § 11.]

Chapter 18.57

OSTEOPATHY—OSTEOPATHIC MEDICINE AND SURGERY

Sections	
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Actions against, limitation of: RCW 4.16.350.

Crimes relating to pregnancy and childbirth: RCW 9A.32.060.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Lien of doctors: Chapter 60.44 RCW.

Rebating by practitioners of healing professions prohibited: Chapter 19.68 RCW.

18.57.001 Definitions. As used in this chapter:

(1) "Board" means the Washington state board of osteopathic medicine and surgery;

(2) "Department" means the department of health;

(3) "Secretary" means the secretary of health; and

(4) "Osteopathic medicine and surgery" means the use of any and all methods in the treatment of disease, injuries, deformities, and all other physical and mental conditions in and of human beings, including the use of osteopathic manipulative therapy. The term means the same as "osteopathy and surgery". [1991 c 160 § 1; 1991 c 3 § 147; 1979 c 117 § 1.]

18.57.002 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.57.003 State board of osteopathic medicine and surgery—Membership—Qualifications—Officers—Meetings—Compensation and travel expenses—Removal. There is hereby created an agency of the state of Washington, consisting of seven individuals appointed by the governor to be known as the Washington state board of osteopathic medicine and surgery.

On expiration of the term of any member, the governor shall appoint for a period of five years a qualified individual to take the place of such member. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been appointed and shall have qualified. Initial appointments shall be made and vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor.

Each member of the board shall be a citizen of the United States and must be an actual resident of this state. One member shall be a consumer who has neither a financial nor a fiduciary relationship to a health care delivery system, and every other member must have been in active practice as a licensed osteopathic physician and surgeon in this state for at least five years immediately preceding appointment.

The board shall elect a chairperson, a secretary, and a vice-chairperson from its members. Meetings of the board shall be held at least four times a year and at such place as the board shall determine and at such other times and places as the board deems necessary.

An affirmative vote of a simple majority of the members present at a meeting or hearing shall be required for the board to take any official action. The board may not take any action without a quorum of the board members present. A simple majority of the board members currently serving constitutes a quorum of the board.

Each member of the board 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.

Any member of the board may be removed by the governor for neglect of duty, misconduct, malfeasance or misfeasance in office, or upon written request of two-thirds of the physicians licensed under this chapter and in active practice in this state. [1991 c 160 § 2; 1984 c 287 § 42; 1979 c 117 § 2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.57.005 Powers and duties of board. The board shall have the following powers and duties:

(1) To administer examinations to applicants for licensure under this chapter;

(2) To make such rules and regulations as are not inconsistent with the laws of this state as may be deemed necessary or proper to carry out the purposes of this chapter;

(3) To establish and administer requirements for continuing professional education as may be necessary or proper to insure the public health and safety as a prerequisite to granting and renewing licenses under this chapter: PROVIDED, That such rules shall not require a licensee under this chapter to engage in continuing education related to or provided by any specific branch, school, or philosophy of medical practice or its political and/or professional organizations, associations, or societies;

(4) To keep an official record of all its proceedings, which record shall be evidence of all proceedings of the board which are set forth therein. [1986 c 259 § 94; 1979 c 117 § 3.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.57.011 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 41; 1986 c 259 § 92.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.57.020 Licenses—Application requirements. A license shall be issued by the secretary authorizing the holder to practice osteopathic medicine and surgery. In order to procure a license to practice osteopathic medicine and surgery, the applicant must provide the board evidence that a diploma has been issued to the applicant by an accredited school of osteopathic medicine and surgery, approved by the board. The application shall be made upon a form prepared by the secretary, with the approval of the board, and it shall contain such information concerning said osteopathic medical instruction and the preliminary education of the applicant as the board may by rule provide. Applicants who have failed to meet the requirements must be rejected.

An applicant for a license to practice osteopathic medicine and surgery must furnish evidence satisfactory to the board that he or she has served for not less than one year in a postgraduate training program approved by the board.

In addition, the applicant may be required to furnish evidence satisfactory to the board that he or she is physically and mentally capable of safely carrying on the practice of osteopathic medicine and surgery. The board may require any applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical and/or mental capability to safely practice osteopathic medicine and surgery. The applicant shall also show that he or she has not been guilty of any conduct which would constitute grounds for denial, suspension, or revocation of such license under the laws of the state of Washington.

Nothing in this section shall be construed as prohibiting the board from requiring such additional information from applicants as it deems necessary.

Nothing in this chapter shall be construed to require any applicant for licensure, or any licensee, as a requisite of retaining or renewing licensure under this chapter, to be a member of any political and/or professional organization. [1991 c 160 § 3; (1991 c 3 § 148 repealed by 1991 sp.s. c 11 § 2); 1979 c 117 § 11; 1959 c 110 § 1; 1919 c 4 § 4; RRS § 10056. Cf. 1909 c 192 § 6. Formerly RCW 18.57.020, 18.57.060, 18.57.070, and 18.57.090.]

18.57.031 License required. No person may practice or represent himself or herself as an osteopathic physician and surgeon without first having a valid license to do so. [1987 c 150 § 42.]

Severability—1987 c 150: See RCW 18.122.901.

18.57.035 Postgraduate training licenses. The board may grant approval to issue without examination a license to an osteopathic physician and surgeon in a board-approved postgraduate training program in this state if the applicant files an application and meets all the requirements for licensure set forth in RCW 18.57.020 except for completion of one year of postgraduate training. The secretary shall issue a postgraduate osteopathic medicine and surgery license that permits the physician in postgraduate training to practice osteopathic medicine and surgery only in connection with his or her duties as a physician in postgraduate training and does not authorize the physician to engage in any other form of practice. Each physician in postgraduate training shall practice osteopathic medicine and surgery only under the supervision of a physician licensed in this state under this chapter or chapter 18.71 RCW, but such supervision shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered.

All persons licensed under this section shall be subject to the jurisdiction of the board of osteopathic medicine and surgery as set forth in this chapter and chapter 18.130 RCW.

Persons applying for licensure pursuant to this section shall pay an application and renewal fee determined by the secretary as provided in RCW 43.70.250. Licenses issued hereunder may be renewed annually. Any person who obtains a license pursuant to this section may, apply for licensure under this chapter, but shall submit a new application form and comply with all other licensing requirements of this chapter. [1991 c 160 § 9.]

18.57.040 Licensing exemptions. Nothing in this chapter shall be construed to prohibit:

- (1) Service in the case of emergency;
- (2) The domestic administration of family remedies;
- (3) The practice of midwifery as permitted under chapter 18.50 RCW;
- (4) The practice of osteopathic medicine and surgery by any commissioned medical officer in the United States government or military service or by any osteopathic physician and surgeon employed by a federal agency, in the discharge of his or her official duties;

(5) Practice by a dentist licensed under chapter 18.32 RCW when engaged exclusively in the practice of dentistry;

(6) Practice by any osteopathic physician and surgeon from any other state or territory in which he or she resides: PROVIDED, That such practitioner shall not open an office or appoint a place of meeting patients or receive calls within the limits of this state;

(7) Practice by a person who is a student enrolled in an accredited school of osteopathic medicine and surgery approved by the board: PROVIDED, That the performance of such services be only pursuant to a course of instruction or assignments from his or her instructor or school, and such services are performed only under the supervision of a person licensed pursuant to this chapter or chapter 18.71 RCW;

(8) Practice by an osteopathic physician and surgeon serving a period of clinical postgraduate medical training in a postgraduate program approved by the board: PROVIDED, That the performance of such services be only pursuant to a course of instruction in said program, and said services are performed only under the supervision and control of a person licensed pursuant to this chapter or chapter 18.71 RCW; or

(9) Practice by a person who is enrolled in a physician assistant program approved by the board who is performing such services only pursuant to a course of instruction in said program: PROVIDED, That such services are performed only under the supervision and control of a person licensed pursuant to this chapter or chapter 18.71 RCW.

This chapter shall not be construed to apply in any manner to any other system or method of treating the sick or afflicted or to apply to or interfere in any way with the practice of religion or any kind of treatment by prayer. [1991 c 160 § 5; 1919 c 4 § 19; RRS § 10071. FORMER PART OF SECTION: 1921 c 82 § 1, part; 1919 c 4 § 17, part; RRS § 10069, part, now codified in RCW 18.57.130.]

Administering of drugs, inoculations, etc., by registered nurses permitted:
RCW 18.88.290.

Midwifery: Chapter 18.50 RCW.

18.57.045 Inactive licenses. A licensed osteopathic physician and surgeon who desires to leave the active practice of osteopathic medicine and surgery in this state may secure from the secretary an inactive license. The initial and renewal fees for an inactive license shall be determined by the secretary as provided in RCW 43.70.250. The holder of an inactive license may reactivate his or her license to practice osteopathic medicine and surgery in accordance with rules adopted by the board. [1991 c 160 § 4.]

18.57.050 Fees—Renewal of licenses. Each applicant on making application shall pay the secretary a fee determined by the secretary as provided in RCW 43.70.250. Application fees are nonrefundable. The board may establish rules and regulations governing mandatory continuing education requirements which shall be met by physicians applying for renewal of licenses. The secretary shall establish a renewal and late renewal penalty fee as provided in RCW 43.70.250. Failure to renew the license invalidates all privileges granted by the license. The board shall

determine by rule when a license shall be canceled for failure to renew and shall establish prerequisites for relicensing. [1991 c 160 § 6; (1991 c 3 § 149 repealed by 1991 sp.s. c 11 § 2); 1985 c 7 § 55; 1979 c 117 § 12; 1975 1st ex.s. c 30 § 58; 1971 ex.s. c 266 § 11; 1919 c 4 § 6; RRS § 10058. Cf. 1909 c 192 § 7. Formerly RCW 18.57.050 and 18.57.120.]

18.57.080 Examinations. Applicants for a license to practice osteopathic medicine and surgery must successfully complete an examination prepared or approved by the board. The examination shall be conducted in the English language, shall determine the applicant's fitness to practice osteopathic medicine and surgery, and may be in whole or in part in writing or by practical application on those general subjects and topics of which knowledge is commonly and generally required of applicants who have obtained the doctor of osteopathic medicine and surgery conferred by accredited schools of osteopathic medicine and surgery approved by the board. If an examination does not encompass the subject of osteopathic principles and practice, the applicant shall be required to complete the board-administered examination. The board may prepare and administer or approve preparation and administration of examinations on such subjects as the board deems advisable. The examination papers of any examination administered by the board shall form a part of the applicant's records and shall be retained as determined by the secretary for a period of not less than one year. All applicants for examination or reexamination shall pay a fee determined by the secretary as provided in RCW 43.70.250. [1991 c 160 § 7; (1991 c 3 § 150 repealed by 1991 sp.s. c 11 § 2); 1979 c 117 § 13; 1919 c 4 § 5; RRS § 10057. Cf. 1909 c 192 § 6. Formerly RCW 18.57.080 and 18.57.090, part.]

18.57.130 Persons licensed by other states—Requirements—Fees. Any person who meets the requirements of RCW 18.57.020 as now or hereafter amended and has been examined and licensed to practice osteopathic medicine and surgery by a state board of examiners of another state or the duly constituted authorities of another state authorized to issue licenses to practice osteopathic medicine and surgery upon examination, shall upon approval of the board be entitled to receive a license to practice osteopathic medicine and surgery in this state upon the payment of a fee determined by the secretary as provided in RCW 43.70.250 to the state treasurer and filing a copy of his or her license in such other state, duly certified by the authorities granting the license to be a full, true, and correct copy thereof, and certifying also that the standard of requirements adopted by such authorities as provided by the law of such state is substantially equal to that provided for by the provisions of this chapter: PROVIDED, That no license shall issue without examination to any person who has previously failed in an examination held in this state: PROVIDED, FURTHER, That all licenses herein mentioned may be revoked for unprofessional conduct, in the same manner and upon the same grounds as if issued under this chapter: PROVIDED, FURTHER, That no one shall be permitted to practice surgery under this chapter who has not a license to practice osteopathic medicine and surgery.

[1991 c 160 § 10; 1991 c 3 § 151; 1985 c 7 § 56; 1979 c 117 § 15; 1975 1st ex.s. c 30 § 59; 1921 c 82 § 1; 1919 c 4 § 17; RRS § 10069. Formerly RCW 18.57.010, 18.57.040, part, and 18.57.130.]

Reviser's note: This section was amended by 1991 c 3 § 151 and by 1991 c 160 § 10, 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).

18.57.140 Advertising regulations. On all cards, signs, letterheads, envelopes and billheads used by those licensed by this chapter to practice osteopathy or osteopathy and surgery the word "osteopathic" shall always immediately precede the word "physician" and if the word "surgeon" is used in connection with said name, the word "osteopathic" shall also immediately precede said word "surgeon." [1919 c 4 § 20; RRS § 10072.]

18.57.145 Use of designations in combination with name. No provision of this chapter or of any other law shall prevent any person who holds a valid, unrevoked certificate to practice osteopathic medicine and surgery from using in combination with his or her name the designation "Osteopathic Physician and Surgeon" or the abbreviation of his or her professional degree, Doctor of Osteopathy (D.O.), provided he or she hold such professional degree, or any combination thereof upon his or her stationery, in any professional lists or directories or in other places where the same may properly appear as permitted within the canons of ethics approved by the board. [1991 c 160 § 8; 1959 c 110 § 2.]

18.57.150 Applicability of health regulations. All persons granted licenses or certificates under this chapter shall be subject to the state and municipal regulations relating to the control of contagious diseases, the reporting and certifying to births and deaths, and all matters pertaining to public health; and all such reports shall be accepted as legal. [1919 c 4 § 18; RRS § 10070.]

Vital statistics: Chapter 70.58 RCW.

18.57.160 Unlawful practices—Penalty. Every person falsely claiming himself to be the person named in a certificate issued to another, or falsely claiming himself to be the person entitled to the same, shall be guilty of a felony, and, upon conviction thereof, shall be subject to such penalties as are provided by the laws of this state for the crime of forgery. [1981 c 277 § 9; 1919 c 4 § 15; RRS § 10067. Cf. 1909 c 192 § 15.]

Forgery: RCW 9A.60.020.

18.57.174 Duty to report unprofessional conduct—Exceptions. [(1)] A health care professional licensed under chapter 18.57 RCW shall report to the board when he or she has personal knowledge that a practicing osteopathic physician has either committed an act or acts which may constitute statutorily defined unprofessional conduct or that a practicing osteopathic physician may be unable to practice osteopathic medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of

drugs, narcotics, chemicals, or any other type of material, or as a result of any impairing mental or physical conditions.

(2) Reporting under this section is not required by:

(a) An appropriately appointed peer review committee member of a licensed hospital or by an appropriately designated professional review committee member of an osteopathic medical society during the investigative phase of their respective operations if these investigations are completed in a timely manner; or

(b) A treating licensed health care professional of an osteopathic physician currently involved in a treatment program as long as the physician patient actively participates in the treatment program and the physician patient's impairment does not constitute a clear and present danger to the public health, safety, or welfare.

(3) The board may impose disciplinary sanctions, including license suspension or revocation, on any health care professional subject to the jurisdiction of the board who has failed to comply with this section. [1986 c 300 § 9.]

Legislative findings—1986 c 300: "(1) The legislature finds that medical malpractice will be reduced if hospitals establish coordinated medical malpractice prevention programs and provide greater scrutiny of physicians prior to granting or renewing hospital privileges.

(2) The legislature also finds that physician disciplinary boards can reduce medical malpractice if they have access to additional information on health care providers who are incompetent or impaired." [1986 c 300 § 1.]

Severability—1986 c 300: "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 300 § 12.]

18.57.245 Duty of professional liability insurers to report malpractice settlements and awards. Every institution or organization providing professional liability insurance to osteopathic physicians shall send a complete report to the board of all malpractice settlements, awards, or payments in excess of twenty thousand dollars as a result of a claim or action for damages alleged to have been caused by an insured physician's incompetency or negligence in the practice of osteopathic medicine. Such institution or organization shall also report the award, settlement, or payment of three or more claims during a year as the result of the alleged physician's incompetence or negligence in the practice of medicine regardless of the dollar amount of the award or payment.

Reports required by this section shall be made within sixty days of the date of the settlement or verdict. Failure to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars. [1986 c 300 § 10.]

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.174.

18.57.250 Physician members of committees to evaluate credentials and qualifications of physicians—Immunity from civil suit. See RCW 4.24.240.

18.57.260 Physicians filing charges or presenting evidence before committees, boards or hospitals—Immunity from civil suit. See RCW 4.24.250, 4.24.260.

18.57.270 Records of medical society or hospital committee or board not subject to civil process. See RCW 4.24.250.

18.57.900 Interchangeable terms. The words "certificates" and "licenses" shall be known as interchangeable terms in this chapter. [1919 c 4 § 21; RRS § 10073.]

18.57.910 Repeal. All acts and parts of acts in conflict herewith are hereby repealed. [1919 c 4 § 22.]

18.57.915 Severability—1979 c 117. 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 117 § 19.]

Chapter 18.57A

OSTEOPATHIC PHYSICIANS' ASSISTANTS

Sections

18.57A.005 Regulation of health care professions—Criteria.

18.57A.010 Definitions.

18.57A.020 Rules fixing qualifications and restricting practice—Contents.

18.57A.025 Application of uniform disciplinary act.

18.57A.030 Limitations on practice by osteopathic physicians' assistants.

18.57A.040 Osteopathic physician's assistants—Generally.

18.57A.050 Osteopathic physician's liability, responsibility.

18.57A.060 Limitations on health care services.

18.57A.070 Performance of acupuncture.

Reviser's note: Certain powers and duties of the department of licensing and the director of licensing transferred to the department of health and the secretary of health. See RCW 43.70.220.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.57A.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.57A.010 Definitions. (1) "Osteopathic physician's assistant" means a person who has satisfactorily completed a board-approved training program designed to prepare persons to practice osteopathic medicine to a limited extent;

(2) "Board" means the board of osteopathic medicine and surgery; and

(3) "Practice medicine" shall have the meaning defined in RCW 18.57.001. [1979 c 117 § 17; 1971 ex.s. c 30 § 7.]

Severability—1979 c 117: See RCW 18.57.915.

Severability—1971 ex.s. c 30: See note following RCW 18.71A.010.

18.57A.020 Rules fixing qualifications and restricting practice—Contents. The board shall adopt rules and regulations fixing the qualifications and the educational and training requirements for persons who may be employed as osteopathic physician's assistants or who may be enrolled in any physician's training program.

The board shall, in addition, adopt rules and regulations governing the extent to which physician's assistants may practice medicine during training and after successful

completion of a training course. Such regulations shall provide:

(1) That the practice of an osteopathic physician's assistant shall be limited to the performance of those services for which he is trained; and

(2) That each osteopathic physician's assistant shall practice medicine only under the supervision and control of an osteopathic physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered. The board may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW. [1992 c 28 § 1; 1971 ex.s. c 30 § 8.]

Severability—1971 ex.s. c 30: See note following RCW 18.71A.010.

18.57A.025 Application of uniform disciplinary act.

The uniform disciplinary act, chapter 18.130 RCW, governs the approval or disapproval of applications and the discipline of persons authorized to practice under this chapter. [1986 c 259 § 93.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.57A.030 Limitations on practice by osteopathic physicians' assistants. An osteopathic physician's assistant as defined in this chapter may practice osteopathic medicine in this state only after authorization by the board and only to the extent permitted by the board. An osteopathic physician's assistant shall be subject to discipline by the board under the provisions of chapter 18.130 RCW. [1986 c 259 § 95; 1971 ex.s. c 30 § 9.]

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1971 ex.s. c 30: See note following RCW 18.71A.010.

18.57A.040 Osteopathic physician's assistants—Generally. No osteopathic physician practicing in this state shall utilize the services of an osteopathic physician's assistant without the approval of the board.

Any osteopathic physician licensed in this state may apply to the board for permission to use the services of an osteopathic physician's assistant. The application shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250, shall detail the manner and extent to which the physician's assistant would be used and supervised, shall detail the education, training, and experience of the osteopathic physician's assistant and shall provide such other information in such form as the board may require.

The board may approve or reject such applications. In addition, the board may modify the proposed utilization of the osteopathic physician's assistant, and approve the application as modified. No such approval shall extend for more than one year, but approval once granted may be renewed annually upon payment of a fee determined by the secretary as provided in RCW 43.70.250. Whenever it appears to the board that an osteopathic physician's assistant is being utilized in a manner inconsistent with the approval granted, the board may withdraw such approval. In the event a hearing is requested upon the rejection of an application, or upon the withdrawal of an approval, a hearing shall be conducted in accordance with chapter 34.05 RCW. [1991

c 3 § 152. Prior: 1986 c 259 § 96; 1985 c 7 § 57; 1975 1st ex.s. c 30 § 60; 1971 ex.s. c 30 § 10.]

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1971 ex.s. c 30: See note following RCW 18.71A.010.

18.57A.050 Osteopathic physician's liability, responsibility. No osteopathic physician who uses the services of an osteopathic physician's assistant in accordance with and within the terms of any permission granted by the board shall be considered as aiding and abetting an unlicensed person to practice osteopathic medicine within the meaning of RCW 18.57.080: PROVIDED, HOWEVER, That any physician shall retain professional and personal responsibility for any act which constitutes the practice of medicine as defined in RCW 18.57.130 when performed by a physician's assistant in his employ. [1986 c 259 § 97; 1971 ex.s. c 30 § 11.]

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1971 ex.s. c 30: See note following RCW 18.71A.010.

18.57A.060 Limitations on health care services. No health care services may be performed under this chapter in any of the following areas:

(1) The measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses or frames for the aid thereof.

(2) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training or orthoptics.

(3) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

(4) Nothing in this section shall preclude the performance of routine visual screening.

(5) The practice of dentistry or dental hygiene as defined in chapter 18.32 and 18.29 RCW respectively. The exemptions set forth in RCW 18.32.030, paragraphs (1) and (8), shall not apply to a physician's assistant.

(6) The practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulations of the spine.

(7) The practice of *podiatry as defined in chapter 18.22 RCW. [1973 c 77 § 20; 1971 ex.s. c 30 § 12.]

***Reviser's note:** The term "podiatry" was changed to "podiatric medicine and surgery" by 1990 c 147.

Severability—1971 ex.s. c 30: See note following RCW 18.71A.010.

18.57A.070 Performance of acupuncture. (1) The performance of acupuncture for the purpose of demonstration, therapy, or the induction of analgesia by a person licensed under this chapter shall be within the scope of practice authorized: PROVIDED, HOWEVER, That a person licensed to perform acupuncture under this section shall only do so under the direct supervision of a licensed osteopathic physician.

(2) The board shall determine the qualifications of a person authorized to perform acupuncture under subsection (1) of this section. In establishing a procedure for certification of such practitioners the board shall consider a license or certificate which acknowledges that the person has the

qualifications to practice acupuncture issued by the government of the Republic of China (Taiwan), the Peoples' Republic of China, British Crown Colony of Hong Kong, Korea, Great Britain, France, the Federated Republic of Germany (West Germany), Italy, Japan, or any other country or state which has generally equivalent standards of practices of acupuncture as determined by the board as evidence of such qualification.

(3) As used in this section "acupuncture" means the insertion of needles into the human body by piercing the skin of the body for the purpose of relieving pain, treating disease, or to produce analgesia, or as further defined by rules and regulations of the board. [1977 ex.s. c 233 § 1.]

Acupuncture: Chapter 18.06 RCW.

Chapter 18.59 OCCUPATIONAL THERAPY

Sections

18.59.005	Regulation of health care professions—Criteria.
18.59.010	Purpose.
18.59.020	Definitions.
18.59.031	License required.
18.59.040	Practice, services, or activities not prevented or restricted by chapter—Limited permits.
18.59.050	Licenses—Application—Requirements—Waiver.
18.59.060	Examinations.
18.59.070	Waiver of examination and licensing requirements—Applicants licensed in other states or territories.
18.59.080	License issuance—Posting required.
18.59.090	Renewal of licenses—Reinstatement of suspended or revoked licenses—Inactive status.
18.59.100	Duty to refer medical cases.
18.59.110	Fees.
18.59.120	Board of occupational therapy practice established—Members—Terms—Meetings—Compensation.
18.59.130	Board—Powers and duties—Rules.
18.59.141	Application of uniform disciplinary act.
18.59.150	Board—Staff.
18.59.900	Short title.
18.59.905	Severability—1984 c 9.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

18.59.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.59.010 Purpose. In order to safeguard the public health, safety, and welfare; to protect the public from being misled by incompetent, unethical, and unauthorized persons; to assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and to assure the availability of occupational therapy services of high quality to persons in need of such services, it is the purpose of this chapter to provide for the regulation of persons offering occupational therapy services to the public. [1984 c 9 § 2.]

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

(1) "Board" means the board of occupational therapy practice.

(2) "Occupational therapy" is the scientifically based use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging process in order to maximize independence, prevent disability, and maintain health. The practice encompasses evaluation, treatment, and consultation. Specific occupational therapy services include but are not limited to: Using specifically designed activities and exercises to enhance neurodevelopmental, cognitive, perceptual motor, sensory integrative, and psychomotor functioning; administering and interpreting tests such as manual muscle and sensory integration; teaching daily living skills; developing prevocational skills and play and avocational capabilities; designing, fabricating, or applying selected orthotic and prosthetic devices or selected adaptive equipment; and adapting environments for the handicapped. These services are provided individually, in groups, or through social systems.

(3) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

(4) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the supervision or with the regular consultation of an occupational therapist.

(5) "Occupational therapy aide" means a person who is trained to perform specific occupational therapy techniques under professional supervision as defined by the board but who does not perform activities that require advanced training in the sciences or practices involved in the profession of occupational therapy.

(6) "Person" means any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this chapter.

(7) "Department" means the department of health.

(8) "Secretary" means the secretary of health. [1991 c 3 § 153; 1984 c 9 § 3.]

18.59.031 License required. No person may practice or represent himself or herself as an occupational therapist without first having a valid license to do so. [1987 c 150 § 44.]

Severability—1987 c 150: See RCW 18.122.901.

18.59.040 Practice, services, or activities not prevented or restricted by chapter—Limited permits. This chapter shall not be construed as preventing or restricting the practice, services, or activities of:

(1) A person licensed in this state under any other law from engaging in the profession or occupation for which the person is licensed;

(2) A person employed as an occupational therapist or occupational therapy assistant by the government of the United States, if the person provides occupational therapy solely under the directions or control of the organization by which the person is employed;

(3) A person pursuing a course of study leading to a degree or certificate in occupational therapy in an accredited or approved educational program if the activities and services constitute a part of a supervised course of study, if the person is designated by a title which clearly indicated the person's status as a student or trainee;

(4) A person fulfilling the supervised fieldwork experience requirements of RCW 18.59.050, if the activities and services constitute a part of the experience necessary to meet the requirements of RCW 18.59.050;

(5) A person performing occupational therapy services in the state, if the services are performed for no more than ninety working days and if:

(a) The person is licensed under the laws of another state which has licensure requirements at least as stringent as the requirements of this chapter, as determined by the board; or

(b) The person has met commonly accepted standards for the practice of occupational therapy as specifically defined by the board;

(6) A person employed by or supervised by an occupational therapist as an occupational therapy aide;

(7) A person with a limited permit. A limited permit may be granted to persons who have completed the education and experience requirements of this chapter, or education and experience requirements which the board deems equivalent to those specified as requirements for licensure. The limited permit allows the applicant to practice in association with an occupational therapist. The limited permit is valid until the results of the next examination have been made public. One extension of this permit may be granted if the applicant has failed the examination, but during this period the person shall be under the direct supervision of an occupational therapist;

(8) Any persons who teach daily living skills, develop prevocational skills, and play and avocational capabilities, or adapt equipment or environments for the handicapped, or who do specific activities to enhance cognitive, perceptual motor, sensory integrative and psychomotor skills, but who do not hold themselves out to the public by any title, initials, or description of services as being engaged in the practice of occupational therapy; or

(9) Any person who designs, fabricates, or applies orthotic or prosthetic devices which are prescribed by a health care professional authorized by the laws of the state of Washington to prescribe the device or to direct the design, fabrication or application of the device. [1985 c 296 § 1; 1984 c 9 § 5.]

18.59.050 Licenses—Application—Requirements—Waiver. (1) An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file a written application on forms provided by the department showing to the satisfaction of the board that the applicant meets the requirements specified in this subsection.

(a) The applicant shall be of good moral character.

(b) The applicant shall present evidence satisfactory to the board of having successfully completed the academic requirements of an educational program in occupational therapy recognized by the board, with concentration in biological or physical science, psychology, sociology, and with education in selected manual skills.

(i) For an occupational therapist, such a program shall be nationally accredited and approved by rules of the board.

(ii) For an occupational therapy assistant, such a program shall be nationally accredited and approved by rules of the board.

(c) The applicant shall submit to the board evidence of having successfully completed a period of supervised fieldwork experience at a recognized educational institution or a training program approved by the educational institution at which the applicant met the academic requirements.

(i) For an occupational therapist, a minimum of six months of supervised fieldwork experience is required.

(ii) For an occupational therapy assistant, a minimum of two months of supervised fieldwork experience is required.

(d) An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall pass an examination as provided in RCW 18.59.060.

(2) The board may waive the educational requirements specified under subsection (1)(b)(ii) of this section for an occupational therapy assistant who has met the experience and any other requirements established by the board. Upon successful completion of the examination required of the occupational therapist, the individual shall be granted a license. [1984 c 9 § 6.]

18.59.060 Examinations. (1) A person applying for licensure shall demonstrate eligibility in accordance with RCW 18.59.050 and shall apply for examination upon a form and in such a manner as the department prescribes. The application shall be accompanied by the fee prescribed by RCW 18.59.110, which fee shall not be refunded. A person who fails an examination may apply for reexamination. The application shall be accompanied by the prescribed fee.

(2) An applicant for licensure under this chapter shall be given a written examination to test the applicant's knowledge of the basic and clinical sciences relating to occupational therapy and occupational therapy theory and practice, including the applicant's professional skills of occupational therapy techniques and methods, and such other subjects as the board deems useful to determine the applicant's fitness to practice. The board shall approve the examination and establish standards for acceptable performance.

(3) Applicants for licensure shall be examined at a time and place and under such supervision as the board may determine. The examination shall be given at least twice each year at such places as the board determines, and the board shall give reasonable public notice of the examinations in accordance with its rules at least sixty days prior to the administration of the examination.

(4) Applicants may obtain their examination scores and may review their papers in accordance with such rules as the board establishes. [1984 c 9 § 7.]

18.59.070 Waiver of examination and licensing requirements—Applicants licensed in other states or territories. (1) The board shall waive the examination and grant a license to a person engaged in the profession of an occupational therapist or an occupational therapy assistant on June 7, 1984, if the board determines that the person meets commonly accepted standards for the profession, as established by rule of the board. The board may waive the examination, education, or experience requirements and grant a license to any person meeting the standards adopted by the board under this section after June 7, 1984, if the board

considers the requirements for licensure in this chapter as having been met.

(2) The board may grant a license to any applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States, which requires standards for licensure considered by the board to be equivalent to the requirements for licensure under this chapter.

(3) The board shall waive the education and experience requirements for licensure in RCW 18.59.050(1) (c) and (d) for applicants for licensure who present evidence to the board that they have been engaged in the practice of occupational therapy for the three years immediately prior to June 7, 1984. The proof of actual practice shall be presented to the board in such a manner as the board prescribes by rule. To obtain the waiver, an applicant shall file an application for examination no later than six months from June 7, 1984. An applicant who has filed for examination under this subsection shall be excluded from the licensure requirement until the date the results of the examination are made public, and may conduct the appropriate activities under *RCW 18.59.030. [1984 c 9 § 8.]

*Reviser's note: RCW 18.59.030 was repealed by 1986 c 259 § 103.

18.59.080 License issuance—Posting required. The secretary shall issue a license to a person who meets the licensing requirements of this chapter upon payment of the prescribed license fee. The license shall be posted in a conspicuous location at the person's work site. [1991 c 3 § 154; 1984 c 9 § 9.]

18.59.090 Renewal of licenses—Reinstatement of suspended or revoked licenses—Inactive status. (1) Licenses under this chapter shall be renewed at the time and in the manner determined by the secretary and with the payment of a renewal fee. The board shall establish requirements for license renewal which provide evidence of continued competency. The secretary may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules which may include additional continuing education or examination requirements.

(2) A suspended license is subject to expiration and may be renewed as provided in this section, but the renewal does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other conduct or activity in violation of the order or judgment by which the license was suspended. If a license revoked on disciplinary grounds is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any applicable late fee.

(3) Any occupational therapist or occupational therapy assistant licensed under this chapter not practicing occupational therapy or providing services may place his or her license in an inactive status. The secretary may prescribe requirements for maintaining an inactive status and converting from an inactive or active status. [1991 c 3 § 155; 1990 c 13 § 1; 1984 c 9 § 10.]

18.59.100 Duty to refer medical cases. An occupational therapist shall, after evaluating a patient and if the

case is a medical one, refer the case to a physician for appropriate medical direction if such direction is lacking. Treatment by an occupational therapist of such a medical case may take place only upon the referral of a physician or *podiatrist licensed to practice medicine in this state. [1986 c 259 § 101; 1984 c 9 § 11.]

*Reviser's note: The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

Savings—1986 c 259 §§ 101, 103: "The repeal of RCW 18.59.030 and 18.59.200 and the amendment of RCW 18.59.100 by this act shall not be construed as affecting any rights and duties which matured, penalties which were incurred, and proceedings which were begun before June 11, 1986." [1986 c 259 § 104.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.59.110 Fees. The secretary shall prescribe and publish fees in amounts determined by the secretary as provided in RCW 43.70.250 for the following purposes:

- (1) Application for examination;
- (2) Initial license fee;
- (3) Renewal of license fee;
- (4) Late renewal fee; and
- (5) Limited permit fee.

The fees shall be set in such an amount as to reimburse the state, to the extent feasible, for the cost of the services rendered. [1991 c 3 § 156; 1985 c 7 § 58; 1984 c 9 § 12.]

18.59.120 Board of occupational therapy practice established—Members—Terms—Meetings—Compensation. (1) There is established a board of occupational therapy practice. The board shall consist of five members appointed by the governor, who may consider the persons who are recommended for appointment by occupational therapy associations of the state. The members of the board shall be residents of the state. Four of the members shall have been engaged in rendering services to the public, teaching, or research in occupational therapy for at least five years immediately preceding their appointment. Three of these four board members shall be occupational therapists who shall at all times be holders of licenses for the practice of occupational therapy in the state, except for the initial members of the board, all of whom shall fulfill the requirements for licensure under this chapter. At least one member of the board shall be an occupational therapy assistant licensed to assist in the practice of occupational therapy, except for the initial member appointed to this position, who shall fulfill the requirements for licensure as an occupational therapy assistant under this chapter. The remaining member of the board shall be a member of the public with an interest in the rights of consumers of health services.

(2) The governor shall, within sixty days after June 7, 1984, appoint one member for a term of one year, two members for a term of two years, and two members for a term of three years. Appointments made thereafter shall be for three-year terms, but no person shall be appointed to serve more than two consecutive full terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the initial appointed members, who shall serve through the last calendar day of the year in which they are appointed before commencing the terms prescribed by this section. The governor shall make appointments for vacan-

cies in unexpired terms within ninety days after the vacancies occur.

(3) The board shall meet during the first month of each calendar year to select a chairman and for other purposes. At least one additional meeting shall be held before the end of each calendar year. Further meetings may be convened at the call of the chairman or the written request of any two board members. A majority of members of the board constitutes a quorum for all purposes. All meetings of the board shall be open to the public, except that the board may hold closed sessions to prepare, approve, grade, or administer examinations or, upon request of an applicant who fails an examination, to prepare a response indicating the reasons for the applicant's failure.

(4) Members of the board shall receive compensation in the amount of fifty dollars for each day's attendance at proper meetings of the committee. [1984 c 9 § 13.]

18.59.130 Board—Powers and duties—Rules. (1) The board shall administer, coordinate, and enforce this chapter, evaluate qualifications under this chapter, and provide for supervision of examinations of applicants for licensure under this chapter.

(2) The board may adopt such rules as it deems necessary in the administration of this chapter. [1986 c 259 § 102; 1984 c 9 § 14.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.59.141 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 43; 1986 c 259 § 100.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.59.150 Board—Staff. The secretary shall provide such administrative and investigative staff as are necessary for the board to carry out its duties under this chapter. [1991 c 3 § 157; 1984 c 9 § 15.]

18.59.900 Short title. This chapter shall be known and may be cited as the occupational therapy practice act. [1984 c 9 § 1.]

18.59.905 Severability—1984 c 9. 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 9 § 21.]

Chapter 18.64 PHARMACISTS

Sections

- 18.64.001 State board of pharmacy—Creation—Membership—Oath—Vacancies.
- 18.64.002 Regulation of health care professions—Criteria.
- 18.64.003 State board of pharmacy—Meetings—Chairperson—Compensation and travel expenses.
- 18.64.005 State board of pharmacy—Powers and duties.

- 18.64.009 Department of health—Enforcement employees declared to be peace officers—Authority.
- 18.64.011 Definitions.
- 18.64.020 Licensing required.
- 18.64.040 Examination fee.
- 18.64.043 Pharmacy license—Fee—Display—Declaration of ownership and location—Penalties.
- 18.64.044 Shopkeeper's registration—Penalty.
- 18.64.045 Manufacturer's license—Fees—Display—Declaration of ownership and location—Penalties.
- 18.64.046 Wholesaler's license—Required—Authority of licensee—Penalty.
- 18.64.047 Itinerant vendor's or peddler's registration—Fee—Penalties.
- 18.64.050 Duplicate for lost or destroyed license or certificate—Certified documents—Fees.
- 18.64.080 Licensing of pharmacists—Registration of interns—Prerequisites—Examinations—Reciprocity—Fees—Renewal.
- 18.64.140 License—Annual renewal—Fee—Penalty—Display—Inactive license.
- 18.64.160 Refusal, suspension, and revocation of pharmacist's and intern's licenses—Grounds—Procedure.
- 18.64.165 Refusal, suspension, and revocation of other licenses.
- 18.64.200 Refusal, suspension, and revocation of other licenses—Appeal procedure.
- 18.64.205 Retired active license status.
- 18.64.245 Prescription records.
- 18.64.246 Prescriptions—Labels—Cover or cap to meet safety standards.
- 18.64.247 Penalty for violation of RCW 18.64.245, 18.64.246.
- 18.64.250 Unlawful practices—Penalty for violations—Exceptions. Authorized practices.
- 18.64.257 Prescription of legend drugs by dialysis programs.
- 18.64.260 Enforcement provisions—Disposition of fines—Remittance of district court fines, fees, penalties and forfeitures.
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- 18.64.275 Limitations on liability for dispensing of prescription.
- 18.64.280 General penalty.
- 18.64.300 Pharmacist members of committees to evaluate credentials and qualifications of pharmacists—Immunity from civil suit.
- 18.64.301 Pharmacists filing charges or presenting evidence before pharmaceutical society—Immunity from civil suit.
- 18.64.302 Records of pharmaceutical society not subject to civil process.
- 18.64.310 Department of health—Powers and duties.
- 18.64.350 Nonresident pharmacies—Findings.
- 18.64.360 Nonresident pharmacies—Definition—Requirements—Exemption.
- 18.64.370 Nonresident pharmacies—License required—Application—Renewal.
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- 18.64.390 Nonresident pharmacies—Violations—Penalties.
- 18.64.400 Nonresident pharmacies—Definition—Advertising.
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- 18.64.420 Nonresident pharmacies—Information confidential—Exceptions.
- 18.64.900 Severability—1923 c 180.
- 18.64.910 Severability—1935 c 98.
- 18.64.911 Severability—1963 c 38.
- 18.64.920 Repealer—1935 c 98.

AIDS education and training: Chapter 70.24 RCW.

Authority of board of pharmacy to regulate packaging of drugs and cosmetics under poison prevention act: RCW 70.106.150.

Dentists, filling prescriptions issued by: RCW 18.32.685.

Drugs and cosmetics: Chapter 69.04 RCW.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Poisons and dangerous drugs, dispensing and sale: Chapter 69.40 RCW.

Rebating by vendors of medical supplies prohibited: Chapter 19.68 RCW.

Regulation of practice of medicine and surgery, sale of drugs and medicines: State Constitution Art. 20 § 2.

Unlawful to refill trademarked containers: RCW 19.76.110.

18.64.001 State board of pharmacy—Creation—Membership—Oath—Vacancies. There shall be a state board of pharmacy consisting of seven members, to be appointed by the governor by and with the advice and consent of the senate. Five of the members shall be designated as pharmacist members and two of the members shall be designated a public member.

Each pharmacist member shall be a citizen of the United States and a resident of this state, and at the time of his appointment shall have been a duly registered pharmacist under the laws of this state for a period of at least five consecutive years immediately preceding his appointment and shall at all times during his incumbency continue to be a duly licensed pharmacist: PROVIDED, That subject to the availability of qualified candidates the governor shall appoint pharmacist members representative of the areas of practice and geographically representative of the state of Washington.

The public member shall be a citizen of the United States and a resident of this state. The public member shall be appointed from the public at large, but shall not be affiliated with any aspect of pharmacy.

Members of the board shall hold office for a term of four years, and the terms shall be staggered so that the terms of office of not more than two members will expire simultaneously on the third Monday in January of each year.

No person who has been appointed to and served for two four year terms shall be eligible for appointment to the board.

Each member shall qualify by taking the usual oath of a state officer, which shall be filed with the secretary of state, and each member shall hold office for the term of his appointment and until his successor is appointed and qualified.

In case of the resignation or disqualification of a member, or a vacancy occurring from any cause, the governor shall appoint a successor for the unexpired term. [1984 c 153 § 1; 1981 c 338 § 17; 1973 1st ex.s. c 18 § 1; 1963 c 38 § 16; 1935 c 98 § 1; RRS § 10132. Formerly RCW 43.69.010.]

18.64.002 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.64.003 State board of pharmacy—Meetings—Chairperson—Compensation and travel expenses. Members of the board shall meet at such places and times as it shall determine and as often as necessary to discharge the duties imposed upon it. The board shall elect a chairperson and a vice chairperson from among its members. Each member 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. [1984 c 287 § 43; 1979 c 90 § 1; 1975-'76 2nd ex.s. c 34 § 40; 1963 c 38 § 17; 1935 c 98 § 2; RRS § 10132-1. Formerly RCW 43.69.020.]

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.

18.64.005 State board of pharmacy—Powers and duties. The board shall:

(1) Regulate the practice of pharmacy and enforce all laws placed under its jurisdiction;

(2) Prepare or determine the nature of, and supervise the grading of, examinations for applicants for pharmacists' licenses;

(3) Establish the qualifications for licensure of pharmacists or pharmacy interns;

(4) Conduct hearings for the revocation or suspension of licenses, permits, registrations, certificates, or any other authority to practice granted by the board, which hearings may also be conducted by an administrative law judge appointed under chapter 34.12 RCW;

(5) Issue subpoenas and administer oaths in connection with any hearing, or disciplinary proceeding held under this chapter or any other chapter assigned to the board;

(6) Assist the regularly constituted enforcement agencies of this state in enforcing all laws pertaining to drugs, controlled substances, and the practice of pharmacy, or any other laws or rules under its jurisdiction;

(7) Promulgate rules for the dispensing, distribution, wholesaling, and manufacturing of drugs and devices and the practice of pharmacy for the protection and promotion of the public health, safety, and welfare. Violation of any such rules shall constitute grounds for refusal, suspension, or revocation of licenses or any other authority to practice issued by the board;

(8) Adopt rules establishing and governing continuing education requirements for pharmacists and other licensees applying for renewal of licenses under this chapter;

(9) Be immune, collectively and individually, from suit in any action, civil or criminal, based upon any disciplinary proceedings or other official acts performed as members of such board. Such immunity shall apply to employees of the department when acting in the course of disciplinary proceedings;

(10) Suggest strategies for preventing, reducing, and eliminating drug misuse, diversion, and abuse, including professional and public education, and treatment of persons misusing and abusing drugs;

(11) Conduct or encourage educational programs to be conducted to prevent the misuse, diversion, and abuse of drugs for health care practitioners and licensed or certified health care facilities;

(12) Monitor trends of drug misuse, diversion, and abuse and make periodic reports to disciplinary boards of licensed health care practitioners and education, treatment, and appropriate law enforcement agencies regarding these trends;

(13) Enter into written agreements with all other state and federal agencies with any responsibility for controlling drug misuse, diversion, or abuse and with health maintenance organizations, health care service contractors, and health care providers to assist and promote coordination of agencies responsible for ensuring compliance with controlled substances laws and to monitor observance of these laws and cooperation between these agencies. The department of social and health services, the department of labor and industries, and any other state agency including licensure disciplinary boards, shall refer all apparent instances of over-prescribing by practitioners and all apparent instances of

legend drug overuse to the department. The department shall also encourage such referral by health maintenance organizations, health service contractors, and health care providers. [1990 c 83 § 1; 1989 1st ex.s. c 9 § 409; 1984 c 153 § 2; 1981 c 67 § 21; 1979 c 90 § 2; 1973 1st ex.s. c 18 § 2; 1963 c 38 § 18; 1935 c 98 § 3; RRS § 10132-2. Formerly RCW 43.69.030.]

Section captions not law—1990 c 83: "Section captions as used in this act do not constitute any part of the law." [1990 c 83 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

18.64.009 Department of health—Enforcement employees declared to be peace officers—Authority. Employees of the department, who are designated by the board as enforcement officers, are declared to be peace officers and shall be vested with police powers to enforce chapters 18.64, 69.04, 69.36, 69.40, 69.41, and 69.50 RCW and all other laws enforced by the board. [1989 1st ex.s. c 9 § 411; 1985 c 7 § 59; 1979 c 90 § 4; 1969 ex.s. c 82 § 1.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64.011 Definitions. Unless the context clearly requires otherwise, definitions of terms shall be as indicated when used in this chapter.

(1) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(2) "Board" means the Washington state board of pharmacy.

(3) "Drugs" means:

(a) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection, but not including devices or their component parts or accessories.

(4) "Device" means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, or (b) to affect the structure or any function of the body of man or other animals.

(5) "Nonlegend" or "nonprescription" drugs means any drugs which may be lawfully sold without a prescription.

(6) "Legend drugs" means any drugs which are required by any applicable federal or state law or regulation to be dispensed on prescription only or are restricted to use by practitioners only.

(7) "Controlled substance" means a drug or substance, or an immediate precursor of such drug or substance, so

designated under or pursuant to the provisions of chapter 69.50 RCW.

(8) "Prescription" means an order for drugs or devices issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe drugs or devices in the course of his or her professional practice for a legitimate medical purpose.

(9) "Practitioner" means a physician, dentist, veterinarian, nurse, or other person duly authorized by law or rule in the state of Washington to prescribe drugs.

(10) "Pharmacist" means a person duly licensed by the Washington state board of pharmacy to engage in the practice of pharmacy.

(11) "Practice of pharmacy" includes the practice of and responsibility for: Interpreting prescription orders; the compounding, dispensing, labeling, administering, and distributing of drugs and devices; the monitoring of drug therapy and use; the initiating or modifying of drug therapy in accordance with written guidelines or protocols previously established and approved for his or her practice by a practitioner authorized to prescribe drugs; the participating in drug utilization reviews and drug product selection; the proper and safe storing and distributing of drugs and devices and maintenance of proper records thereof; the providing of information on legend drugs which may include, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices.

(12) "Pharmacy" means every place properly licensed by the board of pharmacy where the practice of pharmacy is conducted.

(13) The words "drug" and "devices" shall not include surgical or dental instruments or laboratory materials, gas and oxygen, therapy equipment, X-ray apparatus or therapeutic equipment, their component parts or accessories, or equipment, instruments, apparatus, or contrivances used to render such articles effective in medical, surgical, or dental treatment, or for use or consumption in or for mechanical, industrial, manufacturing, or scientific applications or purposes, nor shall the word "drug" include any article or mixture covered by the Washington pesticide control act (chapter 15.58 RCW), as enacted or hereafter amended, nor medicated feed intended for and used exclusively as a feed for animals other than man.

(14) The word "poison" shall not include any article or mixture covered by the Washington pesticide control act (chapter 15.58 RCW), as enacted or hereafter amended.

(15) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a drug or device, whether or not there is an agency relationship.

(16) "Dispense" means the interpretation of a prescription or order for a drug, biological, or device and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(17) "Distribute" means the delivery of a drug or device other than by administering or dispensing.

(18) "Compounding" shall be the act of combining two or more ingredients in the preparation of a prescription.

(19) "Wholesaler" shall mean a corporation, individual, or other entity which buys drugs or devices for resale and

distribution to corporations, individuals, or entities other than consumers.

(20) "Manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other substance or device or the packaging or repackaging of such substance or device, or the labeling or relabeling of the commercial container of such substance or device, but does not include the activities of a practitioner who, as an incident to his or her administration or dispensing such substance or device in the course of his or her professional practice, prepares, compounds, packages, or labels such substance or device.

(21) "Manufacturer" shall mean a person, corporation, or other entity engaged in the manufacture of drugs or devices.

(22) "Labeling" shall mean the process of preparing and affixing a label to any drug or device container. The label must include all information required by current federal and state law and pharmacy rules.

(23) "Administer" means the direct application of a drug or device, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject.

(24) "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.

(25) "Department" means the department of health.

(26) "Secretary" means the secretary of health or the secretary's designee. [1989 1st ex.s. c 9 § 412; 1984 c 153 § 3; 1982 c 182 § 29; 1979 c 90 § 5; 1963 c 38 § 1.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1982 c 182: See RCW 19.02.901.

18.64.020 Licensing required. It shall hereafter be unlawful for any person to practice pharmacy or to institute or operate any pharmacy unless such person shall be a licensed pharmacist or shall place in charge of said pharmacy a licensed pharmacist: PROVIDED, That persons licensed as manufacturers or as wholesalers, and their employees, acting within the scope of their licenses, shall be exempt from this section. [1979 c 90 § 6; 1899 c 121 § 1; RRS § 10126. Prior: 1891 c 113 § 1. Formerly RCW 18.67.010, part.]

18.64.040 Examination fee. Every applicant for license examination under this chapter shall pay the sum determined by the secretary under RCW 43.70.250 before the examination is attempted. [1989 1st ex.s. c 9 § 413; 1979 c 90 § 7; 1971 ex.s. c 201 § 1; 1963 c 38 § 2; 1949 c 153 § 1; 1935 c 98 § 4; 1909 c 213 § 5; 1899 c 121 § 10; Rem. Supp. 1949 § 10135.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1971 ex.s. c 201: "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." [1971 ex.s. c 201 § 9.]

18.64.043 Pharmacy license—Fee—Display—Declaration of ownership and location—Penalties. (1) The owner of each pharmacy shall pay an original license fee to be determined by the secretary, and annually thereafter, on or before a date to be determined by the secretary, a fee to be determined by the secretary, for which he or she shall receive a license of location, which shall entitle the owner to operate such pharmacy at the location specified, or such other temporary location as the secretary may approve, for the period ending on a date to be determined by the secretary, and each such owner shall at the time of filing proof of payment of such fee as provided in RCW 18.64.045 as now or hereafter amended, file with the department on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of ownership of the pharmacy mentioned therein.

(2) It shall be the duty of the owner to immediately notify the department of any change of location or ownership and to keep the license of location or the renewal thereof properly exhibited in said pharmacy.

(3) Failure to comply with this section shall be deemed a misdemeanor, and each day that said failure continues shall be deemed a separate offense.

(4) In the event such license fee remains unpaid on the date due, no renewal or new license shall be issued except upon payment of the license renewal fee and a penalty fee equal to the original license fee. [1991 c 229 § 3; 1989 1st ex.s. c 9 § 414; 1984 c 153 § 4; 1979 c 90 § 8; 1971 ex.s. c 201 § 2; 1963 c 38 § 3; 1949 c 153 § 4; 1935 c 98 § 8; 1909 c 213 § 12; Rem. Supp. 1949 § 10145. Formerly RCW 18.67.020.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1971 ex.s. c 201: See note following RCW 18.64.040.

18.64.044 Shopkeeper's registration—Penalty. (1) A shopkeeper registered as provided in this section may sell nonprescription drugs, if such drugs are sold in the original package of the manufacturer.

(2) Every shopkeeper not a licensed pharmacist, desiring to secure the benefits and privileges of this section, is hereby required to register as a shopkeeper through the master license system, and he or she shall pay the fee determined by the secretary for registration, and on a date to be determined by the secretary thereafter the fee determined by the secretary for renewal of the registration; and shall at all times keep said registration or the current renewal thereof conspicuously exposed in the shop to which it applies. In event such shopkeeper's registration is not renewed by the master license expiration date, no renewal or new registration shall be issued except upon payment of the registration renewal fee and the master license delinquency fee under chapter 19.02 RCW. This registration fee shall not authorize the sale of legend drugs or controlled substances.

(3) The registration fees determined by the secretary under subsection (2) of this section shall not exceed the cost of registering the shopkeeper.

(4) Any shopkeeper who shall vend or sell, or offer to sell to the public any such nonprescription drug or preparation without having registered to do so as provided in this

section, shall be guilty of a misdemeanor and each sale or offer to sell shall constitute a separate offense. [1989 1st ex.s. c 9 § 401; 1989 c 352 § 1; 1984 c 153 § 5; 1982 c 182 § 30; 1979 c 90 § 17.]

Reviser's note: This section was amended by 1989 c 352 § 1 and by 1989 1st ex.s. c 9 § 401, 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—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

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.

generally: RCW 18.64.011(24).

to include additional licenses: RCW 19.02.110.

18.64.045 Manufacturer's license—Fees—Display—Declaration of ownership and location—Penalties. The owner of each and every place of business which manufactures drugs shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary, a fee to be determined by the secretary, for which the owner shall receive a license of location from the department, which shall entitle the owner to manufacture drugs at the location specified for the period ending on a date to be determined by the board, and each such owner shall at the time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the department of any change of location or ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business. Failure to conform with this section shall be deemed a misdemeanor, and each day that said failure continues shall be deemed a separate offense. In event such license fee remains unpaid on the date due, no renewal or new license shall be issued except upon payment of the license renewal fee and a penalty fee equal to the license renewal fee. [1991 c 229 § 4; 1989 1st ex.s. c 9 § 416; 1984 c 153 § 6; 1979 c 90 § 9; 1971 ex.s. c 201 § 3; 1963 c 38 § 4; 1949 c 153 § 5; Rem. Supp. 1949 § 10154-4. Formerly RCW 18.67.140.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1971 ex.s. c 201: See note following RCW 18.64.040.

18.64.046 Wholesaler's license—Required—Authority of licensee—Penalty. The owner of each place of business which sells legend drugs and nonprescription drugs, or nonprescription drugs at wholesale shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary, a like fee to be determined by the secretary, for which the owner shall receive a license of location from the department, which shall entitle such owner to either sell legend drugs and nonprescription drugs or nonprescription drugs at wholesale at the location specified for the period ending on a date to be determined by the board, and each such owner shall at the

time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the department of any change of location and ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business. Failure to conform with this section shall be deemed a misdemeanor, and each day that said failure continues shall be deemed a separate offense. In event such license fee remains unpaid on the date due, no renewal or new license shall be issued except upon payment of the license renewal fee and a penalty fee equal to the license renewal fee. [1991 c 229 § 5; 1989 1st ex.s. c 9 § 417; 1984 c 153 § 7; 1979 c 90 § 18.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64.047 Itinerant vendor's or peddler's registration—Fee—Penalties. Any itinerant vendor or any peddler of any nonprescription drug or preparation for the treatment of disease or injury, shall pay a registration fee determined by the secretary on a date to be determined by the secretary. The department may issue a registration to such vendor on an approved application made to the department. Any itinerant vendor or peddler who shall vend or sell, or offer to sell to the public any such nonprescription drug or preparation without having registered to do so as provided in this section, shall be guilty of a misdemeanor and each sale or offer to sell shall constitute a separate offense. In event such registration fee remains unpaid on the date due, no renewal or new registration shall be issued except upon payment of the registration renewal fee and a penalty fee equal to the renewal fee. This registration shall not authorize the sale of legend drugs or controlled substances. [1991 c 229 § 6; 1989 1st ex.s. c 9 § 418; 1984 c 153 § 8; 1979 c 90 § 10; 1971 ex.s. c 201 § 4; 1963 c 38 § 5; 1949 c 153 § 3; 1935 c 98 § 7; 1899 c 121 § 16; Rem. Supp. 1949 § 10141. Formerly RCW 18.60.010 through 18.60.030.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1971 ex.s. c 201: See note following RCW 18.64.040.

18.64.050 Duplicate for lost or destroyed license or certificate—Certified documents—Fees. In the event that a license or certificate issued by the department is lost or destroyed, the person to whom it was issued may obtain a duplicate thereof upon furnishing proof of such fact satisfactory to the department and the payment of a fee determined by the secretary.

In the event any person desires any certified document to which he is entitled, he shall receive the same upon payment of a fee determined by the secretary. [1989 1st ex.s. c 9 § 419; 1984 c 153 § 9; 1963 c 38 § 6; 1935 c 98 § 9; RRS § 10145-1. FORMER PART OF SECTION: 1935 c 98 § 10; RRS § 10145-2, now codified as RCW 18.64.055.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64.080 Licensing of pharmacists—Registration of interns—Prerequisites—Examinations—Reciprocity—Fees—Renewal. (1) The department may license as a pharmacist any person who has filed an application therefor, subscribed by the person under oath or affirmation, containing such information as the board may by regulation require, and who—

(a) Is at least eighteen years of age;

(b) Has satisfied the board that he or she is of good moral and professional character, that he or she will carry out the duties and responsibilities required of a pharmacist, and that he or she is not unfit or unable to practice pharmacy by reason of the extent or manner of his or her proven use of alcoholic beverages, drugs, or controlled substances, or by reason of a proven physical or mental disability;

(c) Holds a baccalaureate degree in pharmacy or a doctor of pharmacy degree granted by a school or college of pharmacy which is accredited by the board of pharmacy;

(d) Has completed or has otherwise met the internship requirements as set forth in board rules;

(e) Has satisfactorily passed the necessary examinations approved by the board and administered by the department.

(2) The department shall, at least once in every calendar year, offer an examination to all applicants for a pharmacist license who have completed their educational and internship requirements pursuant to rules promulgated by the board. The examination shall be determined by the board. In case of failure at a first examination, the applicant shall have within three years the privilege of a second and third examination. In case of failure in a third examination, the applicant shall not be eligible for further examination until he or she has satisfactorily completed additional preparation as directed and approved by the board. The applicant must pay the examination fee determined by the secretary for each examination taken. Upon passing the required examinations and complying with all the rules and regulations of the board and the provisions of this chapter, the department shall grant the applicant a license as a pharmacist and issue to him or her a certificate qualifying him or her to enter into the practice of pharmacy.

(3) Any person enrolled as a student of pharmacy in an accredited college may file with the department an application for registration as a pharmacy intern in which application he or she shall be required to furnish such information as the board may, by regulation, prescribe and, simultaneously with the filing of said application, shall pay to the department a fee to be determined by the secretary. All certificates issued to pharmacy interns shall be valid for a period to be determined by the board, but in no instance shall the certificate be valid if the individual is no longer making timely progress toward graduation, provided however, the board may issue an intern certificate to a person to complete an internship to be eligible for initial licensure or for the reinstatement of a previously licensed pharmacist.

(4) To assure adequate practical instruction, pharmacy internship experience as required under this chapter shall be obtained after registration as a pharmacy intern by practice in any licensed pharmacy or other program meeting the requirements promulgated by regulation of the board, and shall include such instruction in the practice of pharmacy as the board by regulation shall prescribe.

(5) The department may, without examination other than one in the laws relating to the practice of pharmacy, license as a pharmacist any person who, at the time of filing application therefor, is currently licensed as a pharmacist in any other state, territory, or possession of the United States. The person shall produce evidence satisfactory to the department of having had the required secondary and professional education and training and who was licensed as a pharmacist by examination in another state prior to June 13, 1963, shall be required to satisfy only the requirements which existed in this state at the time he or she became licensed in such other state, and that the state in which the person is licensed shall under similar conditions grant reciprocal licenses as pharmacist without examination to pharmacists duly licensed by examination in this state. Every application under this subsection shall be accompanied by a fee determined by the department.

(6) The department shall provide for, regulate, and require all persons licensed as pharmacists to renew their license periodically, and shall prescribe the form of such license and information required to be submitted by all applicants. [1989 1st ex.s. c 9 §§ 403, 420; 1989 c 352 § 3; 1984 c 153 § 10; 1981 c 147 § 1; 1979 c 90 § 11; 1972 ex.s. c 9 § 1. Prior: 1971 ex.s. c 292 § 25; 1971 ex.s. c 201 § 5; 1963 c 38 § 7; 1931 c 56 § 1; 1927 c 253 § 1; 1923 c 180 § 3; RRS § 10126-3. Formerly RCW 18.64.010, part, 18.64.080 and 18.64.090, part.]

Reviser's note: This section was amended by 1989 c 352 § 3 and by 1989 1st ex.s. c 9 §§ 403, 420, all without reference to the other. All 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—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64.140 License—Annual renewal—Fee—Penalty—Display—Inactive license. Every licensed pharmacist who desires to practice pharmacy shall secure from the department a license, the fee for which shall be determined by the secretary. The renewal fee shall also be determined by the secretary. The date of renewal may be established by the secretary by regulation and the department may by regulation extend the duration of a licensing period for the purpose of staggering renewal periods. Such regulation may provide a method for imposing and collecting such additional proportional fee as may be required for the extended period. Payment of this fee shall entitle the licensee to a pharmacy law book, subsequent current mailings of all additions, changes, or deletions in the pharmacy practice act, chapter 18.64 RCW, and all additions, changes, or deletions of pharmacy board and department regulations. Pharmacists shall pay the license renewal fee and a penalty equal to the license renewal fee for the late renewal of their license. The current license shall be conspicuously displayed to the public in the pharmacy to which it applies. Any licensed pharmacist who desires to leave the active practice of pharmacy in this state may secure from the department an inactive license. The initial license and renewal fees shall be determined by the secretary. The holder of an inactive license may reactivate his or her license to practice pharmacy in accordance with rules adopted by the board. [1991 c 229 § 7; 1989 1st ex.s. c 9 § 421; 1984 c 153 § 11; 1979 c 90 § 12; 1971 ex.s. c 201 §

6; 1963 c 38 § 9; 1949 c 153 § 2; 1935 c 98 § 5; 1899 c 121 § 11; Rem. Supp. 1949 § 10136. Formerly RCW 18.64.140 and 18.64.150.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1971 ex.s. c 201: See note following RCW 18.64.040.

18.64.160 Refusal, suspension, and revocation of pharmacist's and intern's licenses—Grounds—Procedure. The board of pharmacy shall have the power to refuse, suspend, or revoke the license of any pharmacist or intern upon proof that:

(1) His or her license was procured through fraud, misrepresentation, or deceit;

(2) He or she has been convicted of a felony relating to his or her practice as a pharmacist;

(3) He or she has committed any act involving moral turpitude, dishonesty, or corruption, if the act committed directly relates to the pharmacist's fitness to practice pharmacy. Upon such conviction, however, the judgment and sentence shall be conclusive evidence at the ensuing disciplinary hearing of the guilt of the respondent pharmacist of the crime described in the indictment or information, and of his or her violation of the statute upon which it is based;

(4) He or she is unfit to practice pharmacy because of habitual intemperance in the use of alcoholic beverages, drugs, controlled substances, or any other substance which impairs the performance of professional duties;

(5) He or she exhibits behavior which may be due to physical or mental impairment, which creates an undue risk of causing harm to him or herself or to other persons when acting as a licensed pharmacist or intern;

(6) He or she has incompetently or negligently practiced pharmacy, creating an unreasonable risk of harm to any individual;

(7) His or her legal authority to practice pharmacy, issued by any other properly constituted licensing authority of any other state, has been and is currently suspended or revoked;

(8) In the event that a pharmacist is determined by a court of competent jurisdiction to be mentally incompetent, the pharmacist shall automatically have his or her license suspended by the board upon the entry of the judgment, regardless of the pendency of an appeal;

(9) He or she has knowingly violated or permitted the violation of any provision of any state or federal law, rule, or regulation governing the possession, use, distribution, or dispensing of drugs, including, but not limited to, the violation of any provision of this chapter, Title 69 RCW, or rule or regulation of the board;

(10) He or she has knowingly allowed any unlicensed person to take charge of a pharmacy or engage in the practice of pharmacy, except a pharmacy intern or pharmacy assistant acting as authorized in this chapter or chapter 18.64A RCW in the presence of and under the immediate supervision of a licensed pharmacist;

(11) He or she has compounded, dispensed, or caused the compounding or dispensing of any drug or device which contains more or less than the equivalent quantity of ingredient or ingredients specified by the person who prescribed such drug or device: PROVIDED, HOWEVER, That

nothing herein shall be construed to prevent the pharmacist from exercising professional judgment in the preparation or providing of such drugs or devices.

In any case of the refusal, suspension, or revocation of a license by said board of pharmacy under the provisions of this chapter, said board shall proceed in accordance with chapter 34.05 RCW. [1985 c 7 § 60; 1984 c 153 § 12; 1979 c 90 § 13; 1963 c 38 § 10; 1909 c 213 § 10; RRS § 10143. Formerly RCW 18.64.160 through 18.64.190.]

18.64.165 Refusal, suspension, and revocation of other licenses. The board shall have the power to refuse, suspend, or revoke the license of any manufacturer, wholesaler, pharmacy, shopkeeper, itinerant vendor, peddler, poison distributor, or precursor chemical distributor upon proof that:

(1) The license was procured through fraud, misrepresentation, or deceit;

(2) The licensee has violated or has permitted any employee to violate any of the laws of this state or the United States relating to drugs, controlled substances, cosmetics, or nonprescription drugs, or has violated any of the rules and regulations of the board of pharmacy or has been convicted of a felony. [1989 1st ex.s. c 9 § 404; 1989 c 352 § 4; 1979 c 90 § 14; 1963 c 38 § 15.]

Reviser's note: This section was amended by 1989 c 352 § 4 and by 1989 1st ex.s. c 9 § 404, 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—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.64.200 Refusal, suspension, and revocation of other licenses—Appeal procedure. In any case of the refusal, suspension or revocation of a license by said board under the provisions of this chapter, appeal may be taken in accordance with the administrative procedure act. [1963 c 38 § 11; 1909 c 213 § 11; RRS § 10144. Formerly RCW 18.64.200 through 18.64.240.]

Administrative procedure act: Title 34 RCW.

18.64.205 Retired active license status. The board may adopt rules pursuant to this section authorizing a retired active license status. An individual licensed pursuant to this chapter, who is practicing only in emergent or intermittent circumstances as defined by rule established by the board, may hold a retired active license at a reduced renewal fee established by the secretary under RCW 43.70.250. Such a license shall meet the continuing education requirements, if any, established by the board for renewals, and is subject to the provisions of the uniform disciplinary act, chapter 18.130 RCW. Individuals who have entered into retired status agreements with the disciplinary authority in any jurisdiction shall not qualify for a retired active license under this section. [1991 c 229 § 2.]

18.64.245 Prescription records. Every proprietor or manager of a pharmacy shall keep readily available a suitable record of prescriptions which shall preserve for a

period of not less than two years the record of every prescription dispensed at such pharmacy which shall be numbered, dated, and filed, and shall produce the same in court or before any grand jury whenever lawfully required to do so. The record shall be maintained either separately from all other records of the pharmacy or in such form that the information required is readily retrievable from ordinary business records of the pharmacy. All record-keeping requirements for controlled substances must be complied with. Such record of prescriptions shall be for confidential use in the pharmacy, only. The record of prescriptions shall be open for inspection by the board of pharmacy or any officer of the law, who is authorized to enforce chapter 18.64, 69.41, or 69.50 RCW. [1989 1st ex.s. c 9 § 402; 1989 c 352 § 2; 1979 c 90 § 15; 1939 c 28 § 1; RRS § 6154-1. Formerly RCW 18.67.090.]

Reviser's note: This section was amended by 1989 c 352 § 2 and by 1989 1st ex.s. c 9 § 402, 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—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64.246 Prescriptions—Labels—Cover or cap to meet safety standards. To every box, bottle, jar, tube or other container of a prescription which is dispensed there shall be fixed a label bearing the name and address of the pharmacy wherein the prescription is compounded, the corresponding serial number of the prescription, the name of the prescriber, his directions, the name of the medicine and the strength per unit dose, name of patient, date, the expiration date, and initials of the licensed pharmacist who has compounded the prescription, and the security of the cover or cap on every bottle or jar shall meet safety standards promulgated by the state board of pharmacy: **PROVIDED,** That at the physician's request, the name and dosage of the drug need not be shown. If the prescription is for a combination drug product, the generic names of the drugs combined or the trade name used by the manufacturer or distributor for the product shall be noted on the label. This section shall not apply to the dispensing of medicines to inpatients in hospitals. [1984 c 153 § 13; 1971 ex.s. c 99 § 1; 1939 c 28 § 2; RRS § 6154-2. Formerly RCW 18.67.080.]

18.64.247 Penalty for violation of RCW 18.64.245, 18.64.246. Any person violating or failing to comply with the requirements of RCW 18.64.245 and 18.64.246 shall be guilty of a misdemeanor. [1939 c 28 § 3; RRS § 6154-3. Formerly RCW 18.67.091.]

18.64.250 Unlawful practices—Penalty for violations—Exceptions. (1) Any person not a licensed pharmacist and not having continuously and regularly in his employ a duly licensed pharmacist within the full meaning of this chapter, who shall practice pharmacy; or

(2) Any person who shall permit the compounding and dispensing of prescriptions, or vending of drugs, medicines, or poisons in his or her store or place of business, except under the supervision of a licensed pharmacist; or

(3) Any licensed pharmacist or shopkeeper licensed under this chapter, who while continuing in business, shall fail or neglect to procure his or her renewal of license; or

(4) Any person who shall wilfully make any false representations to procure a license for himself or herself or for any other person; or

(5) Any person who shall violate any of the provisions of this chapter wilfully and knowingly; or

(6) Any person who shall take or use or exhibit in or upon any place of business, or advertise in a newspaper, telephone directory, or other directory, or by electronic media, or in any other manner, the title of pharmacist, pharmacy intern, pharmacy assistant, druggist, pharmacy, drug store, medicine store, drug department, drugs, drug sundries, or any title or name of like description or import, or display or permit to be displayed upon said place of business the characteristic pharmacy symbols, bottles or globes, either colored or filled with colored liquids, without having continuously and regularly employed in his or her shop, store, or place of business, during business hours of the pharmacy, a pharmacist duly licensed under this chapter; shall be guilty of a misdemeanor, and each and every day that such prohibited practice continues shall be deemed a separate offense. [1979 c 90 § 16; 1963 c 38 § 12; 1935 c 98 § 6; 1909 c 213 § 7; 1899 c 121 § 13; RRS § 10138. Formerly RCW 18.64.250, 18.64.010, 18.64.030, 18.67.030, 18.67.040 and 18.67.130. FORMER PART OF SECTION: 1909 c 213 § 13; RRS § 10146, now codified as RCW 18.64.280.]

18.64.255 Authorized practices. Nothing in this chapter shall operate in any manner:

(1) To restrict the scope of authorized practice of any practitioner other than a pharmacist, duly licensed as such under the laws of this state; or

(2) In the absence of the pharmacist from the hospital pharmacy, to prohibit a registered nurse designated by the hospital and the responsible pharmacist from obtaining from the hospital pharmacy such drugs as are needed in an emergency: **PROVIDED,** That proper record is kept of such emergency, including the date, time, name of prescriber, the name of the nurse obtaining the drugs, and a list of what drugs and quantities of same were obtained; or

(3) To prevent shopkeepers, itinerant vendors, peddlers, or salesmen from dealing in and selling nonprescription drugs, if such drugs are sold in the original packages of the manufacturer, or in packages put up by a licensed pharmacist in the manner provided by the state board of pharmacy, if such shopkeeper, itinerant vendor, salesman, or peddler shall have obtained a registration. [1984 c 153 § 14; 1981 c 147 § 3; 1979 c 90 § 19.]

18.64.257 Prescription of legend drugs by dialysis programs. This chapter shall not prevent a medicare-approved dialysis center or facility operating a medicare-approved home dialysis program from selling, delivering, possessing, or dispensing directly to its dialysis patients, in case or full shelf lots, if prescribed by a physician licensed under chapter 18.57 or 18.71 RCW, those legend drugs determined by the board pursuant to rule. [1987 c 41 § 1.]

Application of legend drug statutes to dialysis programs: RCW 69.41.032.

18.64.260 Enforcement provisions—Disposition of fines—Remittance of district court fines, fees, penalties

and forfeitures. All suits for the recovery of the several penalties prescribed in this chapter shall be prosecuted in the name of the state of Washington in any court having jurisdiction, and it shall be the duty of the prosecuting attorney of the county wherein such offense is committed to prosecute all persons violating the provisions of this chapter upon the filing of proper complaint. All penalties collected under the provisions of this chapter shall inure to the school fund of the county in which suit was prosecuted and judgment obtained: 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 § 184; 1969 ex.s. c 199 § 17; 1909 c 213 § 9; 1899 c 121 § 17; RRS § 10142.]

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

18.64.270 Responsibility for drug purity—Adulteration—Penalty. Every proprietor of a wholesale or retail drug store shall be held responsible for the quality of all drugs, chemicals or medicines sold or dispensed by him except those sold in original packages of the manufacturer and except those articles or preparations known as patent or proprietary medicines. Any person who shall knowingly, wilfully or fraudulently falsify or adulterate any drug or medicinal substance or preparation authorized or recognized by an official compendium or used or intended to be used in medical practice, or shall wilfully, knowingly or fraudulently offer for sale, sell or cause the same to be sold for medicinal purposes, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not less than seventy-five nor more than one hundred and fifty dollars or by imprisonment in the county jail for a period of not less than one month nor more than three months, and any person convicted a third time for violation of any of the provisions of this section may suffer both fine and imprisonment. In any case he shall forfeit to the state of Washington all drugs or preparations so falsified or adulterated. [1963 c 38 § 13; 1899 c 121 § 14; RRS § 10139. Prior: 1891 c 153 § 15. Formerly RCW 18.67.100 and 18.67.120.]

18.64.275 Limitations on liability for dispensing of prescription. (1) A pharmacist who dispenses a prescription product in the form manufactured by a commercial manufacturer pursuant to a prescription issued by a licensed practitioner is not liable to a person who was injured through the use of the product, based on a claim of the following:

(a) Strict liability in tort; or

(b) Implied warranty provisions under the uniform commercial code Title 62 RCW.

(2) The limitation on pharmacist's liability as provided in subsection (1) of this section shall only apply if the pharmacist complies with recordkeeping requirements pursuant to chapters 18.64, 69.41, and 69.50 RCW, and related administrative rules.

(3) A pharmacist who dispenses a prescription product in the form manufactured by a commercial manufacturer issued by a licensed practitioner is liable to the claimant only if the claimant's harm was proximately caused by (a) the negligence of the pharmacist; (b) breach of an express

warranty made by the pharmacist; or (c) the intentional misrepresentation of facts about the product by the pharmacist or the intentional concealment of information about the product by the pharmacist. A pharmacist shall not be liable for the product manufacturer's liability except as provided in RCW 7.72.040. [1991 c 189 § 1.]

18.64.280 General penalty. Any person who shall violate any of the provisions of chapter 18.64 RCW and for which a penalty is not provided shall be deemed guilty of a gross misdemeanor. [1963 c 38 § 14; 1909 c 213 § 13; RRS § 10146. Formerly RCW 18.64.250, part.]

18.64.300 Pharmacist members of committees to evaluate credentials and qualifications of pharmacists—Immunity from civil suit. See RCW 4.24.240.

18.64.301 Pharmacists filing charges or presenting evidence before pharmaceutical society—Immunity from civil suit. See RCW 4.24.250, 4.24.260.

18.64.302 Records of pharmaceutical society not subject to civil process. See RCW 4.24.250.

18.64.310 Department of health—Powers and duties. The department shall:

(1) Establish reasonable license and examination fees and fees for services to other agencies in accordance with RCW 43.70.250. In cases where there are unanticipated demands for services, the department may request payment for services directly from the agencies for whom the services are performed, to the extent that revenues or other funds are available. Drug-related investigations regarding licensed health care practitioners shall be funded by an appropriation to the department from the health professions account. The payment may be made on either an advance or a reimbursable basis as approved by the director of financial management;

(2) Employ, with confirmation by the board, an executive officer, who shall be exempt from the provisions of chapter 41.06 RCW and who shall be a pharmacist licensed in Washington, and employ inspectors, investigators, chemists, and other persons as necessary to assist it for any purpose which it may deem necessary;

(3) Investigate and prosecute, at the direction of the board, including use of subpoena powers, violations of law or regulations under its jurisdiction or the jurisdiction of the board of pharmacy;

(4) Make, at the direction of the board, inspections and investigations of pharmacies and other places, including dispensing machines, in which drugs or devices are stored, held, compounded, dispensed, sold, or administered to the ultimate consumer, to take and analyze any drugs or devices and to seize and condemn any drugs or devices which are adulterated, misbranded, stored, held, dispensed, distributed, administered, or compounded in violation of or contrary to law. The written operating agreement between the department and the board, as required by RCW 43.70.240 shall include provisions for the department to involve the board in carrying out its duties required by this section. [1989 1st ex.s. c 9 § 410.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64.350 Nonresident pharmacies—Findings. (1) The legislature finds and declares that the practice of pharmacy is a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and drug-related therapy.

(2) The legislature recognizes that with the proliferation of alternate methods of health delivery, there has arisen among third-party payors and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail-order pharmacies located outside the state of Washington.

(3) As a result, the legislature finds and declares that to continue to protect the Washington consumer-patient, all out-of-state pharmacies that provide services to Washington residents shall be licensed by the department of health, disclose specific information about their services, and provide pharmacy services at a high level of protection and competence. [1991 c 87 § 1.]

Effective date—1991 c 87: "This act shall take effect October 1, 1991." [1991 c 87 § 15.]

18.64.360 Nonresident pharmacies—Definition—Requirements—Exemption. (1) For the purposes of this chapter any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an individual, controlled substances, legend drugs, or devices into this state is a nonresident pharmacy, and shall be licensed by the department of health, and shall disclose to the department the following:

(a) The location, names, and titles of all owners including corporate officers and all pharmacists employed by the pharmacy who are dispensing controlled substances, legend drugs, or devices to residents of this state. A report containing this information shall be made on an annual basis and within ninety days after a change of location, corporate officer, or pharmacist;

(b) Proof of compliance with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the department of health under this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to operate the pharmacy in compliance with the laws of the state in which it is located. As a prerequisite to be licensed by the department of health, the nonresident pharmacy shall submit a copy of the most recent inspection report issued by the regulatory licensing agency of the state in which it is located;

(c) Proof that it maintains its records of controlled substances, legend drugs, or devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs dispensed.

(2) Any pharmacy subject to this section shall, during its regular hours of operation, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on

the label affixed to each container of drugs dispensed to patients in this state.

(3) A pharmacy subject to this section shall comply with board rules regarding the maintenance and use of patient medication record systems.

(4) A pharmacy subject to this section shall comply with board of pharmacy rules regarding the provision of drug information to the patient. Drug information may be contained in written form setting forth directions for use and any additional information necessary to assure the proper utilization of the medication prescribed.

(5) A pharmacy subject to this section shall not dispense medication in a quantity greater than authorized by the prescriber.

(6) The license fee specified by the secretary, in accordance with the provisions of RCW 43.70.250, shall not exceed the fee charged to a pharmacy located in this state.

(7) The license requirements of this section apply to nonresident pharmacies that ship, mail, or deliver controlled substances, legend drugs, and devices into this state only under a prescription. The board of pharmacy may grant an exemption from licensing under this section upon application by an out-of-state pharmacy that restricts its dispensing activity in Washington to isolated transactions.

(8) Each nonresident pharmacy that ships, mails, or delivers legend drugs or devices into this state shall designate a resident agent in Washington for service of process. The designation of such an agent does not indicate that the nonresident pharmacy is a resident of Washington for tax purposes. [1991 c 87 § 2.]

Effective date—1991 c 87: See note following RCW 18.64.350.

18.64.370 Nonresident pharmacies—License required—Application—Renewal. (1) A nonresident pharmacy that has not obtained a license from the department of health shall not conduct the business of selling or distributing drugs in this state.

(2) Applications for a nonresident pharmacy license under RCW 18.64.350 through 18.64.400 shall be made on a form furnished by the department. The department may require such information as it deems is reasonably necessary to carry out the purpose of RCW 18.64.350 through 18.64.400.

(3) The nonresident pharmacy license shall be renewed annually on a date to be established by the department by rule. In the event the license fee remains unpaid, no renewal or new license shall be issued except upon payment of the license renewal fee and a penalty fee equal to the original license fee. [1991 c 87 § 3.]

Effective date—1991 c 87: See note following RCW 18.64.350.

18.64.380 Nonresident pharmacies—Information required—Inspection. A nonresident pharmacy shall:

(1) Submit to the department, upon request, information acceptable to the secretary concerning controlled substances shipped, mailed, or delivered to a Washington resident.

(2) Submit to on-site inspection by the department of the nonresident pharmacy's prescription records if the information in subsection (1) of this section is not provided to the department upon request. [1991 c 87 § 4.]

Effective date—1991 c 87: See note following RCW 18.64.350.

18.64.390 Nonresident pharmacies—Violations—Penalties. (1) The board may deny, revoke, or suspend a nonresident pharmacy license or impose a fine not to exceed one thousand dollars per violation for failure to comply with any requirement of RCW 18.64.350 through 18.64.400.

(2) The board may deny, revoke, or suspend a nonresident pharmacy license or impose a fine not to exceed one thousand dollars per violation for conduct that causes serious bodily or psychological injury to a resident of this state if the secretary has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and that regulatory or licensing agency fails to initiate an investigation within forty-five days of the referral under this subsection or fails to make a determination on the referral. [1991 c 87 § 5.]

Effective date—1991 c 87: See note following RCW 18.64.350.

18.64.400 Nonresident pharmacies—Definition—Advertising. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an individual, controlled substances, legend drugs, or devices into this state. It is unlawful for:

(1) Any nonresident pharmacy that is not licensed under RCW 18.64.350 through 18.64.400 to advertise its service in this state; or

(2) Any resident of this state to advertise the pharmaceutical services of a nonresident pharmacy with the knowledge that the nonresident pharmacy is not licensed by the department and that the advertisement will or is likely to induce persons within this state to use the nonresident pharmacy to fill prescriptions. [1991 c 87 § 6.]

Effective date—1991 c 87: See note following RCW 18.64.350.

18.64.410 Nonresident pharmacies—Rules. The board may adopt rules to implement the provisions of RCW 18.64.350 through 18.64.400 and 18.64.420. [1991 c 87 § 11.]

Effective date—1991 c 87: See note following RCW 18.64.350.

18.64.420 Nonresident pharmacies—Information confidential—Exceptions. All records, reports, and information obtained by the department from or on behalf of an entity licensed under chapter 48.20, 48.21, 48.44, or 48.46 RCW shall be confidential and exempt from inspection and copying under chapter 42.17 RCW. Nothing in this section restricts the investigation or the proceedings of the board or the department so long as the board and the department comply with the provisions of chapter 42.17 RCW. Nothing in this section or in chapter 42.17 RCW shall restrict the board or the department from complying with any mandatory reporting requirements that exist or may exist under federal law, nor shall the board or the department be restricted from providing to any person the name of any nonresident pharmacy that is or has been licensed or disciplined under RCW 18.64.350 through 18.64.400. [1991 c 87 § 12.]

Effective date—1991 c 87: See note following RCW 18.64.350.

18.64.900 Severability—1923 c 180. Should any section or parts of sections of this act be declared unconstitutional it shall in no case affect the validity of other provisions of this act. [1923 c 180 § 12.]

Should any section or parts of sections of this act be declared unconstitutional it shall in no case affect the validity of other provisions of this act. [1923 c 180 § 12.]

18.64.910 Severability—1935 c 98. If any section, sentence, clause or part of this act shall be adjudged to be invalid, such adjudication shall not affect the remaining portions of the act. [1935 c 98 § 12.]

18.64.911 Severability—1963 c 38. 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 38 § 24.]

18.64.920 Repealer—1935 c 98. All acts and parts of acts in conflict herewith are hereby repealed. [1935 c 98 § 11.]

Chapter 18.64A PHARMACY ASSISTANTS

Sections

18.64A.005 Regulation of health care professions—Criteria.

18.64A.010 Definitions.

18.64A.020 Rules—Classification and qualifications of assistants and training programs.

18.64A.030 Rules—Levels of service.

18.64A.040 Limitations on practice by pharmacy assistants.

18.64A.050 Grounds for refusal, suspension, or revocation of pharmacy assistant's certificate—Hearing—Appeal.

18.64A.060 Pharmacy's application for pharmacy assistant—Fee—Approval or rejection by board—Hearing—Appeal.

18.64A.065 Late renewal—Penalty.

18.64A.070 Persons presently acting as pharmacy assistants—Pharmacies presently employing persons acting as pharmacy assistants.

18.64A.080 Pharmacy's or pharmacist's liability, responsibility.

18.64A.900 Severability—1977 ex.s. c 101.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

18.64A.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.64A.010 Definitions. Terms used in this chapter shall have the meaning set forth in this section unless the context clearly indicates otherwise:

- (1) "Board" means the state board of pharmacy;
- (2) "Department" means the department of health;
- (3) "Pharmacist" means a person duly licensed by the state board of pharmacy to engage in the practice of pharmacy;
- (4) "Pharmacy" means every place properly licensed by the board of pharmacy where the practice of pharmacy is conducted;
- (5) "Pharmacy assistant level A" means:
 - (a) A person who is enrolled in, or who has satisfactorily completed, a board approved training program designed to prepare persons to perform nondiscretionary functions associated with the practice of pharmacy; or
 - (b) A person who is a graduate with a degree in pharmacy or medicine of a foreign school, university, or college recognized by the board;

(6) "Pharmacy assistant level B" means a person certified by the board to perform limited functions in the pharmacy;

(7) "Practice of pharmacy" means the definition given in RCW 18.64.011, as now or hereafter amended;

(8) "Secretary" means the secretary of health or the secretary's designee. [1989 1st ex.s. c 9 § 422; 1977 ex.s. c 101 § 1.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64A.020 Rules—Classification and qualifications of assistants and training programs. (1) The board shall adopt, in accordance with chapter 34.05 RCW, rules and regulations fixing the classification and qualifications and the educational and training requirements for persons who may be employed as pharmacy assistants or who may be enrolled in any pharmacy assistant training program. Such regulations shall provide that:

(a) Licensed pharmacists shall supervise the training of pharmacy assistants; and

(b) Training programs shall assure the competence of pharmacy assistants to aid and assist pharmacy operations. Training programs shall consist of instruction and/or practical training.

(2) The board may disapprove or revoke approval of any training program for failure to conform to board rules and regulations. In the case of the disapproval or revocation of approval of a training program by the board, a hearing shall be conducted in accordance with RCW 18.64.160 as now or hereafter amended, and appeal may be taken in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1977 ex.s. c 101 § 2.]

18.64A.030 Rules—Levels of service. The board shall adopt, in accordance with chapter 34.05 RCW, rules and regulations governing the extent to which pharmacy assistants may perform services associated with the practice of pharmacy during training and after successful completion of a training course. Such regulations shall provide for the certification of pharmacy assistants by the department at a fee determined by the secretary under RCW 43.70.250 according to the following levels of classification:

(1) "Level A pharmacy assistants" may assist in performing, under the immediate supervision and control of a licensed pharmacist, manipulative, nondiscretionary functions associated with the practice of pharmacy.

(2) "Level B pharmacy assistants" may perform, under the general supervision of a licensed pharmacist, duties including but not limited to, typing of prescription labels, filing, refiling, bookkeeping, pricing, stocking, delivery, nonprofessional phone inquiries, and documentation of third party reimbursements. [1989 1st ex.s. c 9 § 423; 1977 ex.s. c 101 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64A.040 Limitations on practice by pharmacy assistants. (1) A pharmacy assistant shall practice pharmacy in this state only after authorization by the board and only to

the extent permitted by the board in accordance with this chapter.

(2) A pharmacist shall be assisted by a pharmacy assistant in the practice of pharmacy in this state only after authorization by the board and only to the extent permitted by the board in accordance with this chapter: **PROVIDED**, That no pharmacist may supervise more than one person performing level A pharmacy assistant duties and functions: **PROVIDED FURTHER**, That in pharmacies operating in connection with facilities licensed pursuant to chapter 70.41, 71.12, 71A.20, or 74.42 RCW, whether or not situated within the said facility which shall be physically separated from any area of a pharmacy where dispensing of prescriptions to the general public occurs, the ratio of pharmacists to persons performing level A pharmacy assistant duties and functions shall be as follows: In the preparation of medicine or other materials used by patients within the facility, one pharmacist supervising no more than three persons performing level A pharmacy assistant duties and functions; in the preparation of medicine or other materials dispensed to persons not patients within the facility, one pharmacist supervising not more than one person performing level A pharmacy assistant duties and functions. [1992 c 40 § 1; 1977 ex.s. c 101 § 4.]

18.64A.050 Grounds for refusal, suspension, or revocation of pharmacy assistant's certificate—Hearing—Appeal. The board of pharmacy shall have the power to refuse, suspend, or revoke the certificate of any pharmacy assistant upon proof that:

(1) His or her certificate was procured through fraud, misrepresentation or deceit;

(2) He or she has been found guilty of any offense in violation of the laws of this state relating to drugs, poisons, cosmetics or drug sundries by any court of competent jurisdiction. Nothing herein shall be construed to affect or alter the provisions of RCW 9.96A.020;

(3) He or she is unfit to perform his or her duties because of habitual intoxication or abuse of controlled substances;

(4) He or she has exhibited gross incompetency in the performance of his or her duties;

(5) He or she has willfully or repeatedly violated any of the rules and regulations of the board of pharmacy or of the department;

(6) He or she has willfully or repeatedly performed duties beyond the scope of his or her certificate in violation of the provisions of this chapter; or

(7) He or she has impersonated a licensed pharmacist.

In any case of the refusal, suspension or revocation of a certificate by the board, a hearing shall be conducted in accordance with RCW 18.64.160, as now or hereafter amended, and appeal may be taken in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1989 1st ex.s. c 9 § 424; 1977 ex.s. c 101 § 5.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.64A.060 Pharmacy's application for pharmacy assistant—Fee—Approval or rejection by board—Hearing—Appeal. No pharmacy licensed in this state shall utilize the services of pharmacy assistants without approval of the board.

Any pharmacy licensed in this state may apply to the board for permission to use the services of pharmacy assistants. The application shall be accompanied by a uniform fee to be determined by the secretary, shall detail the manner and extent to which the pharmacy assistants would be used and supervised, and shall provide other information in such form as the secretary may require.

The board may approve or reject such applications. In addition, the board may modify the proposed utilization of pharmacy assistants and approve the application as modified. No such approval shall extend for more than one year, but approval once granted may be renewed annually upon payment of a uniform fee as determined by the secretary. Whenever it appears to the board that a pharmacy assistant is being utilized in a manner inconsistent with the approval granted, the board may withdraw such approval. In the event a hearing is requested upon the rejection of an application, or upon the withdrawal of approval, a hearing shall be conducted in accordance with chapter 18.64 RCW, as now or hereafter amended, and appeal may be taken in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1989 1st ex.s. c 9 § 425; 1977 ex.s. c 101 § 6.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64A.065 Late renewal—Penalty. If a pharmacy assistant allows his or her certificate to lapse by failing to renew on or before the date due, a renewal or new license may be issued only upon payment of the certification fee and a penalty fee equal to the original certification fee. [1991 c 229 § 10.]

18.64A.070 Persons presently acting as pharmacy assistants—Pharmacies presently employing persons acting as pharmacy assistants. (1) Persons presently assisting a pharmacist by performing the functions of a pharmacy assistant may continue to do so under the supervision of a licensed pharmacist: **PROVIDED**, That within eighteen months after May 28, 1977, such persons shall be in compliance with the provisions of this chapter.

(2) Pharmacies presently employing persons to perform the functions of a pharmacy assistant may continue to do so while obtaining board approval for the use of certified pharmacy assistants: **PROVIDED**, That within eighteen months after May 28, 1977, such pharmacies shall be in compliance with the provisions of this chapter. [1977 ex.s. c 101 § 7.]

18.64A.080 Pharmacy's or pharmacist's liability, responsibility. No pharmacy or pharmacist which utilizes the services of a pharmacy assistant with approval by the board, shall be considered as aiding and abetting an unlicensed person to practice pharmacy within the meaning of chapter 18.64 RCW, as now or hereafter amended: **PROVIDED, HOWEVER**, That the pharmacy or pharmacist shall retain responsibility for any act performed by a pharmacy

assistant in the course of his or her employment. [1977 ex.s. c 101 § 8.]

18.64A.900 Severability—1977 ex.s. c 101. 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 101 § 10.]

Chapter 18.71 PHYSICIANS

Sections

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Reviser's note: Certain powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Abortion: Chapter 9.02 RCW.

Accepted medical procedures not to include adjustment by hand of any articulation of the spine: RCW 18.25.005.

Actions against, limitation of: RCW 4.16.350.

Actions for negligence against, evidence and proof required to prevail: RCW 4.24.290.

Crimes relating to pregnancy and childbirth: RCW 9A.32.060.

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Medical disciplinary board: Chapter 18.72 RCW.

Medical practice investigator, powers and duties: RCW 18.71A.070.

Rebating by practitioners of healing professions prohibited: Chapter 19.68 RCW.

Regulation of practice of medicine and surgery, sale of drugs and medicines: State Constitution Art. 20 § 2.

18.71.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.71.010 Definitions. The following terms used in this chapter shall have the meanings set forth in this section unless the context clearly indicates otherwise:

(1) "Board" means the board of medical examiners.

(2) "Secretary" means the secretary of health.

(3) "Resident physician" means an individual who has graduated from a school of medicine which meets the requirements set forth in RCW 18.71.055 and is serving a period of postgraduate clinical medical training sponsored by a college or university in this state or by a hospital accredited by this state. For purposes of this chapter, the term shall include individuals designated as intern or medical fellow.

(4) "Emergency medical care" or "emergency medical service" has the same meaning as in chapter 18.73 RCW. [1991 c 3 § 158; 1988 c 104 § 1; 1979 c 158 § 51; 1975 1st ex.s. c 171 § 1; 1961 c 284 § 1; 1957 c 60 § 2. Prior: 1947 c 168 § 1, part; 1919 c 134 § 3, part; 1909 c 192 § 6, part; Rem. Supp. 1947 § 10008, part; prior: 1905 c 41 § 1, part; 1901 c 42 § 1, part; 1890 p 115 § 3, part; Code 1881 § 2285, part.]

Uniform anatomical gift act: Chapter 68.50 RCW.

18.71.011 Definition of practice of medicine—Engaging in practice of chiropractic prohibited, when. A person is practicing medicine if he does one or more of the following:

(1) Offers or undertakes to diagnose, cure, advise or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality;

(2) Administers or prescribes drugs or medicinal preparations to be used by any other person;

(3) Severs or penetrates the tissues of human beings;

(4) Uses on cards, books, papers, signs or other written or printed means of giving information to the public, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human disease or conditions the designation "doctor of medicine", "physician", "surgeon", "m.d." or any combination thereof unless such designation additionally contains the description of another branch of the

healing arts for which a person has a license: PROVIDED HOWEVER, That a person licensed under this chapter shall not engage in the practice of chiropractic as defined in RCW 18.25.005. [1975 1st ex.s. c 171 § 15.]

18.71.015 Board of medical examiners. There is hereby created a board of medical examiners consisting of six individuals licensed to practice medicine in the state of Washington, one individual who is licensed as a physician assistant under chapter 18.71A RCW, and two individuals who are not physicians, to be known as the Washington state board of medical examiners.

The board shall be appointed by the governor. On expiration of the term of any member, the governor shall appoint for a period of five years an individual of similar qualifications to take the place of such member. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been appointed and shall have qualified.

Each member of the board shall be a citizen of the United States, must be an actual resident of this state, and, if a physician, must have been licensed to practice medicine in this state for at least five years.

The board shall meet as soon as practicable after appointment and elect a chair and a vice-chair from its members. Meetings shall be held at least four times a year and at such place as the board shall determine and at such other times and places as the board deems necessary. A majority of the board members serving shall constitute a quorum for the transaction of board business.

It shall require the affirmative vote of a majority of a quorum of the board to carry any motion or resolution, to adopt any rule, or to pass any measure. A majority of the members appointed to a panel of the board shall constitute a quorum for the panel to transact business delegated to it by the board.

Each member of the board shall be compensated in accordance with RCW 43.03.240 and in addition thereto shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060. Any such expenses shall be paid from funds appropriated to the department of health.

Any member of the board may be removed by the governor for neglect of duty, misconduct, or malfeasance or misfeasance in office.

Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor. [1991 c 44 § 1; 1991 c 3 § 159; 1990 c 196 § 11; 1987 c 116 § 1; 1984 c 287 § 44; 1979 c 158 § 52; 1975-'76 2nd ex.s. c 34 § 41; 1975 1st ex.s. c 171 § 2; 1961 c 284 § 2.]

Reviser's note: This section was amended by 1991 c 3 § 159 and by 1991 c 44 § 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).

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.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.71.017 Rules and regulations by board. The board may make such rules and regulations as are not inconsistent with the laws of this state as may be determined necessary or proper to carry out the purposes of this chapter. [1961 c 284 § 11.]

18.71.019 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice and the issuance and denial of licenses under this chapter. [1987 c 150 § 45; 1986 c 259 § 105.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.71.021 License required. No person may practice or represent himself or herself as practicing medicine without first having a valid license to do so. [1987 c 150 § 46.]

Severability—1987 c 150: See RCW 18.122.901.

18.71.030 Exemptions. Nothing in this chapter shall be construed to apply to or interfere in any way with the practice of religion or any kind of treatment by prayer; nor shall anything in this chapter be construed to prohibit:

(1) The furnishing of medical assistance in cases of emergency requiring immediate attention;

(2) The domestic administration of family remedies;

(3) The administration of oral medication of any nature to students by public school district employees or private elementary or secondary school employees as provided for in chapter 28A.210 RCW;

(4) The practice of dentistry, osteopathy, osteopathy and surgery, nursing, chiropractic, *podiatry, optometry, naturopathy or any other healing art licensed under the methods or means permitted by such license;

(5) The practice of medicine in this state by any commissioned medical officer serving in the armed forces of the United States or public health service or any medical officer on duty with the United States veterans administration while such medical officer is engaged in the performance of the duties prescribed for him or her by the laws and regulations of the United States;

(6) The practice of medicine by any practitioner licensed by another state or territory in which he or she resides, provided that such practitioner shall not open an office or appoint a place of meeting patients or receiving calls within this state;

(7) The practice of medicine by a person who is a regular student in a school of medicine approved and accredited by the board, however, the performance of such services be only pursuant to a regular course of instruction or assignments from his or her instructor, or that such services are performed only under the supervision and control of a person licensed pursuant to this chapter;

(8) The practice of medicine by a person serving a period of postgraduate medical training in a program of clinical medical training sponsored by a college or university in this state or by a hospital accredited in this state, however, the performance of such services shall be only pursuant to his or her duties as a trainee;

(9) The practice of medicine by a person who is regularly enrolled in a physician assistant program approved by the board, however, the performance of such services

[shall] be only pursuant to a regular course of instruction in said program and such services are performed only under the supervision and control of a person licensed pursuant to this chapter;

(10) The practice of medicine by a licensed physician assistant which practice is performed under the supervision and control of a physician licensed pursuant to this chapter;

(11) The practice of medicine, in any part of this state which shares a common border with Canada and which is surrounded on three sides by water, by a physician licensed to practice medicine and surgery in Canada or any province or territory thereof;

(12) The administration of nondental anesthesia by a dentist who has completed a residency in anesthesiology at a school of medicine approved by the board of medical examiners, however, a dentist allowed to administer nondental anesthesia shall do so only under authorization of the patient's attending surgeon, obstetrician, or psychiatrist and the medical disciplinary board shall have jurisdiction to discipline a dentist practicing under this exemption and enjoin or suspend such dentist from the practice of nondental anesthesia according to the provisions of chapter 18.72 RCW and chapter 18.130 RCW;

(13) Emergency lifesaving service rendered by a physician's trained mobile intravenous therapy technician, by a physician's trained mobile airway management technician, or by a physician's trained mobile intensive care paramedic, as defined in RCW 18.71.200, if the emergency lifesaving service is rendered under the responsible supervision and control of a licensed physician;

(14) The provision of clean, intermittent bladder catheterization for students by public school district employees or private school employees as provided for in RCW 18.88.295 and 28A.210.280. [1990 c 196 § 12; 1990 c 33 § 552; 1988 c 48 § 4; 1986 c 259 § 108; 1983 c 2 § 1. Prior: 1982 c 195 § 3; 1982 c 51 § 1; 1975 1st ex.s. c 171 § 5; 1973 1st ex.s. c 110 § 1; 1961 c 284 § 4; 1919 c 134 § 12; 1909 c 192 § 19; RRS § 10024.]

Reviser's note: *(1) The term "podiatry" was changed to "podiatric medicine and surgery" by 1990 c 147.

(2) This section was amended by 1990 c 33 § 552 and by 1990 c 196 § 12, 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—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1983 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 2 § 21.]

Severability—1982 c 195: See note following RCW 28A.210.260.

Administering drugs, inoculations, etc., by registered nurses permitted: RCW 18.88.290.

18.71.040 Application—Fee. Every applicant for a certificate to practice medicine and surgery shall pay a fee determined by the secretary as provided in RCW 43.70.250. [1991 c 3 § 160; 1985 c 322 § 1. Prior: 1975 1st ex.s. c 171 § 6; 1975 1st ex.s. c 30 § 61; 1955 c 202 § 35; prior: 1941 c 166 § 1, part; 1913 c 82 § 1, part; 1909 c 192 § 7, part; Rem. Supp. 1941 § 10010-1, part.]

18.71.050 Application—Eligibility requirements—United States and Canadian graduates. (1) Each applicant who has graduated from a school of medicine located in any state, territory or possession of the United States, the District of Columbia, or the Dominion of Canada, shall file an application for licensure with the board on a form prepared by the secretary with the approval of the board. Each applicant shall furnish proof satisfactory to the board of the following:

(a) That the applicant has attended and graduated from a school of medicine approved by the board;

(b) That the applicant has completed two years of postgraduate medical training in a program acceptable to the board, provided that applicants graduating before July 28, 1985, may complete only one year of postgraduate medical training;

(c) That the applicant is of good moral character; and

(d) That the applicant is physically and mentally capable of safely carrying on the practice of medicine. The board may require any applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical and/or mental capability to safely practice medicine.

(2) Nothing in this section shall be construed as prohibiting the board from requiring such additional information from applicants as it deems necessary. The issuance and denial of licenses are subject to chapter 18.130 RCW, the uniform disciplinary act. [1991 c 3 § 161. Prior: 1986 c 259 § 109; 1985 c 322 § 2; 1975 1st ex.s. c 171 § 7; 1961 c 284 § 5; 1957 c 60 § 3; prior: 1947 c 168 § 1, part; 1919 c 134 § 3, part; 1909 c 192 § 6, part; Rem. Supp. 1947 § 10008, part; prior: 1905 c 41 § 1, part; 1901 c 42 § 1, part; 1890 p 115 § 3, part; Code 1881 § 2285, part.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.71.051 Application—Eligibility requirements—Foreign graduates. Applicants for licensure to practice medicine who have graduated from a school of medicine located outside of the states, territories and possessions of the United States, the District of Columbia, or the Dominion of Canada, shall file an application for licensure with the board on a form prepared by the secretary with the approval of the board. Each applicant shall furnish proof satisfactory to the board of the following:

(1) That he or she has completed in a school of medicine a resident course of professional instruction equivalent to that required in this chapter for applicants generally;

(2) That he or she meets all the requirements which must be met by graduates of the United States and Canadian school of medicine except that he or she need not have graduated from a school of medicine approved by the board;

(3) That he or she has satisfactorily passed the examination given by the educational council for foreign medical graduates or has met the requirements in lieu thereof as set forth in rules and regulations adopted by the board;

(4) That he or she has the ability to read, write, speak, understand, and be understood in the English language. [1991 c 3 § 162; 1975 1st ex.s. c 171 § 16.]

18.71.055 Schools of medicine—Requirements for approval. The board may approve any school of medicine

which is located in any state, territory or possession of the United States, the District of Columbia, or in the Dominion of Canada, provided that it:

(1) Requires collegiate instruction which includes courses deemed by the board to be prerequisites to medical education;

(2) Provides adequate instruction in the following subjects: Anatomy, biochemistry, microbiology and immunology, pathology, pharmacology, physiology, anaesthesiology, dermatology, gynecology, internal medicine, neurology, obstetrics, ophthalmology, orthopedic surgery, otolaryngology, pediatrics, physical medicine and rehabilitation, preventive medicine and public health, psychiatry, radiology, surgery and urology and such other subjects determined by the board;

(3) Provides clinical instruction in hospital wards and out-patient clinics under guidance.

Approval may be withdrawn by the board at any time a medical school ceases to comply with one or more of the requirements of this section.

(4) Nothing in this section shall be construed to authorize the board to approve a school of osteopathy, osteopathy and surgery or osteopathic medicine, for purposes of qualifying an applicant to be licensed under this chapter by direct licensure, reciprocity or otherwise. [1975 1st ex.s. c 171 § 8; 1961 c 284 § 6; 1957 c 60 § 4.]

18.71.060 Record of proceedings of board and of applications. Said board shall keep an official record of all its proceedings, a part of which record shall consist of a register of all applicants for licensure under this chapter, with the result of each application. Said record shall be evidence of all the proceedings of said board which are set forth therein. [1975 1st ex.s. c 171 § 9; 1961 c 284 § 7; 1909 c 192 § 8; RRS § 10011.]

18.71.070 Examination—Record. With the exception of those applicants granted licensure through the provisions of RCW 18.71.090 or 18.71.095, applicants for licensure must successfully complete an examination administered by the board to determine their professional qualifications. The board shall prepare and give, or approve the preparation and giving of, an examination which shall cover those general subjects and topics, a knowledge of which is commonly and generally required of candidates for the degree of doctor of medicine conferred by approved colleges or schools of medicine in the United States. Notwithstanding any other provision of law, the board shall have the sole responsibility for determining the proficiency of applicants under this chapter, and, in so doing, may waive any prerequisite to licensure not set forth in this chapter.

The board may by rule establish the passing grade for the examination.

Examination results shall be part of the records of the board and shall be permanently kept with the applicant's file. [1985 c 322 § 3; 1975 1st ex.s. c 171 § 10; 1961 c 284 § 8; 1919 c 134 § 4; 1909 c 192 § 6; RRS § 10009.]

18.71.080 License—Annual renewal—Continuing education requirement—Failure to renew, procedure. Every person licensed to practice medicine in this state shall

register with the secretary of health annually, and pay an annual renewal registration fee determined by the secretary as provided in RCW 43.70.250. The board may establish rules governing mandatory continuing education requirements which shall be met by physicians applying for renewal of licenses. The rules and regulations shall provide that mandatory continuing education requirements may be met in part by physicians showing evidence of the completion of approved activities relating to professional liability risk management. Any failure to register and pay the annual renewal registration fee shall render the license invalid, but such license shall be reinstated upon written application therefor to the secretary, and payment to the state of a penalty fee determined by the secretary as provided in RCW 43.70.250, together with all delinquent annual license renewal fees: PROVIDED, HOWEVER, That any person who fails to renew the license for a period of three years, shall in no event be entitled to renew the license under this section. Such a person in order to obtain a license to practice medicine in this state, shall file an original application as provided for in this chapter, along with the requisite fee therefor. The board, in its sole discretion, may permit such applicant to be licensed without examination if it is satisfied that such applicant meets all the requirements for licensure in this state, and is competent to engage in the practice of medicine. [1991 c 195 § 1; 1991 c 3 § 163; 1985 c 322 § 4. Prior: 1979 c 158 §§ 53, 54, 55; 1975 1st ex.s. c 171 § 11; 1971 ex.s. c 266 § 12; 1955 c 202 § 36; prior: 1941 c 166 § 1, part; 1913 c 82 § 1, part; 1909 c 192 § 7, part; Rem. Supp. 1941 § 10010-1, part.]

Reviser's note: This section was amended by 1991 c 3 § 163 and by 1991 c 195 § 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).

Medical disciplinary assessment fee, payment annually: RCW 18.72.380.

18.71.085 Inactive licenses—Renewal—Application of disciplinary provisions. The board may adopt rules pursuant to this section authorizing an inactive license status.

(1) An individual licensed pursuant to chapter 18.71 RCW may place his or her license on inactive status. The holder of an inactive license shall not practice medicine and surgery in this state without first activating the license.

(2) The inactive renewal fee shall be established by the secretary pursuant to RCW 43.70.250. Failure to renew an inactive license shall result in cancellation in the same manner as an active license.

(3) An inactive license may be placed in an active status upon compliance with rules established by the board.

(4) Provisions relating to disciplinary action against a person with a license shall be applicable to a person with an inactive license, except that when disciplinary proceedings against a person with an inactive license have been initiated, the license shall remain inactive until the proceedings have been completed. [1991 c 44 § 2.]

18.71.090 License without examination—Reciprocity—National board examinees—Fee. Any applicant who meets the requirements of RCW 18.71.050 and has been licensed under the laws of another state, territory, or possession of the United States, or of any province of Canada, or an applicant who has satisfactorily

passed examinations given by the national board of medical examiners may, in the discretion of the board, be granted a license without examination on the payment of the fees required by this chapter: PROVIDED, That the applicant must file with the board a copy of the license certified by the proper authorities of the issuing state to be a full, true copy thereof, and must show that the standards, eligibility requirements and examinations of that state are at least equal in all respects to those of this state. [1985 c 322 § 5. Prior: 1975 1st ex.s. c 171 § 12; 1975 1st ex.s. c 30 § 63; 1961 c 284 § 9; 1957 c 60 § 5; 1919 c 134 § 11; RRS § 10023.]

18.71.095 Limited licenses. The board may, without examination, issue a limited license to persons who possess the qualifications set forth herein:

(1) The board may, upon the written request of the secretary of the department of social and health services or the secretary of corrections, issue a limited license to practice medicine in this state to persons who have been accepted for employment by the department of social and health services or the department of corrections as physicians; who are licensed to practice medicine in another state of the United States or in the country of Canada or any province or territory thereof; and who meet all of the qualifications for licensure set forth in RCW 18.71.050.

Such license shall permit the holder thereof to practice medicine only in connection with patients, residents, or inmates of the state institutions under the control and supervision of the secretary of the department of social and health services or the department of corrections.

(2) The board may issue a limited license to practice medicine in this state to persons who have been accepted for employment by a county or city health department as physicians; who are licensed to practice medicine in another state of the United States or in the country of Canada or any province or territory thereof; and who meet all of the qualifications for licensure set forth in RCW 18.71.050.

Such license shall permit the holder thereof to practice medicine only in connection with his or her duties in employment with the city or county health department.

(3) Upon receipt of a completed application showing that the applicant meets all of the requirements for licensure set forth in RCW 18.71.050 except for completion of two years of postgraduate medical training, and that the applicant has been appointed as a resident physician in a program of postgraduate clinical training in this state approved by the board, the board may issue a limited license to a resident physician. Such license shall permit the resident physician to practice medicine only in connection with his or her duties as a resident physician and shall not authorize the physician to engage in any other form of practice. Each resident physician shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered.

(4)(a) Upon nomination by the dean of the school of medicine at the University of Washington or the chief executive officer of a hospital or other appropriate health care facility licensed in the state of Washington, the board may issue a limited license to a physician applicant invited

to serve as a teaching-research member of the institution's instructional staff if the sponsoring institution and the applicant give evidence that he or she has graduated from a recognized medical school and has been licensed or otherwise privileged to practice medicine at his or her location of origin. Such license shall permit the recipient to practice medicine only within the confines of the instructional program specified in the application and shall terminate whenever the holder ceases to be involved in that program, or at the end of one year, whichever is earlier. Upon request of the applicant and the institutional authority, the license may be renewed for no more than a total of two years.

(b) Upon nomination by the dean of the school of medicine of the University of Washington or the chief executive officer of any hospital or appropriate health care facility licensed in the state of Washington, the board may issue a limited license to an applicant selected by the sponsoring institution to be enrolled in one of its designated departmental or divisional fellowship programs provided that the applicant shall have graduated from a recognized medical school and has been granted a license or other appropriate certificate to practice medicine in the location of the applicant's origin. Such license shall permit the holder only to practice medicine within the confines of the fellowship program to which he or she has been appointed and, upon the request of the applicant and the sponsoring institution, the license may be renewed by the board for no more than a total of two years.

All persons licensed under this section shall be subject to the jurisdiction of the medical disciplinary board to the same extent as other members of the medical profession, in accordance with chapters 18.72 and 18.130 RCW.

Persons applying for licensure pursuant to this section shall pay an application fee determined by the secretary as provided in RCW 43.70.250 and, in the event the license applied for is issued, a license fee at the rate provided for renewals of licenses generally. Licenses issued hereunder may be renewed annually pursuant to the provisions of RCW 18.71.080. Any person who obtains a limited license pursuant to this section may, without an additional application fee, apply for licensure under this chapter, but shall submit a new application form and comply with all other licensing requirements of this chapter. [1991 c 3 § 164; 1990 c 160 § 1; 1987 c 129 § 1. Prior: 1986 c 259 § 110; 1985 c 322 § 6; 1975 1st ex.s. c 171 § 13; 1973 1st ex.s. c 4 § 1; 1967 c 138 § 1; 1965 c 29 § 1; 1959 c 189 § 1.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.71.100 Applicability of health regulations. All persons granted licenses or certificates under this chapter, shall be subject to the state and municipal regulations relating to the control of contagious diseases, the reporting and certifying to births and deaths, and all matters pertaining to public health; and all such reports shall be accepted as legal. [1909 c 192 § 18; RRS § 10022.]

Public health and safety: Title 70 RCW.

Vital statistics: Chapter 70.58 RCW.

18.71.151 Physician members of committees to evaluate credentials and qualifications of physicians—Immunity from civil suit. See RCW 4.24.240.

18.71.161 Physicians filing charges or presenting evidence before committees, boards or hospitals—Immunity from civil suit. See RCW 4.24.250, 4.24.260.

18.71.171 Records of medical society or hospital committee or board not subject to civil process. See RCW 4.24.250.

18.71.190 False personation—Penalty. Every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself to be the person named in such certificate, or falsely claiming himself to be the person entitled to the same, shall be guilty of a felony, and, upon conviction thereof, shall be subject to such penalties as are provided by the laws of this state for the crime of forgery. [1909 c 192 § 16; RRS § 10019.]

False personation: RCW 9A.60.040.

18.71.200 Emergency service medical personnel—Definitions. (1) As used in this chapter, a "physician's trained mobile intravenous therapy technician" means a person who:

(a) Has successfully completed an emergency medical technician course as described in chapter 18.73 RCW;

(b) Is trained under the supervision of an approved medical program director to administer intravenous solutions under written or oral authorization of an approved licensed physician; and

(c) Has been examined and certified as a physician's trained mobile intravenous therapy technician by the University of Washington's school of medicine or the department of health;

(2) As used in this chapter, a "physician's trained mobile airway management technician" means a person who:

(a) Has successfully completed an emergency medical technician course as described in chapter 18.73 RCW;

(b) Is trained under the supervision of an approved medical program director to perform endotracheal airway management and other authorized aids to ventilation under written or oral authorization of an approved licensed physician; and

(c) Has been examined and certified as a physician's trained mobile airway management technician by the University of Washington's school of medicine or the department of health; and

(3) As used in this chapter, a "physician's trained mobile intensive care paramedic" means a person who:

(a) Has successfully completed an emergency medical technician course as described in chapter 18.73 RCW;

(b) Is trained under the supervision of an approved medical program director:

(i) To carry out all phases of advanced cardiac life support;

(ii) To administer drugs under written or oral authorization of an approved licensed physician; and

(iii) To administer intravenous solutions under written or oral authorization of an approved licensed physician; and

(iv) To perform endotracheal airway management and other authorized aids to ventilation; and

(c) Has been examined and certified as a physician's trained mobile intensive care paramedic by the University of

Washington's school of medicine or by the department of health. [1991 c 3 § 165; 1986 c 259 § 111; 1983 c 112 § 1; 1977 c 55 § 2; 1973 1st ex.s. c 52 § 1; 1971 ex.s. c 305 § 2.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

18.71.205 Emergency service medical personnel—Certification. (1) The secretary of the department of health, in conjunction with the advice and assistance of the emergency medical services licensing and certification advisory committee as prescribed in RCW 18.73.050, and the board of medical examiners, shall prescribe:

(a) Minimum standards and performance requirements for the certification and recertification of physician's trained intravenous therapy technicians, airway management technicians, and mobile intensive care paramedics; and

(b) Procedures for certification, recertification, and decertification of physician's trained intravenous therapy technicians, airway management technicians, and mobile intensive care paramedics.

(2) Initial certification shall be for a period of three years.

(3) Recertification shall be granted upon proof of continuing satisfactory performance and education, and shall be for a period of three years.

(4) As used in chapters 18.71 and 18.73 RCW, "approved medical program director" means a person who:

(a) Is licensed to practice medicine and surgery pursuant to chapter 18.71 RCW or osteopathy and surgery pursuant to chapter 18.57 RCW; and

(b) Is qualified and knowledgeable in the administration and management of emergency care and services; and

(c) Is so certified by the department of health for a county, group of counties, or cities with populations over four hundred thousand in coordination with the recommendations of the local medical community and local emergency medical services and trauma care council.

(5) The uniform disciplinary act, chapter 18.130 RCW, governs uncertified practice, the issuance and denial of certificates, and the disciplining of certificate holders under this section. The secretary shall be the disciplining authority under this section. Disciplinary action shall be initiated against a person credentialed under this chapter in a manner consistent with the responsibilities and duties of the medical program director under whom such person is responsible. [1992 c 128 § 1; 1990 c 269 § 18; 1986 c 68 § 1; 1983 c 112 § 2; 1977 c 55 § 3.]

Severability—1990 c 269: See RCW 70.168.901.

18.71.210 Physician's trained mobile intravenous therapy technicians, airway management technicians, mobile intensive care paramedics, emergency medical technicians, and first responders—Liability for acts or omissions. No act or omission of any physician's trained mobile intensive care paramedic, intravenous therapy technician, or airway management technician, as defined in RCW 18.71.200 as now or hereafter amended, any emergency medical technician or first responder as defined in RCW 18.73.030, done or omitted in good faith while rendering

emergency medical service under the responsible supervision and control of a licensed physician or an approved medical program director or delegate(s) to a person who has suffered illness or bodily injury shall impose any liability upon:

(1) The trained mobile intensive care paramedic, intravenous therapy technician, airway management technician, emergency medical technician, or first responder;

(2) The medical program director;

(3) The supervising physician(s);

(4) Any hospital, the officers, members of the staff, nurses, or other employees of a hospital;

(5) Any training agency or training physician(s);

(6) Any licensed ambulance service; or

(7) Any federal, state, county, city or other local governmental unit or employees of such a governmental unit.

This section shall apply to an act or omission committed or omitted in the performance of the actual emergency medical procedures and not in the commission or omission of an act which is not within the field of medical expertise of the physician's trained mobile intensive care paramedic, intravenous therapy technician, airway management technician, emergency medical technician, or first responder, as the case may be.

This section shall not relieve a physician or a hospital of any duty otherwise imposed by law upon such physician or hospital for the designation or training of a physician's trained mobile intensive care paramedic, intravenous therapy technician, airway management technician, emergency medical technician, or first responder, nor shall this section relieve any individual or other entity listed in this section of any duty otherwise imposed by law for the provision or maintenance of equipment to be used by the physician's trained mobile intensive care paramedics, intravenous therapy technicians, airway management technicians, emergency medical technicians, or first responders.

This section shall not apply to any act or omission which constitutes either gross negligence or willful or wanton misconduct. [1989 c 260 § 4; 1987 c 212 § 502; 1986 c 68 § 4; 1983 c 112 § 3; 1977 c 55 § 4; 1971 ex.s. c 305 § 3.]

18.71.212 Medical program directors—Certification. The secretary of the department of health, in conjunction with the state emergency medical services and trauma care committee, shall evaluate, certify and terminate certification of medical program directors, and prescribe minimum standards defining duties and responsibilities and performance of duties and responsibilities. [1990 c 269 § 19; 1986 c 68 § 2.]

Severability—1990 c 269: See RCW 70.168.901.

18.71.213 Medical program directors—Termination—Temporary delegation of authority. If a medical program director terminates certification, that medical program director's authority may be delegated by the department to any other licensed physician for a period of thirty days, or until a new medical program director is certified, whichever comes first. [1986 c 68 § 3.]

18.71.215 Medical program directors—Liability for acts or omissions of directors, delegates, or agents. The

department of health shall defend and hold harmless approved medical program directors, delegates, or agents for any act or omission committed or omitted in good faith in the performance of his or her duties. [1990 c 269 § 20; 1986 c 68 § 5; 1983 c 112 § 4.]

Severability—1990 c 269: See RCW 70.168.901.

18.71.220 Rendering emergency care—Immunity of physician or hospital from civil liability. No physician or hospital licensed in this state shall be subject to civil liability, based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital, or health services to any individual regardless of age where its patient is unable to give his consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care: PROVIDED, That such physician or hospital has acted in good faith and without knowledge of facts negating consent. [1971 ex.s. c 305 § 4.]

Persons rendering emergency care, immunity from liability—Exclusion: RCW 4.24.300.

18.71.230 Disciplinary action against persons exempt from licensure. A right to practice medicine and surgery by an individual in this state pursuant to RCW 18.71.030 (5) through (12) shall be subject to discipline by order of the board upon a finding by the board of an act of unprofessional conduct as defined in RCW 18.130.180 or that the individual is unable to practice with reasonable skill or safety due to a mental or physical condition as described in RCW 18.130.170. Such physician shall have the same rights of notice, hearing and judicial review as provided licensed physicians generally pursuant to chapters 18.72 and 18.130 RCW. [1986 c 259 § 112; 1979 c 158 § 57; 1973 1st ex.s. c 110 § 2.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.71.240 Abortion—Right to medical treatment of infant born alive. The right of medical treatment of an infant born alive in the course of an abortion procedure shall be the same as the right of an infant born prematurely of equal gestational age. [1981 c 328 § 1.]

18.71.910 Repeal—1909 c 192. All acts, or parts of acts, in any wise conflicting with the provisions of this act, are hereby repealed. [1909 c 192 § 22.]

18.71.920 Repeal—1957 c 60. All acts and parts of acts to the extent that the same are in conflict herewith are hereby repealed. [1957 c 60 § 6.]

18.71.930 Severability—1957 c 60. If any section, sentence, clause, or phrase of this act should be held to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this act. [1957 c 60 § 7.]

18.71.940 Severability—1961 c 284. If any section, sentence, clause, or phrase of this act should be held to be

invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this act. [1961 c 284 § 13.]

18.71.941 Severability—1975 1st ex.s. c 171. If any section, sentence, clause, or phrase of this 1975 amendatory act should be held to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this 1975 amendatory act. [1975 1st ex.s. c 171 § 19.]

Chapter 18.71A PHYSICIAN ASSISTANTS

Sections

- 18.71A.005 Regulation of health care professions—Criteria.
- 18.71A.010 Definitions.
- 18.71A.020 Rules fixing qualifications and restricting practice—Contents.
- 18.71A.025 Application of uniform disciplinary act.
- 18.71A.030 Limitations on practice by physician assistants.
- 18.71A.040 Physician's application for physician assistant—Fee—Approval or rejection by board—Hearing.
- 18.71A.045 Eligibility of foreign medical school graduates.
- 18.71A.050 Physician's liability, responsibility.
- 18.71A.060 Limitations on health care services.
- 18.71A.070 Medical practice investigator—Appointment—Powers and duties.
- 18.71A.085 Performance of acupuncture.

Reviser's note: Certain powers and duties of the department of licensing and the director of licensing transferred to the department of health and the secretary of health. See RCW 43.70.220.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

18.71A.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.71A.010 Definitions. (1) "Physician assistant" means a person who is licensed by the board to practice medicine to a limited extent only under the supervision of a physician as defined in chapter 18.71 RCW and who is academically and clinically prepared to provide health care services and perform diagnostic, therapeutic, preventative, and health maintenance services.

(2) "Board" means the board of medical examiners.

(3) "Practice medicine" shall have the meaning defined in RCW 18.71.011.

(4) "Secretary" means the secretary of health or the secretary's designee.

(5) "Department" means the department of health. [1990 c 196 § 1; 1988 c 113 § 1; 1975 1st ex.s. c 190 § 1; 1971 ex.s. c 30 § 1.]

Severability—1971 ex.s. c 30: "If any provision of this 1971 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." [1971 ex.s. c 30 § 13.]

18.71A.020 Rules fixing qualifications and restricting practice—Contents. (1) The board shall adopt rules fixing the qualifications and the educational and training

requirements for persons who may be employed as physician assistants or who may be enrolled in any physician assistant training program. The requirements shall include completion of an accredited physician assistant training program approved by the board and eligibility to take an examination approved by the board, provided such examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program. Physician assistants licensed by the board on June 7, 1990, shall continue to be licensed.

(2)(a) The board shall adopt rules governing the extent to which:

(i) Physician assistant students may practice medicine during training; and

(ii) Physician assistants may practice after successful completion of a physician assistant training course.

(b) Such rules shall provide:

(i) That the practice of a physician assistant shall be limited to the performance of those services for which he or she is trained; and

(ii) That each physician assistant shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered. The board may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW. [1992 c 28 § 2; 1990 c 196 § 2; 1971 ex.s. c 30 § 2.]

18.71A.025 Application of uniform disciplinary act.

The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of licenses and the discipline of licensees under this chapter. [1986 c 259 § 106.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.71A.030 Limitations on practice by physician assistants. A physician assistant as defined in this chapter may practice medicine in this state only after authorization by the board and only to the extent permitted by the board. A physician assistant shall be subject to discipline under chapter 18.130 RCW. [1990 c 196 § 3; 1971 ex.s. c 30 § 3.]

18.71A.040 Physician's application for physician assistant—Fee—Approval or rejection by board—Hearing. No physician practicing in this state shall employ or supervise a physician assistant without the approval of the board.

Any physician licensed in this state may apply to the board for permission to employ or supervise a physician assistant. The application shall be jointly submitted by the physician and physician assistant and shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250. The joint application shall detail the manner and extent to which the physician assistant would practice and be supervised, shall detail the education, training, and experience of the physician assistant and shall provide such other information in such form as the board may require.

The board may approve or reject such applications. In addition, the board may modify the proposed practice of the

physician assistant, and approve the application as modified. No such approval shall extend for more than one year, but approval once granted may be renewed upon payment of a fee determined by the secretary as provided in RCW 43.70.250. Whenever it appears to the board that a physician assistant is practicing in a manner inconsistent with the approval granted, the board may withdraw such approval. In the event a hearing is requested upon the rejection of an application, or upon the withdrawal of an approval, a hearing shall be conducted in accordance with chapter 18.130 RCW. [1990 c 196 § 4. Prior: 1986 c 259 § 113; 1985 c 7 § 61; 1975 1st ex.s. c 30 § 64; 1975 1st ex.s. c 190 § 2; 1971 ex.s. c 30 § 4.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.71A.045 Eligibility of foreign medical school graduates. Foreign medical school graduates shall not be eligible for registration as physician assistants after July 1, 1989. Those applying on or before that date shall remain eligible to register as a physician assistant after July 1, 1989: PROVIDED, That the graduate does not violate chapter 18.130 RCW or the rules of the board. The board shall adopt rules regarding applications for registration. The rules shall include board approval of training as required in RCW 18.71.051(1) and receipt of original translated transcripts directly from the medical school. [1988 c 113 § 2.]

18.71A.050 Physician's liability, responsibility. No physician who supervises a physician assistant in accordance with and within the terms of any permission granted by the medical examining board shall be considered as aiding and abetting an unlicensed person to practice medicine: PROVIDED, HOWEVER, That any physician shall retain professional and personal responsibility for any act which constitutes the practice of medicine as defined in *RCW 18.71.010 when performed by a physician assistant in the physician's employ. [1990 c 196 § 5; 1986 c 259 § 114; 1971 ex.s. c 30 § 5.]

***Reviser's note:** The practice of medicine is defined in RCW 18.71.011.

Severability—1986 c 259: See note following RCW 18.130.010.

18.71A.060 Limitations on health care services. No health care services may be performed under this chapter in any of the following areas:

(1) The measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses or frames for the aid thereof.

(2) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training or orthoptics.

(3) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

(4) Nothing in this section shall preclude the performance of routine visual screening.

(5) The practice of dentistry or dental hygiene as defined in chapters 18.32 and 18.29 RCW respectively. The exemptions set forth in RCW 18.32.030, paragraphs (1) and (8), shall not apply to a physician assistant.

(6) The practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulations of the spine.

(7) The practice of *podiatry as defined in chapter 18.22 RCW. [1990 c 196 § 6; 1973 c 77 § 21; 1971 ex.s. c 30 § 6.]

***Reviser's note:** The term "podiatry" was changed to "podiatric medicine and surgery" by 1990 c 147.

18.71A.070 Medical practice investigator—Appointment—Powers and duties. There shall be appointed by the secretary an agent whose title shall be "medical practice investigator", who shall have the duty and shall be authorized to enter the clinic, office, or premises where a physician assistant is employed for the purpose of inspecting the registration and utilization of any physician assistant employed therein. Said investigator may serve and execute any notice or process issued under the authority of this chapter and shall perform any other duty prescribed by the secretary or the board, including assisting other agencies in enforcing the provisions of the law regulating the practice of medicine. [1990 c 196 § 7; 1979 c 158 § 58; 1975 1st ex.s. c 190 § 3.]

18.71A.085 Performance of acupuncture. Any physician assistant acupuncturist currently licensed by the board may continue to perform acupuncture under the physician assistant license as long as he or she maintains licensure as a physician assistant. [1990 c 196 § 10.]

Chapter 18.72

MEDICAL DISCIPLINARY BOARD

Sections

18.72.005	Regulation of health care professions—Criteria.
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18.72.370	Records of medical society or hospital committee or board not subject to civil process.

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18.72.380	Medical disciplinary assessment fee.
18.72.390	Medical disciplinary account—Purpose.
18.72.400	Allocation of all appropriated funds.
18.72.900	Severability—1955 c 202.
18.72.910	Short title.

Reviser's note: Certain powers and duties of the department of licensing and the director of licensing transferred to the department of health and the secretary of health. See RCW 43.70.220.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Hospital medical malpractice prevention programs: RCW 70.41.200.

Physicians: Chapter 18.71 RCW.

18.72.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.72.010 Declaration of purpose. This chapter is passed:

(1) In the exercise of the police power of the state to protect public health, to promote the welfare of the state, and to provide an adequate public agency to act as a disciplinary body for the members of the medical profession licensed to practice medicine and surgery in this state;

(2) Because the health and well-being of the people of this state are of paramount importance;

(3) Because the conduct of members of the medical profession licensed to practice medicine and surgery in this state plays a vital role in preserving the health and well-being of the people of the state; and

(4) Because the agency which now exists to handle disciplinary proceedings for members of the medical profession licensed to practice medicine and surgery in this state is ineffective and very infrequently employed, and consequently there is no effective means of handling such disciplinary proceedings when they are necessary for the protection of the public health. [1955 c 202 § 1.]

18.72.020 Definitions. Terms used in this chapter and in RCW 18.71.040 and 18.71.080 have the meaning set forth in this section unless the context clearly indicates otherwise:

(1) "Board" means the medical disciplinary board.

(2) "License" means a certificate or license to practice medicine and surgery in this state as provided for in RCW 18.71.010 and 18.71.050.

(3) "Members" means members of the medical disciplinary board.

(4) "Secretary" means the secretary of the medical disciplinary board. [1986 c 259 § 115; 1955 c 202 § 2.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.72.045 Medical disciplinary board. There is hereby created the Washington state medical disciplinary board. The board shall be composed of one holder of a valid license to practice medicine and surgery under this chapter from each congressional district now existing or hereafter created in the state, four members representing the public, and one physician assistant authorized to practice under chapter 18.71A RCW. The physician assistant member shall vote only on matters relating to the discipline of physician assistants. The members of the board shall be appointed by the governor. The governor may stagger initial terms of appointment and thereafter all terms of appointment

shall be for four years. The governor shall consider such physician and physician assistant members who are recommended for appointment by the appropriate professional associations in the state. The members representing the public shall be persons whose occupations are other than the administration of health activities or the providing of health services, who have no fiduciary obligations to a health facility or other health agency, and who have no material financial interest in the rendering of health services.

Nothing in this section shall affect the current terms of members of the board who are serving on the board on July 28, 1991.

Vacancies on the board shall be filled promptly by the governor, and a member appointed to fill a vacancy on the board shall continue to serve until his or her successor is appointed.

The terms of office of members of the board shall not be affected by changes in congressional district boundaries.

The board shall be an administrative agency of the state of Washington. The attorney general shall be the advisor to the board and shall represent it in legal proceedings. [1991 c 215 § 1.]

18.72.090 Removal of members. Any member of the board may be removed by the governor for neglect of duty, misconduct or malfeasance or misfeasance in office, after being given a written statement of the charges against him and sufficient opportunity to be heard thereon. [1955 c 202 § 9.]

18.72.100 Compensation and reimbursement of members. Members of the board shall be compensated in accordance with RCW 43.03.240 and shall be repaid their travel expenses while engaged in business of the board in accordance with RCW 43.03.050 and 43.03.060. Such compensation and reimbursement for expenses shall be paid out of the general fund on vouchers approved by the secretary of health. [1991 c 3 § 166; 1984 c 287 § 45; 1979 ex.s. c 111 § 3; 1979 c 158 § 59; 1975-'76 2nd ex.s. c 34 § 42; 1955 c 202 § 10.]

Legislative findings—Severability—Effective date—1984 c 287: See note following RCW 43.03.220.

Severability—1979 ex.s. c 111: See note following RCW 18.26.030.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

18.72.110 Territorial scope of operations. The board may meet, function, and exercise its powers at any place within the state. [1955 c 202 § 11.]

18.72.120 Organization of first board. The first board shall be organized in this manner: Within ten days after the effective date of this chapter the secretary of health shall appoint five holders of licenses to practice medicine and surgery in this state to serve as members of a temporary commission which shall, within ninety days thereafter, organize and hold the election to name the first members of the medical disciplinary board. The temporary commission shall adopt such rules as it deems necessary to govern the holding of the first election. After the election is completed and the first members of the board have qualified and taken

office, the temporary commission shall be abolished and all of its records shall be turned over to the board. [1991 c 3 § 167; 1955 c 202 § 12.]

18.72.130 Officers—Meetings—Quorum. The board shall elect from its members a chairperson, vice-chairperson, and secretary, who shall serve for one year and until their successors are elected and qualified. The board shall meet at least once a year or oftener upon the call of the chairperson at such times and places as he/she shall designate. Five members shall constitute a quorum of the full board for the transaction of any business. A majority of the members appointed to a panel shall constitute a quorum for a panel of the board to transact any business delegated to a panel by the board. [1979 ex.s. c 111 § 4; 1955 c 202 § 13.]

Severability—1979 ex.s. c 111: See note following RCW 18.26.030.

18.72.150 Rules. The board may adopt, amend, and rescind such rules and regulations as it deems necessary to carry out the provisions of this chapter. [1986 c 259 § 116; 1979 ex.s. c 111 § 5; 1975 c 61 § 4; 1955 c 202 § 15.]

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1979 ex.s. c 111: See note following RCW 18.26.030.

18.72.154 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs the discipline of licensees under this chapter. [1986 c 259 § 107.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.72.155 Executive secretary—Staff. The secretary of the department of health shall appoint, from a list of three names supplied by the board, an executive secretary who shall act to carry out the provisions of this chapter. The secretary shall also employ such additional staff including administrative assistants, investigators, and clerical staff as are required to enable the board to accomplish its duties and responsibilities. The executive secretary shall be exempt from the provisions of the civil service law, chapter 41.06 RCW, as now or hereafter amended. [1991 c 3 § 168; 1979 ex.s. c 111 § 6.]

Severability—1979 ex.s. c 111: See note following RCW 18.26.030.

18.72.165 Duty to report unprofessional conduct—Exceptions. (1) A licensed health care professional licensed under chapter 18.71 RCW shall report to the medical disciplinary board when he or she has personal knowledge that a practicing physician has either committed an act or acts which may constitute statutorily defined unprofessional conduct or that a practicing physician may be unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical conditions.

(2) Reporting under this section is not required by:

(a) An appropriately appointed peer review committee member of a licensed hospital or by an appropriately designated professional review committee member of a county or state medical society during the investigative phase

of their respective operations if these investigations are completed in a timely manner; or

(b) A treating licensed health care professional of a physician currently involved in a treatment program as long as the physician patient actively participates in the treatment program and the physician patient's impairment does not constitute a clear and present danger to the public health, safety, or welfare.

(3) The medical disciplinary board may impose disciplinary sanctions, including license suspension or revocation, on any health care professional subject to the jurisdiction of the board who has failed to comply with this section. [1986 c 300 § 5.]

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.174.

18.72.190 Subpoenas—Contempt of court. Subpoenas issued by the board to compel the attendance of witnesses at any investigation or hearing shall be served in accordance with the provisions of chapter 5.56 RCW, governing the service of subpoenas in court actions. The board shall issue subpoenas at the request and on the behalf of the accused. In case any person contumaciously refuses to obey a subpoena issued by the board or to answer any proper question put to him during the hearing or proceeding, the superior court of any county in which the proceeding is carried on or in which the person guilty of refusal to obey the subpoena or to answer the question resides or is found shall have jurisdiction, upon application by the board, to issue to such person an order requiring him to appear before the board or its hearing committee, there to produce evidence if so ordered, or there to give testimony concerning the matter under investigation or question. Any failure to obey such order of the court is a contempt of court under chapter 7.21 RCW. [1989 c 373 § 18; 1955 c 202 § 19.]

Severability—1989 c 373: See RCW 7.21.900.

Failure to attend, contempt of court: RCW 5.56.061.

18.72.265 Disciplinary reports—Contents confidential—Immunity. (1) The contents of any report file under RCW 18.130.070 shall be confidential and exempt from public disclosure pursuant to chapter 42.17 RCW, except that it may be reviewed (a) by the licensee involved or his counsel or authorized representative who may submit any additional exculpatory or explanatory statements or other information, which statements or other information shall be included in the file, or (b) by a representative of the medical disciplinary board, or investigator thereof, who has been assigned to review the activities of a licensed physician.

Upon a determination that a report is without merit, the board's records may be purged of information relating to the report.

(2) Every individual, medical association, medical society, hospital, medical service bureau, health insurance carrier or agent, professional liability insurance carrier, professional standards review organization, and agency of the federal, state, or local government shall be immune from civil liability, whether direct or derivative, for providing information to the board subsequent to RCW 18.130.070, or for which an individual health care provider has immunity under the provisions of RCW 4.24.240, 4.24.250, or

4.24.260, as now or hereafter amended. [1986 c 259 § 117; 1979 ex.s. c 111 § 15.]

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1979 ex.s. c 111: See note following RCW 18.26.030.

18.72.301 Impaired physician program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 18.72.306 through 18.72.321.

(1) "Board" means the medical disciplinary board of this state.

(2) "Committee" means a nonprofit corporation formed by physicians who have expertise in the areas of alcoholism, drug abuse, or mental illness and who broadly represent the physicians of the state and that has been designated to perform any or all of the activities set forth in RCW 18.72.306(1) pursuant to rules adopted by the board under chapter 34.05 RCW.

(3) "Impaired" or "impairment" means the presence of the diseases of alcoholism, drug abuse, mental illness, or other debilitating conditions.

(4) "Impaired physician program" means the program for the prevention, detection, intervention, and monitoring of impaired physicians established by the board pursuant to RCW 18.72.306(1).

(5) "Physician" means a person licensed under chapter 18.71 RCW.

(6) "Treatment program" means a plan of care and rehabilitation services provided by those organizations or persons authorized to provide such services to be approved by the board for impaired physicians taking part in the impaired physician program created by RCW 18.72.306. [1989 c 119 § 1; 1987 c 416 § 1.]

Effective date—1987 c 416: "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 July 1, 1987." [1987 c 416 § 10.]

18.72.306 Impaired physician program—License surcharge. (1) The board shall enter into a contract with the committee to implement an impaired physician program. The impaired physician program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired physicians to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired physicians including those ordered by the board;
- (f) Providing post-treatment monitoring and support of rehabilitative impaired physicians;
- (g) Performing such other activities as agreed upon by the board and the committee; and
- (h) Providing prevention and education services.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to twenty-five dollars on each license renewal or issuance of a new license to be collected by the department of health from every physician and surgeon licensed under chapter 18.71 RCW in addition to other license fees and the medical discipline assessment fee established under RCW 18.72.380. These

moneys shall be placed in the health professions account to be used solely for the implementation of the impaired physician program. [1991 c 3 § 169; 1989 c 119 § 2; 1987 c 416 § 2.]

Effective date—1987 c 416: See note following RCW 18.72.301.

18.72.311 Impaired physician program—Procedures. The committee shall develop procedures in consultation with the board for:

(1) Periodic reporting of statistical information regarding impaired physician activity;

(2) Periodic disclosure and joint review of such information as the board may deem appropriate regarding reports received, contacts or investigations made, and the disposition of each report: PROVIDED, That the committee shall not disclose any personally identifiable information except as provided in subsections (3) and (4) of this section;

(3) Immediate reporting to the board of the name and results of any contact or investigation regarding any impaired physician who is believed to constitute an imminent danger to the public;

(4) Reporting to the board, in a timely fashion, any impaired physician who refuses to cooperate with the committee, refuses to submit to treatment, or whose impairment is not substantially alleviated through treatment, and who, in the opinion of the committee, is unable to practice medicine with reasonable skill and safety. However, impairment, in and of itself, shall not give rise to a presumption of the inability to practice medicine with reasonable skill and safety;

(5) Informing each participant of the impaired physician program of the program procedures, the responsibilities of program participants, and the possible consequences of noncompliance with the program. [1987 c 416 § 3.]

Effective date—1987 c 416: See note following RCW 18.72.301.

18.72.316 Impaired physician program—Evaluation of physician. If the board has reasonable cause to believe that a physician is impaired, the board shall cause an evaluation of such physician to be conducted by the committee or the committee's designee or the board's designee for the purpose of determining if there is an impairment. The committee or appropriate designee shall report the findings of its evaluation to the board. [1987 c 416 § 4.]

Effective date—1987 c 416: See note following RCW 18.72.301.

18.72.321 Impaired physician program—Committee records not subject to disclosure. All committee records are not subject to disclosure pursuant to chapter 42.17 RCW. [1987 c 416 § 6.]

Effective date—1987 c 416: See note following RCW 18.72.301.

18.72.340 Duty of professional liability insurers to report malpractice settlements and awards. (1) Every institution or organization providing professional liability insurance to physicians shall send a complete report to the medical disciplinary board of all malpractice settlements, awards, or payments in excess of twenty thousand dollars as a result of a claim or action for damages alleged to have been caused by an insured physician's incompetency or negligence in the practice of medicine. Such institution or

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organization shall also report the award, settlement, or payment of three or more claims during a year as the result of the alleged physician's incompetency or negligence in the practice of medicine regardless of the dollar amount of the award or payment.

(2) Reports required by this section shall be made within sixty days of the date of the settlement or verdict. Failure to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars. [1986 c 300 § 6.]

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.174.

18.72.345 Access to driving records of physicians and physician assistants. To assist in identifying impairment related to alcohol abuse, the board may obtain a copy of the driving record of a physician or a physician assistant maintained by the department of licensing. [1991 c 215 § 2.]

18.72.350 Physician members of committees to evaluate credentials and qualifications of physicians—Immunity from civil suit. See RCW 4.24.240.

18.72.360 Physicians filing charges or presenting evidence before committees, boards, or hospitals—Immunity from civil suit. See RCW 4.24.250, 4.24.260.

18.72.370 Records of medical society or hospital committee or board not subject to civil process. See RCW 4.24.250.

18.72.380 Medical disciplinary assessment fee. There is hereby levied to be collected by the department of health from every physician and surgeon licensed pursuant to chapter 18.71 RCW an annual medical disciplinary assessment equal to the license renewal fee established under RCW 43.70.250. The assessment levied pursuant to this subsection is in addition to any license renewal fee established under RCW 43.70.250. [1991 c 3 § 170; 1985 c 7 § 62; 1983 c 71 § 1.]

18.72.390 Medical disciplinary account—Purpose. Because it is the express purpose of this chapter to protect the public health and to provide for a public agency to act as a disciplinary body for members of the medical profession licensed to practice medicine and surgery in this state, and because the health and well-being of the people of this state are of paramount importance, there is hereby created an account in the state treasury to be known as the medical disciplinary account. All assessments, fines, and other funds collected or received pursuant to this chapter shall be deposited in the medical disciplinary account and used to administer and implement this chapter. [1991 sp.s. c 13 § 17; 1985 c 57 § 6; 1983 c 71 § 2.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: See note following RCW 18.04.105.

18.72.400 Allocation of all appropriated funds. The secretary of health shall allocate all appropriated funds to accomplish the purposes of this chapter. [1991 c 3 § 171; 1983 c 71 § 3.]

18.72.900 Severability—1955 c 202. If any section, sentence, clause or phrase of this chapter should be held invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this medical disciplinary board act. [1955 c 202 § 46.]

18.72.910 Short title. This chapter may be known, as [and] cited, as the "medical disciplinary board act". [1955 c 202 § 48.]

Chapter 18.73

EMERGENCY MEDICAL CARE AND TRANSPORTATION SERVICES

Sections

18.73.005	Regulation of health care professions—Criteria.
18.73.010	Legislative finding.
18.73.020	Supersession of local ordinances, regulations, requirements and fees.
18.73.030	Definitions.
18.73.040	Emergency medical services licensing and certification advisory committee.
18.73.050	Emergency medical services licensing and certification advisory committee—Duties—Review of rules.
18.73.081	Duties of secretary—Minimum requirements to be prescribed.
18.73.101	Variance from requirements.
18.73.120	Certificate of advanced first aid qualification.
18.73.130	Ambulance and aid vehicles—Operators or directors licenses.
18.73.140	Ambulance and aid vehicles—Licenses.
18.73.145	Ambulance and aid vehicles—Self-inspection program.
18.73.150	Ambulance personnel requirements.
18.73.170	Aid vehicles—Personnel—Use.
18.73.180	Other transportation vehicles.
18.73.190	Violations—Penalties.
18.73.200	Administrative procedure act applicable.
18.73.240	Application of uniform disciplinary act.
18.73.900	Severability—1973 1st ex.s. c 208.
18.73.901	Severability—1987 c 214.
18.73.910	Effective dates—1973 1st ex.s. c 208.

AIDS education and training: Chapter 70.24 RCW.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Natural death act and futile treatment: RCW 43.70.480.

Poison information centers: Chapter 18.76 RCW.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.73.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.73.010 Legislative finding. The legislature finds that a state-wide program of emergency medical care is necessary to promote the health, safety, and welfare of the citizens of this state. The intent of the legislature is to assure minimum standards and training for first responders

and emergency medical technicians, and minimum standards for ambulance services, ambulances, aid vehicles, aid services, and emergency medical equipment. [1990 c 269 § 22; 1988 c 104 § 2; 1987 c 214 § 1; 1973 1st ex.s. c 208 § 1.]

Severability—1990 c 269: See RCW 70.168.901.

18.73.020 Supersession of local ordinances, regulations, requirements and fees. The legislature further declares its intention to supersede all ordinances, regulations, and requirements promulgated by counties, cities and other political subdivisions of the state of Washington, insofar as they may provide for the regulation of emergency medical care, first aid, and ambulance services which do not exceed the provisions of this chapter; except that (1) license fees established in this chapter shall supersede all license fees of counties, cities and other political subdivisions of this state; and, (2) nothing in this chapter shall alter the provisions of RCW 18.71.200, 18.71.210, and 18.71.220. [1986 c 259 § 118; 1973 1st ex.s. c 208 § 2.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.73.030 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as used in this chapter shall have the meanings indicated.

(1) "Secretary" means the secretary of the department of health.

(2) "Department" means the department of health.

(3) "Committee" means the emergency medical services licensing and certification advisory committee.

(4) "Ambulance" means a ground or air vehicle designed and used to transport the ill and injured and to provide personnel, facilities, and equipment to treat patients before and during transportation.

(5) "Aid vehicle" means a vehicle used to carry aid equipment and individuals trained in first aid or emergency medical procedure.

(6) "Emergency medical technician" means a person who is authorized by the secretary to render emergency medical care pursuant to RCW 18.73.081.

(7) "Ambulance operator" means a person who owns one or more ambulances and operates them as a private business.

(8) "Ambulance director" means a person who is a director of a service which operates one or more ambulances provided by a volunteer organization or governmental agency.

(9) "Aid vehicle operator" means a person who owns one or more aid vehicles and operates them as a private business.

(10) "Aid director" means a person who is a director of a service which operates one or more aid vehicles provided by a volunteer organization or governmental agency.

(11) "Emergency medical service" means medical treatment and care which may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

(12) "Communications system" means a radio and landline network which provides rapid public access,

coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in an emergency medical services and trauma care system.

(13) "Prehospital patient care protocols" means the written procedure adopted by the emergency medical services medical program director which direct the out-of-hospital emergency care of the emergency patient which includes the trauma care patient. These procedures shall be based upon the assessment of the patient's medical needs and what treatment will be provided for emergency conditions. The protocols shall meet or exceed state-wide minimum standards developed by the department in rule as authorized in chapter 70.168 RCW.

(14) "Patient care procedures" means written operating guidelines adopted by the regional emergency medical services and trauma care council, in consultation with the local emergency medical services and trauma care councils, emergency communication centers, and the emergency medical services medical program director, in accordance with state-wide minimum standards. The patient care procedures shall identify the level of medical care personnel to be dispatched to an emergency scene, procedures for triage of patients, the level of trauma care facility to first receive the patient, and the name and location of other trauma care facilities to receive the patient should an interfacility transfer be necessary. Procedures on interfacility transfer of patients shall be consistent with the transfer procedures in chapter 70.170 RCW.

(15) "Emergency medical services medical program director" means a person who is an approved medical program director as defined by RCW 18.71.205(4).

(16) "Council" means the local or regional emergency medical services and trauma care council as authorized under chapter 70.168 RCW.

(17) "Basic life support" means noninvasive emergency medical services requiring basic medical treatment skills as defined in chapter 18.73 RCW.

(18) "Advanced life support" means invasive emergency medical services requiring advanced medical treatment skills as defined by chapter 18.71 RCW.

(19) "First responder" means a person who is authorized by the secretary to render emergency medical care as defined by RCW 18.73.081. [1990 c 269 § 23; 1988 c 104 § 3; 1987 c 214 § 2; 1983 c 112 § 5; 1979 ex.s. c 261 § 1; 1973 1st ex.s. c 208 § 3.]

Severability—1990 c 269: See RCW 70.168.901.

18.73.040 Emergency medical services licensing and certification advisory committee. There is created an emergency medical services licensing and certification advisory committee of eleven members to be appointed by the department. Members of the committee shall be composed of a balance of physicians, one of whom is an emergency medical services medical program director, and individuals regulated under RCW 18.71.205 and 18.73.081, an administrator from a city or county emergency medical services system, a member of the emergency medical services and trauma care steering committee, and one consumer. All members except the consumer shall be knowledgeable in specific and general aspects of emergency medical services. Members shall be appointed for a period

of three years. The terms of those members representing the same field shall not expire at the same time.

The committee shall elect a chairman and a vice chairman whose terms of office shall be for one year each. The chairman shall be ineligible for reelection after serving four consecutive terms.

The committee shall meet on call by the secretary or the chairman.

All appointive members of the committee, in the performance of their duties, may be entitled to receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1990 c 269 § 6; 1984 c 279 § 55; 1981 c 338 § 13; 1979 ex.s. c 261 § 2; 1975-'76 2nd ex.s. c 34 § 43; 1973 1st ex.s. c 208 § 4.]

Severability—1990 c 269: See RCW 70.168.901.

Severability—1984 c 279: See RCW 18.130.901.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

18.73.050 Emergency medical services licensing and certification advisory committee—Duties—Review of rules. The emergency medical services licensing and certification advisory committee shall:

(1) Review all administrative rules pertaining to licensing and certification of emergency medical services proposed for adoption by the department under this chapter or under RCW 18.71.205 and advise the department of its recommendations.

(2) Assist the department, at the department's request, to fulfill any duty or exercise any power under this chapter pertaining to emergency medical services licensing and certification. [1990 c 269 § 7; 1987 c 214 § 3; 1979 ex.s. c 261 § 3; 1973 1st ex.s. c 208 § 5.]

Severability—1990 c 269: See RCW 70.168.901.

18.73.081 Duties of secretary—Minimum requirements to be prescribed. In addition to other duties prescribed by law, the secretary shall:

(1) Prescribe minimum requirements for:

(a) Ambulance, air ambulance, and aid vehicles and equipment;

(b) Ambulance and aid services; and

(c) Minimum emergency communication equipment;

(2) Adopt procedures for services that fail to perform in accordance with minimum requirements;

(3) Prescribe minimum standards for first responder and emergency medical technician training including:

(a) Adoption of curriculum and period of certification;

(b) Procedures for certification, recertification, decertification, or modification of certificates: PROVIDED, That there shall be no practical examination for recertification if the applicant received a passing grade on the state written examination and completed a program of ongoing training and evaluation, approved in rule by the county medical program director and the secretary;

(c) Procedures for reciprocity with other states or national certifying agencies;

(d) Review and approval or disapproval of training programs; and

(e) Adoption of standards for numbers and qualifications of instructional personnel required for first responder and emergency medical technician training programs;

(4) Prescribe minimum requirements for liability insurance to be carried by licensed services except that this requirement shall not apply to public bodies; and

(5) Certify emergency medical program directors. [1990 c 269 § 24; 1988 c 111 § 1; 1987 c 214 § 7.]

Severability—1990 c 269: See RCW 70.168.901.

18.73.101 Variance from requirements. The secretary may grant a variance from a provision of this chapter if no detriment to health and safety would result from the variance and compliance is expected to cause reduction or loss of existing emergency medical services. Variances may be granted for a period of no more than one year. A variance may be renewed by the secretary upon approval of the committee. [1987 c 214 § 9.]

18.73.120 Certificate of advanced first aid qualification. The secretary shall recognize a current certificate of advanced first aid qualification for those who provide proof of advanced Red Cross training or its equivalent. [1979 ex.s. c 261 § 12; 1973 1st ex.s. c 208 § 12.]

18.73.130 Ambulance and aid vehicles—Operators or directors licenses. An ambulance operator, ambulance director, aid vehicle operator or aid director may not operate a service in the state of Washington without holding a license for such operation, issued by the secretary when such operation is consistent with the state-wide and regional emergency medical services and trauma care plans established pursuant to chapter 70.168 RCW, indicating the general area to be served and the number of vehicles to be used, with the following exceptions:

(1) The United States government;

(2) Ambulance operators and ambulance directors providing service in other states when bringing patients into this state;

(3) Owners of businesses in which ambulance or aid vehicles are used exclusively on company property but occasionally in emergencies may transport patients to hospitals not on company property; and

(4) Operators of vehicles pressed into service for transportation of patients in emergencies when licensed ambulances are not available or cannot meet overwhelming demand.

The license shall be valid for a period of two years and shall be renewed on request provided the holder has consistently complied with the regulations of the department and the department of licensing and provided also that the needs of the area served have been met satisfactorily. The license shall not be transferable. [1992 c 128 § 2; 1990 c 269 § 25; 1987 c 214 § 10; 1979 ex.s. c 261 § 13; 1979 c 158 § 61; 1973 1st ex.s. c 208 § 13.]

Severability—1990 c 269: See RCW 70.168.901.

Effective date—1973 1st ex.s. c 208: See RCW 18.73.910.

18.73.140 Ambulance and aid vehicles—Licenses. The secretary shall issue an ambulance or aid vehicle license for each vehicle so designated. The license shall be for a

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period of two years and may be reissued on expiration if the vehicle and its equipment meet requirements in force at the time of expiration of the license period. The license may be revoked if the ambulance or aid vehicle is found to be operating in violation of the regulations promulgated by the department or without required equipment. The license shall be terminated automatically if the vehicle is sold or transferred to the control of anyone not currently licensed as an ambulance or aid vehicle operator or director. The license number shall be prominently displayed on each vehicle. [1992 c 128 § 3; 1987 c 214 § 11; 1979 ex.s. c 261 § 14; 1973 1st ex.s. c 208 § 14.]

Effective date—1973 1st ex.s. c 208: See RCW 18.73.910.

18.73.145 Ambulance and aid vehicles—Self-inspection program. The secretary shall adopt a self-inspection program to assure compliance with minimum standards for vehicles and for medical equipment and personnel on all licensed vehicles. The self-inspection shall coincide with the vehicle licensing cycle and shall be recorded on forms provided by the department. The department may perform an on-site inspection of any licensed service or vehicles as needed. [1987 c 214 § 13.]

18.73.150 Ambulance personnel requirements. Any ambulance operated as such shall operate with sufficient personnel for adequate patient care, at least one of whom shall be an emergency medical technician under standards promulgated by the secretary. The emergency medical technician shall have responsibility for its operation and for the care of patients both before they are placed aboard the vehicle and during transit. If there are two or more emergency medical technicians operating the ambulance, a nondriving medical technician shall be in command of the vehicle. The emergency medical technician in command of the vehicle shall be in the patient compartment and in attendance to the patient.

The driver of the ambulance shall have at least a certificate of advance first aid qualification recognized by the secretary pursuant to RCW 18.73.120 unless there are at least two certified emergency medical technicians in attendance of the patient, in which case the driver shall not be required to have such certificate. [1992 c 128 § 4; 1979 ex.s. c 261 § 15; 1973 1st ex.s. c 208 § 15.]

Effective date—1973 1st ex.s. c 208: See RCW 18.73.910.

18.73.170 Aid vehicles—Personnel—Use. The aid vehicle shall be operated in accordance with standards promulgated by the secretary, by at least one person holding a certificate recognized under RCW 18.73.120.

The aid vehicle may be used for transportation of patients only when it is impossible or impractical to obtain an ambulance or when a wait for arrival of an ambulance would place the life of the patient in jeopardy. If so used, the vehicle shall be under the command of a person holding a certificate recognized pursuant to RCW 18.73.081 other than the driver. [1987 c 214 § 12; 1979 ex.s. c 261 § 17; 1973 1st ex.s. c 208 § 17.]

Effective date—1973 1st ex.s. c 208: See RCW 18.73.910.

18.73.180 Other transportation vehicles. Other vehicles not herein defined by this chapter shall not be used for transportation of patients who must be carried on a stretcher or who may require medical attention en route, except that such transportation may be used when a disaster creates a situation that cannot be served by licensed ambulances. [1987 c 214 § 14; 1979 ex.s. c 261 § 18; 1973 1st ex.s. c 208 § 18.]

Effective date—1973 1st ex.s. c 208: See RCW 18.73.910.

18.73.190 Violations—Penalties. Any person who violates any of the provisions of this chapter and for which a penalty is not provided shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars for each day of the violation, or may be imprisoned in the county jail not exceeding six months. [1987 c 214 § 15; 1973 1st ex.s. c 208 § 19.]

Effective date—1973 1st ex.s. c 208: See RCW 18.73.910.

18.73.200 Administrative procedure act applicable. The administrative procedure act, chapter 34.05 RCW, shall wherever applicable govern the rights, remedies, and procedures respecting the administration of this chapter. [1973 1st ex.s. c 208 § 21.]

18.73.240 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, shall govern the issuance and denial of credentials, unauthorized practice, and the discipline of persons credentialed under this chapter. The secretary shall act as the disciplinary authority under this chapter. Disciplinary action shall be initiated against a person credentialed under this chapter in a manner consistent with the responsibilities and duties of the medical program director under whom such person is responsible. [1992 c 128 § 5.]

18.73.900 Severability—1973 1st ex.s. c 208. If any provision of this 1973 act, or the application thereof to any person or circumstance is held invalid, this invalidity shall 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 declared to be severable. [1973 1st ex.s. c 208 § 20.]

18.73.901 Severability—1987 c 214. 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 214 § 26.]

18.73.910 Effective dates—1973 1st ex.s. c 208. The provisions of sections 1 through 8, inclusive, 11, 12, 20, 21, 22, and 23 of this 1973 act shall take effect on July 1, 1973. The provisions of sections 9, 10, and 13 through 19, inclusive, shall take effect on January 1, 1976. [1973 1st ex.s. c 208 § 22.]

Reviser's note: For codification of 1973 1st ex.s. c 208, see Codification Tables, Volume 0.

Chapter 18.74 PHYSICAL THERAPY

Sections

- 18.74.003 Regulation of health care professions—Criteria.
- 18.74.005 Purpose.
- 18.74.010 Definitions.
- 18.74.012 Consultation with health care practitioner not required for certain treatments.
- 18.74.015 Referral to health care practitioners—When required.
- 18.74.020 Board created—Members—Staff assistance—Compensation and travel expenses.
- 18.74.023 Board—Powers and duties.
- 18.74.025 Standards for appropriateness of physical therapy care—Violation.
- 18.74.027 Board—Officers—Meetings—Quorum.
- 18.74.029 Application of uniform disciplinary act.
- 18.74.030 Qualifications of applicants.
- 18.74.035 Examinations—Scope—Time and place.
- 18.74.040 Licenses.
- 18.74.050 Licenses—Fees.
- 18.74.060 Licensure by endorsement.
- 18.74.065 Licenses—Issuance to persons licensed or registered before July 24, 1983.
- 18.74.070 Renewal of license—Lapsed license—Fees.
- 18.74.085 Advertising of spinal manipulation or mobilization prohibited.
- 18.74.090 False advertising—Use of name and words—License required—Prosecutions of violations.
- 18.74.095 False advertising—Injunctions.
- 18.74.120 Record of proceedings—Register.
- 18.74.125 Construction of chapter—Activities not prohibited—Use of letters or words in connection with name.
- 18.74.130 Practices and services not regulated or prohibited by chapter.
- 18.74.135 Insurance coverage and benefits not mandated or regulated.
- 18.74.140 Practice setting not restricted.
- 18.74.900 Severability—1949 c 239.
- 18.74.910 Severability—1961 c 64.
- 18.74.911 Severability—1983 c 116.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Lien of doctors: Chapter 60.44 RCW.

18.74.003 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.74.005 Purpose. In order to safeguard the public safety and welfare, to protect the public from being misled by incompetent, unethical, and unauthorized persons, and to assure the highest degree of professional conduct and competency, it is the purpose of this chapter to strengthen existing regulation of persons offering physical therapy services to the public. [1983 c 116 § 1.]

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

(1) "Board" means the board of physical therapy created by RCW 18.74.020.

(2) "Department" means the department of health.

(3) "Physical therapy" means the treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, cold, air, light, water, electricity, sound, massage, and therapeutic exercise, which includes posture and rehabilitation procedures; the performance of tests and measurements of neuromuscular function as an aid to the diagnosis or treat-

ment of any human condition; performance of treatments on the basis of test findings after consultation with and periodic review by an authorized health care practitioner except as provided in RCW 18.74.012; supervision of selective forms of treatment by trained supportive personnel; and provision of consultative services for health, education, and community agencies. The use of Roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, and the use of spinal manipulation or manipulative mobilization of the spine and its immediate articulations, are not included under the term "physical therapy" as used in this chapter.

(4) "Physical therapist" means a person who practices physical therapy as defined in this chapter but does not include massage operators as defined in RCW 18.108.010.

(5) "Secretary" means the secretary of health.

(6) Words importing the masculine gender may be applied to females.

(7) "Authorized health care practitioner" means and includes licensed physicians, osteopathic physicians, chiropractors, naturopaths, *podiatrists, and dentists: PROVIDED, HOWEVER, That nothing herein shall be construed as altering the scope of practice of such practitioners as defined in their respective licensure laws. [1991 c 12 § 1; (1991 c 3 §§ 172, 173 repealed by 1991 sp.s. c 11 § 2); (1990 c 297 § 17 repealed by 1991 c 12 § 6); 1988 c 185 § 1; 1983 c 116 § 2; 1961 c 64 § 1; 1949 c 239 § 1; Rem. Supp. 1949 § 10163-1.]

***Reviser's note:** The term "podiatrists" was changed to "podiatric physicians and surgeons" by 1990 c 147.

Effective dates—1991 c 12 §§ 1, 2, 3, 6: "(1) Sections 1, 2, and 6 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 June 30, 1991.

(2) Section 3 of this act shall take effect January 1, 1992." [1991 c 12 § 7.]

Number and gender: RCW 1.12.050.

18.74.012 Consultation with health care practitioner not required for certain treatments. Notwithstanding the provisions of *RCW 18.74.010(4), a consultation and periodic review by an authorized health care practitioner is not required for treatment of neuromuscular or musculoskeletal conditions: PROVIDED, That a physical therapist may only provide treatment utilizing orthoses that support, align, prevent, or correct any structural problems intrinsic to the foot or ankle by referral or consultation from an authorized health care practitioner. [1991 c 12 § 2; 1990 c 297 § 19; 1988 c 185 § 2.]

***Reviser's note:** RCW 18.74.010 was amended by 1991 c 12 § 1 and subsection (4) was renumbered as subsection (3).

Effective dates—1991 c 12 §§ 1, 2, 3, 6: See note following RCW 18.74.010.

18.74.015 Referral to health care practitioners—When required. (1) Physical therapists shall refer persons under their care to authorized health care practitioners if they have reasonable cause to believe symptoms or conditions are present which require services beyond the scope of their practice or for which physical therapy is contraindicated.

(2) A violation of this section is unprofessional conduct under this chapter and chapter 18.130 RCW. [1988 c 185 § 3.]

18.74.020 Board created—Members—Staff assistance—Compensation and travel expenses. The state board of physical therapy is hereby created. The board shall consist of five members who shall be appointed by the governor. Of the initial appointments, two shall be appointed for a term of two years, two for a term of three years, and one for a term of four years. Thereafter, all appointments shall be for terms of four years. Four members of the board shall be physical therapists licensed under this chapter and residing in this state, shall have not less than five years' experience in the practice of physical therapy, and shall be actively engaged in practice within two years of appointment. The fifth member shall be appointed from the public at large, shall have an interest in the rights of consumers of health services, and shall not be or have been a member of any other licensing board, a licensee of any health occupation board, an employee of any health facility nor derive his or her primary livelihood from the provision of health services at any level of responsibility. In the event that a member of the board for any reason cannot complete his or her term of office, another appointment shall be made by the governor in accordance with the procedure stated above to fill the remainder of the term. No member may serve for more than two successive four-year terms.

The secretary of health shall furnish such secretarial, clerical and other assistance as the board may require. Each member of the board shall, in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060, be compensated in accordance with RCW 43.03.240. [1991 c 3 § 174; 1984 c 287 § 46; 1983 c 116 § 3; 1979 c 158 § 62; 1975-'76 2nd ex.s. c 34 § 44; 1949 c 239 § 2; Rem. Supp. 1949 § 10163-2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Severability—Effective date—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.74.023 Board—Powers and duties. The board has the following powers and duties:

(1) To administer examinations to applicants for a license under this chapter.

(2) To pass upon the qualifications of applicants for a license and to certify to the secretary duly qualified applicants.

(3) To make such rules not inconsistent with the laws of this state as may be deemed necessary or proper to carry out the purposes of this chapter.

(4) To establish and administer requirements for continuing competency, which shall be a prerequisite to renewing a license under this chapter.

(5) To keep an official record of all its proceedings, which record shall be evidence of all proceedings of the board which are set forth therein.

(6) To adopt rules not inconsistent with the laws of this state, when it deems appropriate, in response to questions put to it by professional health associations, physical therapists,

and consumers in this state concerning the authority of physical therapists to perform particular acts. [1991 c 12 § 3; 1991 c 3 § 175; 1986 c 259 § 124; 1983 c 116 § 4.]

Reviser's note: This section was amended by 1991 c 3 § 175 and by 1991 c 12 § 3, 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 dates—1991 c 12 §§ 1, 2, 3, 6: See note following RCW 18.74.010.

Severability—1986 c 259: See note following RCW 18.130.010.

18.74.025 Standards for appropriateness of physical therapy care—Violation. Pursuant to the board's power in RCW 18.74.023(3), the board is directed to adopt rules relating to standards for appropriateness of physical therapy care. Violation of the standards adopted by rule under this section is unprofessional conduct under this chapter and chapter 18.130 RCW. [1991 c 12 § 5.]

18.74.027 Board—Officers—Meetings—Quorum. The board shall elect from its members a chairperson and vice chairperson-secretary, who shall serve for one year and until their successors are elected. The board shall meet at least once a year and upon the call of the chairperson at such times and places as the chairperson designates. Three members constitute a quorum of the full board for the transaction of any business. Meetings of the board shall be open and public, except the board may hold executive sessions to the extent permitted by chapter 42.30 RCW. [1983 c 116 § 5.]

18.74.029 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 47; 1986 c 259 § 123.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.74.030 Qualifications of applicants. An applicant for a license as a physical therapist shall have the following minimum qualifications:

- (1) Be of good moral character; and
- (2) Have obtained either (a) a baccalaureate degree in physical therapy from an institution of higher learning approved by the board or (b) a baccalaureate degree from an institution of higher learning and a certificate or advanced degree from a school of physical therapy approved by the board.

The applicant shall present proof of qualification to the board in the manner and on the forms prescribed by it. [1983 c 116 § 6; 1961 c 64 § 2; 1949 c 239 § 3; Rem. Supp. 1949 § 10163-3.]

18.74.035 Examinations—Scope—Time and place. All qualified applicants for a license as a physical therapist shall be examined by the board at such time and place as the board may determine. The examination shall embrace the following subjects: The applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, psychology, physics; physical therapy, as defined in this chapter,

applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery; medical ethics; technical procedures in the practice of physical therapy as defined in this chapter; and such other subjects as the board may deem useful to test the applicant's fitness to practice physical therapy, but not including the adjustment or manipulation of the spine or use of a thrusting force as mobilization. Examinations shall be held within the state at least once a year, at such time and place as the board shall determine. An applicant who fails an examination may apply for reexamination upon payment of a reexamination fee determined by the secretary. [1991 c 3 § 176; 1983 c 116 § 7; 1961 c 64 § 3.]

18.74.040 Licenses. The secretary of health shall license as a physical therapist, and shall furnish a license to each applicant who successfully passes the examination for licensure as a physical therapist. [1991 c 3 § 177; 1983 c 116 § 8; 1949 c 239 § 4; Rem. Supp. 1949 § 10163-4.]

18.74.050 Licenses—Fees. The secretary shall furnish a license upon the authority of the board to any person who applies and who has qualified under the provisions of this chapter. At the time of applying, the applicant shall pay to the state treasurer a fee determined by the secretary as provided in RCW 43.70.250. No person registered or licensed on July 24, 1983, as a physical therapist shall be required to pay an additional fee for a license under this chapter. [1991 c 3 § 178; 1985 c 7 § 63; 1983 c 116 § 9; 1975 1st ex.s. c 30 § 65; 1961 c 64 § 4; 1949 c 239 § 5; Rem. Supp. 1949 § 10163-5.]

18.74.060 Licensure by endorsement. Upon the recommendation of the board, the secretary shall license as a physical therapist and shall furnish a license to any person who is a physical therapist registered or licensed under the laws of another state or territory, or the District of Columbia, if the qualifications for such registration or license required of the applicant were substantially equal to the requirements under this chapter. At the time of making application, the applicant shall pay to the state treasurer a fee determined by the secretary as provided in RCW 43.70.250. [1991 c 3 § 179; 1985 c 7 § 64; 1983 c 116 § 10; 1975 1st ex.s. c 30 § 66; 1961 c 64 § 5; 1949 c 239 § 6; Rem. Supp. 1949 § 10163-6.]

18.74.065 Licenses—Issuance to persons licensed or registered before July 24, 1983. Any person holding a valid license or certificate of registration to practice physical therapy issued by authority of this state prior to July 24, 1983, shall be issued a license under this chapter. [1983 c 116 § 11.]

18.74.070 Renewal of license—Lapsed license—Fees. Every licensed physical therapist shall apply to the secretary for a renewal of the license and pay to the state treasurer a fee determined by the secretary as provided in RCW 43.70.250. The license of a physical therapist who fails to renew the license within thirty days of the date set by the secretary for renewal shall automatically lapse. Within three years from the date of lapse and upon the recommendation of the board, the secretary may revive a

lapsed license upon the payment of all past unpaid renewal fees and a penalty fee to be determined by the secretary. The board may require reexamination of an applicant whose license has lapsed for more than three years and who has not continuously engaged in lawful practice in another state or territory, or waive reexamination in favor of evidence of continuing education satisfactory to the board. [1991 c 3 § 180; 1983 c 116 § 12; 1975 1st ex.s. c 30 § 67; 1971 ex.s. c 266 § 13; 1961 c 64 § 6; 1949 c 239 § 7; Rem. Supp. 1949 § 10163-7.]

18.74.085 Advertising of spinal manipulation or mobilization prohibited. (1) Physical therapists shall not advertise that they perform spinal manipulation or manipulative mobilization of the spine.

(2) A violation of this section is unprofessional conduct under this chapter and chapter 18.130 RCW. [1988 c 185 § 4.]

18.74.090 False advertising—Use of name and words—License required—Prosecutions of violations. A person who is not licensed with the secretary of health as a physical therapist under the requirements of this chapter shall not represent him or herself as being so licensed and shall not use in connection with his or her name the words or letters "P.T.", "R.P.T.", "L.P.T.", "physical therapy", "physiotherapy", "physical therapist" or "physiotherapist", or any other letters, words, signs, numbers, or insignia indicating or implying that he or she is a physical therapist. No person may practice physical therapy without first having a valid license. Nothing in this chapter prohibits any person licensed in this state under any other act from engaging in the practice for which he or she is licensed. It shall be the duty of the prosecuting attorney of each county to prosecute all cases involving a violation of this chapter arising within his or her county. The attorney general may assist in such prosecution and shall appear at all hearings when requested to do so by the board. [1991 c 3 § 181; 1987 c 150 § 48; 1986 c 259 § 125; 1983 c 116 § 18; 1961 c 64 § 8; 1949 c 239 § 9; Rem. Supp. 1949 § 10163-9.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

False advertising: Chapter 9.04 RCW.

18.74.095 False advertising—Injunctions. If any person violates the provisions of this chapter, the attorney general, prosecuting attorney, the secretary, the board, or any citizen of the same county, may maintain an action in the name of the state to enjoin such person from practicing or holding himself or herself out as practicing physical therapy. The injunction shall not relieve criminal prosecution but the remedy by injunction shall be in addition to the liability of such offender for criminal prosecution and the suspension or revocation of his or her license. [1991 c 3 § 182; 1983 c 116 § 19; 1961 c 64 § 9.]

18.74.120 Record of proceedings—Register. The secretary of health shall keep a record of proceedings under this chapter and a register of all persons licensed under it. The register shall show the name of every living licensed physical therapist, his or her last known place of residence,

and the date and number of his or her license as a physical therapist. [1991 c 3 § 183; 1983 c 116 § 21; 1979 c 158 § 63; 1977 c 75 § 11; 1949 c 239 § 12; Rem. Supp. 1949 § 10163-12.]

18.74.125 Construction of chapter—Activities not prohibited—Use of letters or words in connection with name. Nothing in this chapter shall prohibit any person licensed in this state under any other act from engaging in the practice for which he is licensed. Nothing in this chapter shall prohibit any person who, at any time prior to January 1, 1961 was practicing any healing or manipulative art in the state of Washington and designating the same as physical therapy or physiotherapy, from continuing to do so after the passage of this amendatory act: PROVIDED, That no such person shall represent himself as being registered and shall not use in connection with his name the words or letters "registered" or "licensed" or "R.P.T." [1961 c 64 § 10.]

Reviser's note: The language "after the passage of this amendatory act" refers to chapter 64, Laws of 1961 which passed the House March 1, 1961, passed the Senate February 27, 1961, approved by the governor March 6, 1961, and became effective at midnight June 7, 1961.

18.74.130 Practices and services not regulated or prohibited by chapter. This chapter does not prohibit or regulate:

(1) The practice of physical therapy by students enrolled in approved schools as may be incidental to their course of study so long as such activities do not go beyond the scope of practice defined by this chapter.

(2) Auxiliary services provided by physical therapy aides carrying out duties necessary for the support of physical therapy including those duties which involve minor physical therapy services when performed under the direct supervision of licensed physical therapists so long as such activities do not go beyond the scope of practice defined by this chapter.

(3) The practice of physical therapy by licensed or registered physical therapists of other states or countries while appearing as clinicians of bona fide educational seminars sponsored by physical therapy, medical, or other healing art professional associations so long as such activities do not go beyond the scope of practice defined by this chapter.

(4) The practice of physical therapists in the armed services or employed by any other branch of the federal government. [1983 c 116 § 22.]

18.74.135 Insurance coverage and benefits not mandated or regulated. This chapter shall not be construed to restrict the ability of any insurance entity regulated by Title 48 RCW, or any state agency or program from limiting or controlling the utilization of physical therapy services by the use of any type of gatekeeper function; nor shall it be construed to require or prohibit that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person licensed under this chapter. For the purpose of this chapter, "gatekeeper function" means any provision in a contract which establishes a threshold require-

ment, such as a recommendation from a case manager or a primary care provider, which must be satisfied before a covered person is eligible to receive benefits under the contract. [1988 c 185 § 5.]

18.74.140 Practice setting not restricted. Nothing in this chapter restricts the ability of physical therapists to work in the practice setting of their choice. [1991 c 12 § 4.]

18.74.900 Severability—1949 c 239. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect 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. [1949 c 239 § 13.]

18.74.910 Severability—1961 c 64. If any provision of this amendatory act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this amendatory act which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory act are declared to be severable. [1961 c 64 § 11.]

18.74.911 Severability—1983 c 116. 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. [1983 c 116 § 24.]

Chapter 18.76

POISON INFORMATION CENTERS

Sections

18.76.010	Purpose.
18.76.020	Definitions.
18.76.030	Poison information centers—State-wide program.
18.76.040	Poison information centers—Activities.
18.76.050	Rules and standards.
18.76.060	Poison center medical director—Poison information specialist—Certification required.
18.76.070	Immunity from liability.
18.76.080	Department to defend personnel.
18.76.900	Severability—1987 c 214.

18.76.010 Purpose. The legislature finds that accidental and purposeful exposure to drugs and poisonous substances continues to be a severe health problem in the state of Washington. It further finds that a significant reduction in the consequences of such accidental exposures have occurred as a result of the services provided by poison information centers.

The purpose of this chapter is to reduce morbidity and mortality associated with overdose and poisoning incidents by providing emergency telephone assistance and treatment referral to victims of such incidents, by providing immediate treatment information to health care professionals, and public education and prevention programs. Further, the purpose is to improve utilization of drugs by providing information to health professionals relating to appropriate therapeutic drug use.

The legislature recognizes that enhanced cooperation between the emergency medical system and poison control centers will aid in responding to emergencies resulting from exposure to drugs and poisonous substances. [1987 c 214 § 16; 1980 c 178 § 1. Formerly RCW 18.73.210.]

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

(1) "Department" means the department of health.

(2) "Poison information center medical director" means a person who: (a) Is licensed to practice medicine and surgery under chapter 18.71 RCW or osteopathy and surgery under chapter 18.57 RCW; (b) is certified by the secretary under standards adopted under RCW 18.76.050; and (c) provides services enumerated under RCW 18.76.030 and 18.76.040, and is responsible for supervision of poison information specialists.

(3) "Poison information specialist" means a person who provides services enumerated under RCW 18.76.030 and 18.76.040 under the supervision of a poison information center medical director and is certified by the secretary under standards adopted under RCW 18.76.050.

(4) "Secretary" means the secretary of health. [1991 c 3 § 184; 1987 c 214 § 19.]

18.76.030 Poison information centers—State-wide program. The department shall, in a manner consistent with this chapter, provide support for the state-wide program of poison and drug information services conducted by poison information centers located in the cities of Seattle and Spokane and satellite units located in the cities of Tacoma and Yakima. The services of this program shall be:

(1) Emergency telephone management and treatment referral of victims of poisoning and overdose incidents;

(2) Information to health professionals involved in management of poisoning and overdose victims;

(3) Community education programs designed to inform the public of poison prevention methods; and

(4) Information to health professionals regarding appropriate therapeutic use of medications, their compatibility and stability, and adverse drug reactions and interactions. [1987 c 214 § 17; 1980 c 178 § 2. Formerly RCW 18.73.220.]

18.76.040 Poison information centers—Activities.

(1) The principal activities of the poison information centers shall be answering requests by telephone for poison information and making recommendations for appropriate emergency management and treatment referral of poisoning exposure and overdose victims. These services, provided around-the-clock, will involve determining whether treatment can be accomplished at the scene of the incident or whether transport to an emergency treatment facility is required; recommending treatment measures to appropriate personnel; and carrying out follow-up to assure that adequate care is provided.

(2) Poison center personnel shall provide follow-up education to prevent future similar incidents. They shall also provide community education programs designed to improve

public awareness of poisoning and overdose problems, and to educate the public regarding prevention.

(3) Poison center personnel shall answer drug information questions from health professionals by providing current, accurate, and unbiased information regarding drugs and their therapeutic uses.

(4) Poison centers shall utilize physicians, pharmacists, nurses, and supportive personnel trained in various aspects of toxicology, poison control and prevention, and drug information retrieval and analysis. [1987 c 214 § 18; 1980 c 178 § 3. Formerly RCW 18.73.230.]

18.76.050 Rules and standards. The secretary with the advice of the emergency medical services and trauma care steering committee established under RCW 18.73.050 shall adopt rules, under chapter 34.05 RCW, prescribing:

(1) Standards for the operation of a poison information center;

(2) Standards and procedures for certification, recertification and decertification of poison center medical directors and poison information specialists; and

(3) Standards and procedures for reciprocity with other states or national certifying agencies. [1990 c 269 § 21; 1987 c 214 § 20.]

Severability—1990 c 269: See RCW 70.168.901.

18.76.060 Poison center medical director—Poison information specialist—Certification required. (1) A person may not act as a poison center medical director or poison information specialist of a poison information center without being certified by the secretary under this chapter.

(2) Notwithstanding subsection (1) of this section, if a poison center medical director terminates certification or is decertified, that poison center medical director's authority may be delegated by the department to any other person licensed to practice medicine and surgery under chapter 18.71 RCW or osteopathy and surgery under chapter 18.57 RCW for a period of thirty days, or until a new poison center medical director is certified, whichever comes first. [1987 c 214 § 21.]

18.76.070 Immunity from liability. (1) No act done or omitted in good faith while performing duties as a poison center medical director or poison information specialist of a poison information center shall impose any liability on the poison center, its officers, the poison center medical director, the poison information specialist, or other employees.

(2) This section:

(a) Applies only to acts or omissions committed or omitted in the performance of duties which are within the area of responsibility and expertise of the poison center medical director or poison information specialist.

(b) Does not relieve the poison center or any person from any duty imposed by law for the designation or training of a person certified under this chapter.

(c) Does not apply to any act or omission which constitutes gross negligence or wilful or wanton conduct. [1987 c 214 § 22.]

18.76.080 Department to defend personnel. The department shall defend any poison center medical director

or poison information specialist for any act or omission subject to RCW 18.76.070. [1987 c 214 § 23.]

18.76.900 Severability—1987 c 214. See RCW 18.73.901.

Chapter 18.78 PRACTICAL NURSES

Sections

18.78.003	Regulation of health care professions—Criteria.
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18.78.055	Practical nursing schools/programs—Approval—Surveys.
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18.78.900	Severability—1949 c 222.
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Actions for negligence against, evidence and proof required to prevail: RCW 4.24.290.

Crimes relating to pregnancy and childbirth: RCW 9A.32.060.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.

Nurse's lien: Chapter 60.44 RCW.

Registered professional nurses: Chapter 18.88 RCW.

18.78.003 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.78.005 Purpose. The purpose of this chapter is to protect the health of the general public and to provide for the establishment and enforcement of standards for licensing practical nurses. Any person offering to practice as a licensed practical nurse or using any title, representation, sign, or device to indicate that the person is practicing as a practical nurse or licensed practical nurse in this state shall submit evidence that he or she is qualified to practice and shall be licensed as provided in this chapter. [1991 c 84 § 1; 1983 c 55 § 1.]

18.78.010 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) "Board" shall mean "Washington state board of practical nursing."

(2) "Curriculum" means the theoretical and practical studies which must be taught in order for students to meet the minimum standards of competency as determined by the board.

(3) "Secretary" means the "secretary of health."

(4) "Licensed practical nurse," abbreviated "L.P.N.," means a person licensed by the board to practice practical nursing.

(5) "Licensed practical nurse practice" shall mean the performance of services requiring the knowledge, skill, and judgment necessary for carrying out selected aspects of the designated nursing regimen under the direction and supervision of a licensed physician and surgeon, dentist, osteopathic physician and surgeon, physician assistant, osteopathic physician assistant, advanced registered nurse practitioner authorized under chapter 18.88 RCW, or podiatric physician and surgeon or at the direction and under the supervision of a registered nurse.

(6) "Supervision" shall mean the critical evaluation of acts performed with authority to take corrective action, but shall not be construed so as to require direct and bodily presence. [1991 c 84 § 13; 1991 c 3 § 185; 1983 c 55 § 2; 1967 c 79 § 1; 1963 c 15 § 1; 1949 c 222 § 1; Rem. Supp. 1949 § 10173-27.]

Reviser's note: This section was amended by 1991 c 3 § 185 and by 1991 c 84 § 13, 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).

18.78.020 Board of practical nursing created. There is hereby created a board to be known and designated as the "Washington state board of practical nursing." The board of practical nursing shall be composed of five members, appointed by the governor as follows:

(1) Two members shall be licensed practical nurses who shall have had not less than five years' actual experience as a licensed practical nurse and who have practiced as a practical nurse within two years of appointment;

(2) Two members shall be licensed registered nurses who have no less than five years' experience in the practice of nursing, one of whom shall be a registered nurse actively engaged in instructing in an approved practical nursing course, and one of whom shall be a registered nurse supervisor of licensed practical nurses;

(3) There shall be one public member who does not derive his or her livelihood primarily from the provision of health services and is not:

(a) A present or former member of another licensing board;

(b) A licensed health professional; or

(c) An employee of a health care facility. [1991 c 84 § 2; 1983 c 55 § 3; 1967 c 79 § 2; 1949 c 222 § 2; Rem. Supp. 1949 § 10173-28.]

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.78.030 Vacancies—Terms of members—Meetings. Vacancies occurring on the board shall be filled for the unexpired term by appointment of the governor, who also may remove any member from the board for neglect of duty required by law, for incompetency, or for unprofessional conduct as defined in chapter 18.130 RCW. All appoint-

ments shall be for terms of five years each. No person may serve as a member of the board for more than two consecutive terms, except that a member who is filling less than one-half of an uncompleted term shall be eligible for two full terms in addition to the uncompleted term. Board members shall serve until a successor is appointed.

The board shall meet at least quarterly at times and places it designates. It shall hold such other meetings during the year as may be deemed necessary to transact its business. A majority of the board currently serving shall constitute a quorum at any meeting. [1991 c 84 § 3; 1983 c 55 § 4; 1949 c 222 § 3; Rem. Supp. 1949 § 10173-29.]

18.78.040 Compensation and travel expenses of board members—Officers. Each board member shall be compensated in accordance with RCW 43.03.240 and shall be paid travel expenses while away from home in accordance with RCW 43.03.050 and 43.03.060. The board shall appoint officers annually. [1991 c 84 § 4; 1984 c 287 § 47; 1983 c 55 § 5; 1975-'76 2nd ex.s. c 34 § 45; 1967 c 188 § 4; 1949 c 222 § 4; Rem. Supp. 1949 § 10173-30.]

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.

Executive secretary of board: RCW 18.78.100.

18.78.050 Duties of board—Rules. The board shall conduct examinations for all applicants for licensure under this chapter and shall certify qualified applicants for licensure to the department. The board in consultation with the *state board for community college education and the superintendent of public instruction shall also determine and formulate what constitutes the curriculum for approved practical nursing schools/programs and shall establish criteria for minimum standards for schools/programs preparing persons for licensure under this chapter. The board shall establish criteria for licensure by endorsement.

The board may adopt rules or issue advisory opinions in response to questions from professional health associations, health care practitioners, and consumers in this state concerning licensed practical nurse practice. The board shall establish criteria for proof of reasonable currency of knowledge and skill as a basis for safe practice of practical nursing.

The board shall adopt such rules as are necessary to fulfill the purposes of this chapter pursuant to chapter 34.05 RCW. [1991 c 84 § 5; (1991 c 3 § 186 repealed by 1991 sp.s. c 11 § 2); 1988 c 211 § 4; 1986 c 259 § 129; 1983 c 55 § 6; 1979 c 158 § 64; 1967 c 79 § 3; 1949 c 222 § 5; Rem. Supp. 1949 § 10173-31.]

***Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

Legislative declaration—1988 c 211: See note following RCW 18.88.080.

Severability—1986 c 259: See note following RCW 18.130.010.

18.78.054 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and

the discipline of licensees under this chapter. [1987 c 150 § 49; 1986 c 259 § 128.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.78.055 Practical nursing schools/programs—

Approval—Surveys. An institution desiring to conduct a school/program of practical nursing shall apply to the board and submit evidence satisfactory to the board that: (1) It is prepared to carry out the approved curriculum for an approved practical nursing school/program; and (2) it is prepared to meet other standards established by this chapter and by the board.

If in the opinion of the board a school/program of practical nursing meets the requirements of this chapter and the board, the program shall be approved.

All approved practical nursing schools/programs in the state shall be surveyed and the board shall review written reports of each survey. The surveys shall be conducted periodically as determined by the board. If the board determines that an approved practical nursing school/program is not maintaining the curriculum standards or other standards required by the board written notice shall be given specifying the deficiencies. Failure to correct the deficiencies within a period of time specified by the board shall result in the suspension of the program's approval. [1991 c 84 § 6; 1983 c 55 § 7.]

18.78.058 License required. No person may practice or represent himself or herself as a licensed practical nurse without first having a valid license to do so. [1987 c 150 § 50.]

Severability—1987 c 150: See RCW 18.122.901.

18.78.060 Qualifications of applicants for license—

Examination—Interim permit. An applicant for a license to practice nursing as a licensed practical nurse shall submit to the board written evidence, on a form provided by the board, verified under oath, that the applicant:

- (1) Is at least eighteen years of age;
- (2) Is of good moral character;
- (3) Is of good physical and mental health;
- (4) Has a high school diploma or general educational development certificate or diploma;
- (5) Has completed an approved program for the education of practical nurses, or its equivalent, as determined by the board;
- (6) Has provided written information or completed other requirements of the board;
- (7) At the time of submission, is not in violation of chapter 18.130 RCW or any provisions of this chapter.

To be licensed as a practical nurse, each applicant shall be required to pass an examination in such subjects as the board may determine within the scope of and commensurate with the work to be performed by a licensed practical nurse. Upon approval by the board, the department shall issue an interim permit authorizing the applicant to practice nursing as authorized under this chapter pending notification of the results of the first licensing examination following verification of satisfactory completion of an approved program of practical nursing. Any applicant failing to pass the examina-

tion may apply for reexamination. If the applicant fails the examination, the interim permit expires upon notification and is not renewable. Upon passing the examination a license shall be issued to the applicant to practice as a licensed practical nurse, providing the license fee is paid by the applicant and the applicant meets all other requirements of the board. [1991 c 84 § 7; (1991 c 3 § 187 repealed by 1991 sp.s. c 11 § 2); 1988 c 212 § 1; 1983 c 55 § 8; 1971 ex.s. c 292 § 26; 1963 c 15 § 2; 1949 c 222 § 6; Rem. Supp. 1949 § 10173-32.]

Effective date—Implementation—1988 c 212: "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 April 1, 1988. The director of licensing may immediately take such steps as are necessary to ensure that this act is implemented on its effective date." [1988 c 212 § 2.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

18.78.070 Licenses for persons from foreign countries.

An applicant graduated from a nursing program outside the United States and licensed by a country outside the United States shall meet all qualifications required by this chapter and by the board and shall pass an examination to be determined by the board. [1986 c 259 § 130; 1983 c 55 § 9; 1949 c 222 § 7; Rem. Supp. 1949 § 10173-33.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.78.072 Licenses for persons from other states.

An applicant holding a credential in another state may be licensed by endorsement to practice in this state without examination if the board determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1988 c 211 § 3.]

Legislative declaration—1988 c 211: See note following RCW 18.88.080.

18.78.080 License fees.

Applicants applying for a license to practice as a licensed practical nurse, with or without examination, or for reexamination, shall pay fees determined by the secretary as provided in RCW 43.70.250 to the department. [1991 c 84 § 8; (1991 c 3 § 188 repealed by 1991 sp.s. c 11 § 2); 1985 c 7 § 65; 1979 c 158 § 65; 1975 1st ex.s. c 30 § 68; 1963 c 15 § 3; 1949 c 222 § 9; Rem. Supp. 1949 § 10173-35.]

18.78.090 Renewal.

Every licensed practical nurse in this state shall renew the license with the department, shall pay a fee determined by the secretary as provided in RCW 43.70.250, and shall provide evidence of knowledge and skill in current practice as required by the board. Any failure to register, pay the renewal registration fee, or meet the requirements of the board shall render the license lapsed. The lapsed license shall be reinstated upon payment to the state of renewal and penalty fees determined by the secretary as provided in RCW 43.70.250 and upon compliance with the rules established by the board. [1991 c 84 § 9; (1991 c 3 § 189 repealed by 1991 sp.s. c 11 § 2). Prior: 1986 c 259 § 131; 1985 c 7 § 66; 1983 c 55 § 10; 1979 c 158 § 66; 1975 1st ex.s. c 30 § 69; 1971 ex.s. c 266 § 14; 1967 c 79 § 4; 1963 c 15 § 4; 1949 c 222 § 10; Rem. Supp. 1949 § 10173-36.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.78.100 Executive secretary of board. After consultation with the board, the secretary shall appoint an executive secretary of the board to carry out the provisions of this chapter.

The board and secretary shall determine the qualifications required to be employed as the executive secretary. [1991 c 84 § 10; 1991 c 3 § 190; 1983 c 55 § 11; 1971 c 68 § 1; 1949 c 222 § 11; Rem. Supp. 1949 § 10173-37.]

Reviser's note: This section was amended by 1991 c 3 § 190 and by 1991 c 84 § 10, 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).

18.78.160 Limitation of practice—Activities not covered by chapter. This chapter shall not be construed as conferring authority to practice medicine or surgery, or to practice as a registered nurse, or to undertake the treatment or cure of disease, pain, injury, deformity or physical condition; nor shall it be construed to prohibit:

(1) The incidental care of the sick by domestic servants or persons primarily employed as housekeepers, if they do not practice practical nursing within the meaning of this chapter;

(2) The domestic administration of family remedies or the furnishing of nursing assistance in case of emergency;

(3) Practical nurse practice by students enrolled in approved schools if incidental to their course of study, nor shall it prohibit these students from working as nursing assistants;

(4) Auxiliary services provided by persons performing duties necessary for the support of nursing service including those duties which involve minor nursing services for persons performed in hospitals, nursing homes, or elsewhere under the direction of licensed physicians or the supervision of registered nurses;

(5) The practice of nursing in this state by a practical nurse legally qualified in another state or territory of the United States whose engagement requires the person to accompany and care for a patient temporarily residing in this state during the period of one engagement not to exceed six months, if the person does not represent himself or herself as a nurse licensed to practice in this state;

(6) Nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any church by its adherents if they do not engage in practical nurse practice as defined in this chapter; or

(7) The practice, while in the course of official duties, of any legally qualified practical nurse of another state who is employed by the United States government or any of its bureaus, divisions, or agencies. [1991 c 84 § 12; 1983 c 55 § 15; 1949 c 222 § 17; Rem. Supp. 1949 § 10173-43.]

18.78.182 Scope of practice. A licensed practical nurse under his or her license may perform nursing care (as that term is usually understood) of the ill, injured, or infirm, and in the course thereof is authorized, under the direction and supervision of a licensed physician and surgeon, osteopathic physician and surgeon, dentist, physician assistant, osteopathic physician assistant, advanced registered nurse practitioner authorized under chapter 18.88 RCW, podiatric physician and surgeon (acting within the scope of his or her

license), or at the direction and under the supervision of a registered nurse, to administer drugs, medications, treatments, tests, injections, and inoculations, whether or not the piercing of tissues is involved and whether or not a degree of independent judgment and skill is required, when selected to do so by one of the licensed practitioners designated in this section, or by a registered nurse who need not be physically present; provided the order given is reduced to writing within a reasonable time and made a part of the patient's record. [1991 c 84 § 11; 1983 c 55 § 19; 1971 c 68 § 2; 1967 c 79 § 6.]

Authority of registered nurses: RCW 18.88.285.

18.78.225 Inactive status. An individual may place his or her license on inactive status with proper notification to the department. The holder of an inactive license shall not practice practical nursing in this state. The inactive renewal fee shall be established by the secretary pursuant to RCW 43.70.250. Failure to renew an inactive license shall result in cancellation in the same manner as an active license. An inactive license may be placed in an active status upon compliance with the rules established by the board.

The provisions relating to the denial, suspension, and revocation of a license shall be applicable to an inactive or lapsed license. When proceedings to suspend or revoke an inactive license have been initiated, the license shall not be reinstated until the proceedings have been completed. [1991 c 3 § 192; 1988 c 211 § 12.]

Legislative declaration—1988 c 211: See note following RCW 18.88.080.

18.78.900 Severability—1949 c 222. Should any section of this chapter, or any portion of any section, for any reason be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. [1949 c 222 § 19.]

18.78.901 Severability—1983 c 55. 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. [1983 c 55 § 22.]

Chapter 18.83

PSYCHOLOGISTS

Sections

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18.83.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.83.010 Definitions. When used in this chapter:

(1) The "practice of psychology" means the application of established principles of learning, motivation, perception, thinking and emotional relationships to problems of evaluation, group relations and behavior adjustment, including but not limited to: (a) Counseling and guidance; (b) use of psychotherapeutic techniques with clients who have adjustment problems in the family, at school, at work or in interpersonal relationships; (c) measuring and testing of personality, intelligence, aptitudes, emotions, public opinion, attitudes and skills.

This definition does not include the teaching of principles of psychology for accredited educational institutions, or the conduct of research in problems of human or animal behavior.

Nothing in this definition shall be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine and surgery as defined in chapter 18.71 RCW.

(2) "Secretary" means the secretary of health.

(3) "Board" means the examining board of psychology.

(4) "Committee" means the disciplinary committee established by the board.

(5) "Department" means the department of health. [1991 c 3 § 193; 1984 c 279 § 75; 1979 c 158 § 67; 1965 c 70 § 1; 1955 c 305 § 1.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.020 License required—Use of "psychology" or terms of like import. (1) To safeguard the people of the state of Washington from the dangers of unqualified and improper practice of psychology, it is unlawful for any person to whom this chapter applies to represent himself or herself to be a psychologist without first obtaining a license as provided in this chapter.

(2) A person represents himself or herself to be a psychologist when the person adopts or uses any title or any description of services which incorporates one or more of the following terms: "psychology," "psychological," "psycholo-

gist," or any term of like import. [1986 c 27 § 1; 1965 c 70 § 2; 1955 c 305 § 2.]

18.83.025 Secretary—Authority. The secretary has the following authority:

(1) To hire such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter;

(2) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation, hearing, or proceeding, and to reimburse the individuals for services provided. [1991 c 3 § 194; 1984 c 279 § 87.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.035 Examining board—Composition—Terms—Chairperson. (Effective until June 30, 1996.)

There is created the examining board of psychology which shall examine the qualifications of applicants for licensing. The board shall consist of seven psychologists and two public members, all appointed by the governor. The public members shall not be and have never been psychologists or in training to be psychologists; they may not have any household member who is a psychologist or in training to be a psychologist; they may not participate or ever have participated in a commercial or professional field related to psychology, nor have a household member who has so participated; and they may not have had within two years before appointment a substantial financial interest in a person regulated by the board. Each psychologist member of the board shall be a citizen of the United States who has actively practiced psychology in the state of Washington for at least three years immediately preceding appointment and who is licensed under this chapter. Board members shall be appointed for a term of five years, except that the terms of the existing appointees shall be adjusted by the governor so that no more than two members' terms expire each year with all subsequent appointments for a five-year term. Upon the death, resignation, or removal of a member, the governor shall appoint a successor to serve for the unexpired term. The board shall elect one of its members to serve as chairperson. [1989 c 226 § 1; 1986 c 27 § 2; 1984 c 279 § 76.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.045 Examining board—Generally. (Effective until June 30, 1996.)

The board shall meet at least once each year and at such other times as the board deems appropriate to properly discharge its duties. All meetings shall be held in Olympia, Washington, or such other places as may be designated by the secretary. Five members of the board shall constitute a quorum, except that oral examinations may be conducted with only three psychologist members. [1991 c 3 § 195; 1984 c 279 § 77.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.050 Examining board—Powers and duties. (Effective until June 30, 1996.) (1) The board shall adopt such rules as it deems necessary to carry out its functions.

(2) The board shall examine the qualifications of applicants for licensing under this chapter, to determine which applicants are eligible for licensing under this chapter

and shall forward to the secretary the names of applicants so eligible.

(3) The board shall administer examinations to qualified applicants on at least an annual basis. The board shall determine the subject matter and scope of the examinations and shall require both written and oral examinations of each applicant, except as provided in RCW 18.83.170. The board may allow applicants to take the written examination upon the granting of their doctoral degree before completion of their internship for supervised experience.

(4) The board shall keep a complete record of its own proceedings, of the questions given in examinations, of the names and qualifications of all applicants, and the names and addresses of all licensed psychologists. The examination paper of such applicant shall be kept on file for a period of at least one year after examination.

(5) The board shall, by rule, adopt a code of ethics for psychologists which is designed to protect the public interest.

(6) The board shall create a disciplinary committee within the board for the purposes of hearing, examining, and ruling on complaints and evidence of unethical conduct or practices brought by the public, other psychologists, organizations, corporations, public or private agencies, or officers, agencies, or instrumentalities of state, county, or local governments.

(7) The board may require that persons licensed under this chapter as psychologists obtain and maintain professional liability insurance in amounts determined by the board to be practicable and reasonably available. [1991 c 3 § 196; 1986 c 27 § 3; 1984 c 279 § 78; 1965 c 70 § 5; 1955 c 305 § 5.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.051 Examining board—Compensation and travel expenses. (Effective until June 30, 1996.) Each member of the board shall be compensated in accordance with RCW 43.03.240 and in addition thereto shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 48; 1983 c 168 § 10; 1975-'76 2nd ex.s. c 34 § 48; 1969 ex.s. c 199 § 19; 1965 c 70 § 21.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Severability—1983 c 168: See RCW 18.120.910.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

18.83.054 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter, except that the term "unlicensed practice" shall be defined by RCW 18.83.180 rather than RCW 18.130.020. [1987 c 150 § 51.]

Severability—1987 c 150: See RCW 18.122.901.

18.83.060 Application for license—Fee. Each applicant for a license shall file with the secretary an application duly verified, in such form and setting forth such information as the board shall prescribe. An application fee determined by the secretary as provided in RCW 43.70.250 shall accompany each application. [1991 c 3 § 197; 1984 c

279 § 79; 1975 1st ex.s. c 30 § 72; 1965 c 70 § 6; 1955 c 305 § 6.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.070 Applicants—Qualifications—Examination. An applicant for a license as "psychologist" must submit proof to the board that:

(1) The applicant is of good moral character.

(2) The applicant holds a doctoral degree from a regionally accredited institution, obtained from an integrated program of graduate study in psychology as defined by rules of the board.

(3) The applicant has had no fewer than two years of supervised experience, at least one of which shall have been obtained subsequent to the granting of the doctoral degree. The board shall adopt rules defining the circumstances under which supervised experience shall qualify the candidate for licensure.

(4) The applicant has passed the written and oral examinations prescribed by the board.

Any person holding a valid license to practice psychology in the state of Washington on June 7, 1984, shall be considered licensed under this chapter. [1984 c 279 § 80; 1965 c 70 § 7; 1955 c 305 § 7.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.072 Examinations—Where held—Applicant-board conference—Reexamination. (1) Examination of applicants shall be held in Olympia, Washington, or at such other place as designated by the secretary, at least annually at such times as the board may determine.

(2) Any applicant shall have the right to discuss with the board his or her performance on the examination.

(3) Any applicant who fails to make a passing grade on the examination may be allowed to retake the examination. Any applicant who fails the examination a second time must obtain special permission from the board to take the examination again.

(4) The reexamination fee shall be the same as the application fee set forth in RCW 18.83.060. [1991 c 3 § 198; 1984 c 279 § 81; 1971 ex.s. c 266 § 15; 1965 c 70 § 20.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.080 Licenses—Issuance—Display. Upon forwarding to the secretary by the board of the name of each applicant entitled to a license under this chapter, the secretary shall promptly issue to such applicant a license authorizing such applicant to use the title "psychologist" for a period of one year. Said license shall be in such form as the secretary shall determine. Each licensed psychologist shall keep his or her license displayed in a conspicuous place in his or her principal place of business. [1991 c 3 § 199; 1986 c 27 § 4; 1965 c 70 § 8; 1955 c 305 § 8.]

18.83.082 Temporary permits. (1) A valid receipt for an initial application for license hereunder, provided the applicant meets the requirements of RCW 18.83.070 (1), (2), and (3), shall constitute a temporary permit to practice psychology until the board completes action on the applica-

tion. The board must complete action within one year of the date such receipt is issued.

(2) A person, not licensed in this state, who wishes to perform practices under the provisions of this chapter for a period not to exceed ninety days within a calendar year, must petition the board for a temporary permit to perform such practices. If the person is licensed or certified in another state deemed by the board to have standards equivalent to this chapter, a permit may be issued. No fee shall be charged for such temporary permit. [1984 c 279 § 82; 1975 1st ex.s. c 30 § 73; 1965 c 70 § 23.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.090 Continuing education requirements—

License renewal. The board shall establish rules governing mandatory continuing education requirements which shall be met by any psychologist applying for a license renewal. Each licensed psychologist shall pay to the health professions account, created in RCW 43.70.320, annually, at such time as determined by the board, an annual license renewal fee determined by the secretary under RCW 43.70.250. Upon receipt of the fee, the secretary shall issue a certificate of renewal in such form as the secretary shall determine. [1991 c 3 § 200; 1984 c 279 § 83; 1977 c 58 § 1; 1975 1st ex.s. c 30 § 74; 1971 ex.s. c 266 § 16; 1965 c 70 § 9; 1955 c 305 § 9.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.100 Licenses—Failure to renew. Failure to renew a license as provided in this chapter shall suspend such license. A license holder whose license has been suspended for failure to renew may reinstate such license by paying to the state treasurer the renewal fees for all of the years in which such failure occurred, together with a renewal fee for the current year, but not to exceed five years. However, no renewal license shall be issued unless the board shall find that the applicant has not violated any provision of this chapter since his or her license was suspended. [1986 c 27 § 5; 1965 c 70 § 10; 1955 c 305 § 10.]

18.83.105 Certificates of qualification. The board may issue certificates of qualification with appropriate title to applicants who meet all the licensing requirements except the possession of the degree of Doctor of Philosophy or its equivalent in psychology from an accredited educational institution. These certificates of qualification certify that the holder has been examined by the board and is deemed competent to perform certain functions within the practice of psychology under the periodic direct supervision of a psychologist licensed by the board. Such functions will be specified on the certificate issued by the board. Such applicant shall pay to the board of examiners a fee determined by the secretary as provided in RCW 43.70.250 for certification in a single area of qualification and a fee for amendment of the certificate to include each additional area of qualification. Upon petition by a holder the board of examiners may grant authority to function without immediate supervision. [1991 c 3 § 201; 1985 c 7 § 67; 1975 1st ex.s. c 30 § 75; 1965 c 70 § 22.]

18.83.110 Privileged communications. Confidential communications between a client and a psychologist shall be privileged against compulsory disclosure to the same extent and subject to the same conditions as confidential communications between attorney and client, but this exception is subject to the limitations under RCW 70.96A.140 and 71.05.250. [1989 c 271 § 303; 1987 c 439 § 12; 1965 c 70 § 11; 1955 c 305 § 11.]

Severability—1989 c 271: See note following RCW 9.94A.310.

18.83.115 Duty to disclose information to client. (1) Psychologists licensed under this chapter shall provide clients at the commencement of any program of treatment with accurate disclosure information concerning their practice, in accordance with guidelines developed by the board, which will inform clients of the purposes of and resources available under this chapter, including the right of clients to refuse treatment, the responsibility of clients for choosing the provider and treatment modality which best suits their needs, and the extent of confidentiality provided by this chapter. The disclosure information provided by the psychologist, the receipt of which shall be acknowledged in writing by the psychologist and client, shall include any relevant education and training, the therapeutic orientation of the practice, the proposed course of treatment where known, any financial requirements, and such other information as the board may require by rule.

(2) In in-patient settings, the health facility shall provide clients with the disclosure statement at the commencement of any program of treatment, and shall post the statement in a conspicuous location accessible to the client.

(3) The board shall provide for modification of the guidelines as appropriate in cases where the client has been referred by the court, a state agency, or other governmental body to a particular provider for specified evaluation or treatment. [1986 c 27 § 9.]

18.83.121 Unprofessional conduct. In addition to those acts defined in chapter 18.130 RCW, the board may take disciplinary action under RCW 18.130.160 for the following reasons:

(1) Failing to maintain the confidentiality of information under RCW 18.83.110;

(2) Violating the ethical code developed by the board under RCW 18.83.050;

(3) Failing to inform prospective research subjects or their authorized representatives of the possible serious effects of participation in research; and failing to undertake reasonable efforts to remove possible harmful effects of participation;

(4) Practicing in an area of psychology for which the person is clearly untrained or incompetent;

(5) Failing to exercise appropriate supervision over persons who practice under the supervision of a psychologist;

(6) Using fraud or deceit in the procurement of the psychology license, or knowingly assisting another in the procurement of such a license through fraud or deceit;

(7) Failing to maintain professional liability insurance when required by the board;

(8) Violating any state statute or administrative rule specifically governing the practice of psychology; or

(9) Gross, wilful, or continued overcharging for professional services. [1987 c 150 § 52.]

Severability—1987 c 150: See RCW 18.122.901.

18.83.135 Disciplinary committee—Immunity—Powers and duties. The disciplinary committee shall meet at least once each year or upon the call of the chairperson at such time and place as the chairperson designates. A quorum for transaction of any business shall consist of three members, one of whom must be a public member.

The members of the disciplinary committee shall be immune from suit in any action, civil or criminal, based upon its disciplinary proceedings or other official acts performed in good faith as members of the committee.

In addition to the authority prescribed under RCW 18.130.050, the committee shall have the following authority:

(1) To maintain records of all activities, and to publish and distribute to all psychologists at least once each year abstracts of significant activities of the committee; and

(2) To obtain the written consent of the complaining client or patient or their legal representative, or of any person who may be affected by the complaint, in order to obtain information which otherwise might be confidential or privileged.

(3) Whenever the workload of the committee requires, the board may request that the secretary appoint pro tempore members. While serving as members pro tempore persons shall have all the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses, of the committee. [1992 c 12 § 1; 1987 c 150 § 53; 1984 c 279 § 86.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1984 c 279: See RCW 18.130.901.

18.83.155 Disciplinary committee—Notice of action. The committee shall report to appropriate national and state organizations which represent the profession of psychology any action taken pursuant to an investigation or hearing that finds a licensee has committed unprofessional or unethical conduct. [1987 c 150 § 54; 1984 c 279 § 89.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1984 c 279: See RCW 18.130.901.

18.83.168 Judgments for professional negligence—Notification of disciplinary committee. Upon entering a judgment for professional negligence against a psychologist or a criminal conviction relating to professional confidence, a court shall transmit a copy of the judgment and any findings of fact to the disciplinary committee. [1986 c 27 § 7.]

18.83.170 Endorsement. Upon application accompanied by a fee determined by the secretary as provided in RCW 43.70.250, the board may grant a license, without written examination, to any applicant who has not previously failed any examination held by the board of psychology of the state of Washington and furnishes evidence satisfactory to the board that the applicant:

(1) Holds a doctoral degree with primary emphasis on psychology from an accredited college or university; and

(2) Is licensed or certified to practice psychology in another state or country in which the requirements for such licensing or certification are, in the judgment of the board, essentially equivalent to those required by this chapter and the rules and regulations of the board. Such individuals must have been licensed or certified in another state for a period of at least two years; or

(3) Is a diplomate in good standing of the American Board of Examiners in Professional Psychology. [1991 c 3 § 202; 1984 c 279 § 92; 1975 1st ex.s. c 30 § 76; 1965 c 70 § 17; 1955 c 305 § 17.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.180 Penalties. It shall be a gross misdemeanor and unlicensed practice for any person to:

(1) Use in connection with his or her name any designation tending to imply that he or she is a licensed psychologist unless duly licensed under or specifically excluded from the provisions of this chapter;

(2) Practice as a licensed psychologist during the time his or her license issued under the provisions of this chapter is suspended or revoked. [1987 c 150 § 55; 1965 c 70 § 18; 1955 c 305 § 18.]

Severability—1987 c 150: See RCW 18.122.901.

18.83.190 Injunction. If any person represents himself or herself to be a psychologist, unless the person is exempt from the provisions of this chapter, without possessing a valid license, certificated qualification, or a temporary permit to do so, or if he or she violates any of the provisions of this chapter, any prosecuting attorney, the secretary, or any citizen of the same county may maintain an action in the name of the state to enjoin such person from representing himself or herself as a psychologist. The injunction shall not relieve the person from criminal prosecution, but the remedy by injunction shall be in addition to the liability of such offender to criminal prosecution and to suspension or revocation of his or her license. [1991 c 3 § 203; 1986 c 27 § 8; 1965 c 70 § 24.]

18.83.200 Exemptions. This chapter shall not apply to:

(1) Any person teaching, lecturing, consulting, or engaging in research in psychology but only insofar as such activities are performed as a part of or are dependent upon a position in a college or university in the state of Washington.

(2) Any person who holds a valid school psychologist credential from the Washington state board of education but only when such a person is practicing psychology in the course of his or her employment.

(3) Any person employed by a local, state, or federal government agency whose psychologists must qualify for employment under federal or state certification or civil service regulations; but only at those times when that person is carrying out the functions of his or her employment.

(4) Any person who must qualify under the employment requirements of a business or industry and who is employed by a business or industry which is not engaged in offering

psychological services to the public, but only when such person is carrying out the functions of his or her employment: PROVIDED, That no person exempt from licensing under this subsection shall engage in the clinical practice of psychology.

(5) Any person who is a student of psychology, psychological intern, or resident in psychology preparing for the profession of psychology under supervision in a training institution or facilities and who is designated by the title such as "psychological trainee," "psychology student," which thereby indicates his or her training status.

(6) Any person who has received a doctoral degree from an accredited institution of higher learning with an adequate major in sociology or social psychology as determined by the board and who has passed comprehensive examinations in the field of social psychology as part of the requirements for the doctoral degree. Such persons may use the title "social psychologist" provided that they file a statement of their education with the board. [1986 c 27 § 10; 1965 c 70 § 19.]

18.83.210 Certain counseling or guidance not prohibited. Nothing in this chapter shall be construed as prohibiting any individual from offering counseling or guidance provided that such individuals do not hold themselves forth as psychologists. [1965 c 70 § 25.]

18.83.900 Severability—1965 c 70. If any provision of this 1965 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the 1965 amendatory act, or the application of the provision to other persons or circumstances is not affected. [1965 c 70 § 26.]

18.83.910 Examining board of psychology—Termination. The powers and duties of the examining board of psychology shall be terminated on June 30, 1995, as provided in RCW 18.83.911. [1990 c 297 § 7; 1988 c 288 § 8; 1986 c 27 § 11; 1985 c 7 § 109; 1984 c 279 § 94. Formerly RCW 43.131.323.]

18.83.911 Examining board of psychology—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1996:

(1) Section 76, chapter 279, Laws of 1984, section 2, chapter 27, Laws of 1986, section 1, chapter 226, Laws of 1989 and RCW 18.83.035;

(2) Section 77, chapter 279, Laws of 1984 and RCW 18.83.045;

(3) Section 5, chapter 305, Laws of 1955, section 5, chapter 70, Laws of 1965, section 78, chapter 279, Laws of 1984, section 3, chapter 27, Laws of 1986 and RCW 18.83.050; and

(4) Section 21, chapter 70, Laws of 1965, section 19, chapter 199, Laws of 1969 ex. sess., section 48, chapter 34, Laws of 1975-'76 2nd ex. sess., section 10, chapter 168, Laws of 1983, section 48, chapter 287, Laws of 1984 and RCW 18.83.051. [1990 c 297 § 8.]

Chapter 18.84

RADIOLOGIC TECHNOLOGISTS

Sections

- 18.84.010 Legislative intent—Insurance coverage not mandated.
- 18.84.020 Definitions.
- 18.84.030 Registration or certificate required.
- 18.84.040 Powers of secretary—Application of uniform disciplinary act.
- 18.84.050 Record of proceedings.
- 18.84.060 Radiologic technology advisory committee—Generally.
- 18.84.070 Secretary and advisory committee immune from liability.
- 18.84.080 Certification—Qualifications.
- 18.84.090 Certification—Approval of schools and training.
- 18.84.100 Certification—Application form—Fee.
- 18.84.110 Renewal of certificates.
- 18.84.120 Registration—Fee—Requirements.
- 18.84.130 Educational material.
- 18.84.140 Application of chapter—Exemption for persons performing services within their authorized scope of practice.
- 18.84.150 Application of chapter—Exemption for licensed dentists.
- 18.84.160 Application of chapter—Exemption for licensed chiropractors.
- 18.84.170 Registration deadline.
- 18.84.901 Effective date—1987 c 412.
- 18.84.902 Severability—1987 c 412.
- 18.84.903 Effective date—1991 c 222.

Regulation of health professions—Criteria: Chapter 18.120 RCW.

18.84.010 Legislative intent—Insurance coverage not mandated. It is the intent and purpose of this chapter to protect the public by the certification and registration of practitioners of radiological technology. By promoting high standards of professional performance, by requiring professional accountability, and by credentialing those persons who seek to provide radiological technology under the title of radiological technologists, and by regulating all persons utilizing ionizing radiation on human beings this chapter identifies those practitioners who have achieved a particular level of competency. Nothing in this chapter shall be construed to require that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person certified under this chapter.

The legislature finds and declares that this chapter conforms to the guidelines, terms, and definitions for the credentialing of health or health-related professions specified under chapter 18.120 RCW. [1991 c 222 § 1; 1987 c 412 § 1.]

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

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of health.

(3) "Licensed practitioner" means any licensed health care practitioner performing services within the person's authorized scope of practice.

(4) "Radiologic technologist" means an individual certified under this chapter, other than a licensed practitioner, who practices radiologic technology as a:

(a) Diagnostic radiologic technologist, who is a person who actually handles x-ray equipment in the process of

applying radiation on a human being for diagnostic purposes at the direction of a licensed practitioner; or

(b) Therapeutic radiologic technologist, who is a person who uses radiation-generating equipment for therapeutic purposes on human subjects at the direction of a licensed practitioner; or

(c) Nuclear medicine technologist, who is a person who prepares radiopharmaceuticals and administers them to human beings for diagnostic and therapeutic purposes and who performs in vivo and in vitro detection and measurement of radioactivity for medical purposes at the direction of a licensed practitioner.

(5) "Advisory committee" means the Washington state radiologic technology advisory committee.

(6) "Approved school of radiologic technology" means a school of radiologic technology approved by the council on medical education of the American medical association or a school found to maintain the equivalent of such a course of study as determined by the department. Such school may be operated by a medical or educational institution, and for the purpose of providing the requisite clinical experience, shall be affiliated with one or more general hospitals.

(7) "Radiologic technology" means the use of ionizing radiation upon a human being for diagnostic or therapeutic purposes.

(8) "Radiologist" means a physician certified by the American board of radiology or the American osteopathic board of radiology.

(9) "Registered x-ray technician" means a person who is registered with the department, and who applies ionizing radiation at the direction of a licensed practitioner. [1991 c 222 § 2; 1991 c 3 § 204; 1987 c 412 § 3.]

18.84.030 Registration or certificate required. No person may practice radiologic technology without being registered or certified under this chapter, unless that person is a licensed practitioner as defined in RCW 18.84.020(3). A person represents himself or herself to the public as a certified radiological technologist when that person adopts or uses a title or description of services that incorporates one or more of the following items or designations:

(1) Certified radiologic technologist or CRT, for persons so certified under this chapter;

(2) Certified radiologic therapy technologist, CRTT, or CRT, for persons certified in the therapeutic field;

(3) Certified radiologic diagnostic technologist, CRDT, or CRT, for persons certified in the diagnostic field; or

(4) Certified nuclear medicine technologist, CNMT, or CRT, for persons certified as nuclear medicine technologists. [1991 c 222 § 3; 1987 c 412 § 2.]

18.84.040 Powers of secretary—Application of uniform disciplinary act. (1) In addition to any other authority provided by law, the secretary may in consultation with the advisory committee:

(a) Adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;

(b) Set all registration, certification, and renewal fees in accordance with RCW 43.70.250;

(c) Establish forms and procedures necessary to administer this chapter;

(d) Evaluate and designate those schools from which graduation will be accepted as proof of an applicant's eligibility to receive a certificate;

(e) Determine whether alternative methods of training are equivalent to formal education, and to establish forms, procedures, and criteria for evaluation of an applicant's alternative training to determine the applicant's eligibility to receive a certificate;

(f) Issue a certificate to any applicant who has met the education, training, and conduct requirements for certification; and

(g) Issue a registration to an applicant who meets the requirement for a registration.

(2) The secretary may hire clerical, administrative, and investigative staff as needed to implement this chapter.

(3) The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of registrations and certifications, unregistered and uncertified practice, and the discipline of registrants and certificants under this chapter. The secretary is the disciplining authority under this chapter. [1991 c 222 § 11; 1991 c 3 § 205; 1987 c 412 § 5.]

18.84.050 Record of proceedings. The secretary shall keep an official record of all proceedings, a part of which record shall consist of a register of all applicants for certification under this chapter, with the result of each application. [1991 c 3 § 206; 1987 c 412 § 6.]

18.84.060 Radiologic technology advisory committee—Generally. (1) There is created a state radiologic technology advisory committee consisting of seven members appointed by the secretary who shall advise the secretary concerning the administration of this chapter. Three members of the committee shall be radiologic technologists who are certified under this chapter, except for the initial members of the committee, and who have been engaged in the practice of radiologic technology for at least five years. Two members shall be radiologists. Two members of the committee shall be individuals who are unaffiliated with the profession representing the public. The term of office for committee members is four years. The terms of the first committee members, however, shall be staggered to ensure an orderly succession of new committee members thereafter. Any committee member may be removed for just cause. The secretary may appoint a new member to fill any vacancy on the committee for the remainder of the unexpired term. No committee member may serve more than two consecutive terms whether full or partial.

(2) Committee members shall be compensated in accordance with RCW 43.03.220 and reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(3) The committee shall elect a chair and vice-chair annually to direct the meetings of the committee. The committee shall meet at least once each year, and may hold additional meetings as called by the secretary or the chair. Four members of the committee shall constitute a quorum. [1991 c 3 § 207; 1987 c 412 § 7.]

18.84.070 Secretary and advisory committee immune from liability. The secretary, members of the committee, or individuals acting on their behalf are immune

from suit in any civil action based on any certification or disciplinary proceedings or other official acts performed in the course of their duties. [1991 c 3 § 208; 1987 c 412 § 8.]

18.84.080 Certification—Qualifications. (1) The secretary shall issue a certificate to any applicant who demonstrates to the secretary's satisfaction, that the following requirements have been met:

(a) Graduation from an approved school or successful completion of alternate training that meets the criteria established by the secretary; and

(b) Good moral character.

(2) Applicants shall be subject to the grounds for denial or issuance of a conditional license under chapter 18.130 RCW.

(3) The secretary shall establish by rule what constitutes adequate proof of meeting the requirements for certification and for designation of certification in a particular field of radiologic technology. [1991 c 3 § 209; 1987 c 412 § 9.]

18.84.090 Certification—Approval of schools and training. The secretary, in consultation with the advisory committee, shall establish by rule the standards and procedures for approval of schools and alternate training, and may contract with individuals or organizations having expertise in the profession or in education to assist in evaluating those applying for approval. The standards and procedures set shall apply equally to schools and training within the United States and those in foreign jurisdictions. [1991 c 3 § 210; 1987 c 412 § 10.]

18.84.100 Certification—Application form—Fee. Applications for certification must be submitted on forms provided by the secretary. The secretary may require any information and documentation that reasonably relates to the determination of whether the applicant meets the requirements for certification provided for in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250 which shall accompany the application. [1991 c 3 § 211; 1987 c 412 § 11.]

18.84.110 Renewal of certificates. The secretary, in consultation with the advisory committee, shall establish by rule the requirements and fees for renewal of certificates. Failure to renew invalidates the certificate and all privileges granted by the certificate. In the event a certificate has lapsed for a period longer than three years, the certificant shall demonstrate competence to the satisfaction of the secretary by continuing education or under the other standards determined by the secretary. [1991 c 3 § 212; 1987 c 412 § 12.]

18.84.120 Registration—Fee—Requirements. The secretary may issue a registration to an applicant who submits, on forms provided by the department, the applicant's name, the address, occupational title, name and location of business where applicant performs his or her services, and other information as determined by the secretary, including information necessary to determine whether there are grounds for denial of registration under this chapter

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or chapter 18.130 RCW. Each applicant shall pay a fee as determined by the secretary as provided in RCW 43.70.250. The secretary shall establish by rule the procedural requirements and fees for registration and for renewal of registrations. [1991 c 222 § 4.]

18.84.130 Educational material. The secretary may provide educational materials and training to registered x-ray technicians, certified radiologic technologists, licensed practitioners and the public concerning, but not limited to, health risks associated with ionizing radiation, proper radiographic techniques, and x-ray equipment maintenance. The secretary may charge fees to recover the cost of providing educational materials and training. [1991 c 222 § 5.]

18.84.140 Application of chapter—Exemption for persons performing services within their authorized scope of practice. Nothing in this chapter may be construed to prohibit or restrict the practice of a profession by a person who is either registered, certified, licensed, or similarly regulated under the laws of this state who is performing services within the person's authorized scope of practice. [1991 c 222 § 6.]

18.84.150 Application of chapter—Exemption for licensed dentists. This chapter does not apply to practitioners licensed under chapter 18.32 RCW or unlicensed persons supervised by persons licensed under chapter 18.32 RCW. [1991 c 222 § 7.]

18.84.160 Application of chapter—Exemption for licensed chiropractors. This chapter does not apply to practitioners licensed under chapter 18.25 RCW or unlicensed persons supervised by persons licensed under chapter 18.25 RCW. [1991 c 222 § 8.]

18.84.170 Registration deadline. Persons required to register under this chapter must be registered by January 1, 1992. [1991 c 222 § 10.]

18.84.901 Effective date—1987 c 412. This act shall take effect October 1, 1987. [1987 c 412 § 17.]

18.84.902 Severability—1987 c 412. 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 412 § 21.]

18.84.903 Effective date—1991 c 222. 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 222 § 14.]

Chapter 18.85

REAL ESTATE BROKERS AND SALESPERSONS

Real estate salesman or broker on commission not subject to unemployment compensation: RCW 50.04.230.

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Department of licensing, division of real estate in business and professions administration: RCW 46.01.050.

Excise tax on real estate sales: Chapter 82.45 RCW.

18.85.010 Definitions. In this chapter words and phrases have the following meanings unless otherwise apparent from the context:

(1) "Real estate broker," or "broker," means a person, while acting for another for commissions or other compensation or the promise thereof, or a licensee under this chapter while acting in his or her own behalf, who:

(a) Sells or offers for sale, lists or offers to list, buys or offers to buy real estate or business opportunities, or any interest therein, for others;

(b) Negotiates or offers to negotiate, either directly or indirectly, the purchase, sale, exchange, lease, or rental of real estate or business opportunities, or any interest therein, for others;

(c) Negotiates or offers to negotiate, either directly or indirectly, the purchase, sale, or exchange of a used mobile home in conjunction with the purchase, sale, exchange, rental, or lease of the land upon which the used mobile home is located;

(d) Advertises or holds himself or herself out to the public by any oral or printed solicitation or representation that he or she is so engaged; or

(e) Engages, directs, or assists in procuring prospects or in negotiating or closing any transaction which results or is calculated to result in any of these acts;

(2) "Real estate salesperson" or "salesperson" means any natural person employed, either directly or indirectly, by a real estate broker, or any person who represents a real estate broker in the performance of any of the acts specified in subsection (1) of this section;

(3) An "associate real estate broker" is a person who has qualified as a "real estate broker" who works with a broker and whose license states that he or she is associated with a broker;

(4) The word "person" as used in this chapter shall be construed to mean and include a corporation or copartnership, except where otherwise restricted;

(5) "Business opportunity" shall mean and include business, business opportunity and good will of an existing business or any one or combination thereof;

(6) "Commission" means the real estate commission of the state of Washington;

(7) "Director" means the director of licensing;

(8) "Real estate multiple listing association" means any association of real estate brokers:

(a) Whose members circulate listings of the members among themselves so that the properties described in the listings may be sold by any member for an agreed portion of the commission to be paid; and

(b) Which require in a real estate listing agreement between the seller and the broker, that the members of the real estate multiple listing association shall have the same rights as if each had executed a separate agreement with the seller;

(9) "Clock hours of instruction" means actual hours spent in classroom instruction in any tax supported, public vocational-technical institution, community college, or any other institution of higher learning or a correspondence course from any of the aforementioned institutions certified

by such institution as the equivalent of the required number of clock hours, and the real estate commission may certify courses of instruction other than in the aforementioned institutions; and

(10) "Incapacitated" means the physical or mental inability to perform the duties of broker prescribed by this chapter. [1987 c 332 § 1; 1981 c 305 § 1; 1979 c 158 § 68; 1977 ex.s. c 370 § 1; 1973 1st ex.s. c 57 § 1; 1972 ex.s. c 139 § 1; 1969 c 78 § 1; 1953 c 235 § 1; 1951 c 222 § 1; 1943 c 118 § 1; 1941 c 252 § 2; Rem. Supp. 1943 § 8340-25. Prior: 1925 ex.s. c 129 § 4.]

18.85.030 Employees. The director shall appoint an adequate staff to assist him. [1972 ex.s. c 139 § 2; 1951 c 222 § 2; 1945 c 111 § 1, part; 1941 c 252 § 5, part; Rem. Supp. 1945 § 8340-28, part.]

18.85.040 Director—General powers and duties—Disciplinary action. (Effective until July 1, 1993.) The director, with the advice and approval of the commission, may issue rules and regulations to govern the activities of real estate brokers, associate real estate brokers and salespersons, consistent with this chapter, fix the times and places for holding examinations of applicants for licenses and prescribe the method of conducting them. The director shall enforce all laws, rules and regulations relating to the licensing of real estate brokers, associate real estate brokers, and salespersons, grant or deny licenses to real estate brokers, associate real estate brokers, and salespersons, and hold hearings. The director may impose any one or more of the following sanctions: Suspend or revoke licenses, deny applications for licenses, fine violators, or require the completion of a course in a selected aspect of real estate practice relevant to the provision of this chapter or rule violated. The director may deny, suspend or revoke the authority of a broker to act as the designated broker of persons who commit violations of the real estate license law or of the rules and regulations. The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions. The director shall institute a program of education for the benefit of the licensees and may institute a program of education at institutions of higher education in Washington. The director shall charge a fee, as prescribed by the director by rule, for the certification of courses of instruction, instructors, and schools. [1988 c 205 § 2; 1987 c 332 § 2; 1972 ex.s. c 139 § 3; 1953 c 235 § 2; 1951 c 222 § 3; 1941 c 252 § 4; Rem. Supp. 1941 § 8340-27. Prior: 1925 ex.s. c 129 § 2.]

18.85.040 Director—General powers and duties—Disciplinary action. (Effective July 1, 1993.) (1) The director, with the advice and approval of the commission, may issue rules and regulations to govern the activities of real estate brokers, associate real estate brokers and salespersons, consistent with this chapter, fix the times and places for holding examinations of applicants for licenses and prescribe the method of conducting them.

(2) The director shall enforce all laws, rules and regulations relating to the licensing of real estate brokers, associate real estate brokers, and salespersons, grant or deny licenses to real estate brokers, associate real estate brokers,

and salespersons, and hold hearings. The director may impose any one or more of the following sanctions: Suspend or revoke licenses, deny applications for licenses, fine violators, or require the completion of a course in a selected aspect of real estate practice relevant to the provision of this chapter or rule violated. The director may deny, suspend or revoke the authority of a broker to act as the designated broker of persons who commit violations of the real estate license law or of the rules and regulations.

(3) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

(4) The director shall institute a program of real estate education including, but not limited to, instituting a program of education at institutions of higher education in Washington. The overall program shall include establishing minimum levels of ongoing education for licensees relating to the practice of real estate by real estate brokers and salespersons under this chapter. The program may also include the development or implementation of curricula courses, educational materials, or approaches to education relating to real estate when required, approved, or certified for continuing education credit. The director may enter into contracts with other persons or entities, whether publicly or privately owned or operated, to assist in developing or implementing the real estate education program.

(5) The director shall charge a fee, as prescribed by the director by rule, for the certification of courses of instruction, instructors, and schools. [1992 c 92 § 1; 1988 c 205 § 2; 1987 c 332 § 2; 1972 ex.s. c 139 § 3; 1953 c 235 § 2; 1951 c 222 § 3; 1941 c 252 § 4; Rem. Supp. 1941 § 8340-27. Prior: 1925 ex.s. c 129 § 2.]

Effective date—1992 c 92: "This act shall take effect July 1, 1993." [1992 c 92 § 5.]

18.85.050 Director or employees shall not have interest in the business. Neither the director nor any employees, shall be interested in any real estate business regulated by *this 1972 amendatory act: PROVIDED, That if any real estate broker, associate real estate broker, or salesman is employed by the director or by the commission as an employee, the license of such broker, associate real estate broker, or salesman shall not be revoked, suspended, or canceled by reason thereof. [1972 ex.s. c 139 § 4; 1953 c 235 § 3; 1951 c 222 § 4; 1945 c 111 § 1, part; 1941 c 252 § 5, part; Rem. Supp. 1945 § 8340-28, part.]

***Reviser's note:** "This 1972 amendatory act" [1972 ex.s. c 139] consists of the amendments to RCW 18.85.010, 18.85.030, 18.85.040, 18.85.050, 18.85.060, 18.85.071, 18.85.090, 18.85.100, 18.85.110, 18.85.130, 18.85.140, 18.85.150, 18.85.161, 18.85.170, 18.85.190, 18.85.210, 18.85.230, 18.85.271, 18.85.290, and the enactment of RCW 18.85.095, 18.85.155, and 18.85.920.

18.85.055 Licensure of state employees conducting real estate transactions. No person licensed under this chapter who is employed by the state and who is conducting real estate transactions on behalf of the state may hold an active license under this chapter. [1987 c 514 § 2.]

Severability—1987 c 514: See RCW 18.118.900.

18.85.060 Director's seal. The director shall adopt a seal with the words real estate director, state of Washington, and such other device as he may approve engraved thereon,

by which he shall authenticate the proceedings of his office. Copies of all records and papers in the office of the director certified to be a true copy under the hand and seal of the director shall be received in evidence in all cases equally and with like effect as the originals. The director may deputize one or more of his assistants to certify records and papers. [1972 ex.s. c 139 § 5; 1941 c 252 § 8; RRS § 8340-31. Prior: 1925 ex.s. c 129 § 7.]

18.85.071 Real estate commission created—Qualifications, terms, appointment of members—Vacancies. There is established the real estate commission of the state of Washington, consisting of the director of the commission and six commission members who shall act in an advisory capacity to the director.

The six commission members shall be appointed by the governor in the following manner: For a term of six years each, with the exception of the first appointees, who shall be appointed one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, and one for a term of six years, with all other subsequent appointees to be appointed for a six year term. At least two of the commission members shall be selected from the area in the state west of the Cascade mountain range and at least two shall be selected from that area of the state east of the Cascade mountain range. No commission member shall be appointed who has had less than five years experience in the sale, operation, or management of real estate in this state, or has had at least three years experience in investigative work of a similar nature, preferably in connection with the administration of real estate license law of this state or elsewhere. Any vacancies on the commission shall be filled by appointment by the governor for the unexpired term. [1972 ex.s. c 139 § 6; 1953 c 235 § 17.]

18.85.080 Real estate commission—Compensation and travel expenses. The six board members of the commission shall be compensated in accordance with RCW 43.03.240, plus travel expenses in accordance with RCW 43.03.050 and 43.03.060 when they shall be called into session by the director or when presiding at examinations for applicants for licenses or when otherwise engaged in the business of the commission. [1984 c 287 § 49; 1975-'76 2nd ex.s. c 34 § 49; 1953 c 235 § 4; 1951 c 222 § 6; 1941 c 252 § 14; Rem. Supp. 1941 § 8340-37.]

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.

18.85.085 Commission—Educational conferences—Examinations of applicants for licenses. The commission shall have authority to hold educational conferences for the benefit of the industry, and shall conduct examinations of applicants for licenses under this chapter. It shall be charged with the preparation of such examinations and shall administer them at least once a month, with not less than six examinations per year in each of the following six areas of the state: Northwest Washington, southwest Washington, northeast Washington, southeast Washington, north central

Washington, and south central Washington. [1977 ex.s. c 24 § 1; 1953 c 235 § 18.]

18.85.090 Real estate commission—Duties—Examination for broker's license—Qualifications of applicant. The commission shall be responsible for the preparation of the examination to be submitted to applicants, and shall make and file with the director a list, which may be signed by a majority of the members of the commission conducting the examination, of all applicants who successfully passed the examination and of those who failed.

Any applicant who fails to pass the examination may apply again.

No applicant shall be permitted to take the examination for a real estate broker's license without first satisfying the director that the applicant:

(1) Has had a minimum of two years of actual experience as a full time real estate salesman in this state or in another state having comparable requirements within the five years previous to applying for said examination or is, in the opinion of the director, otherwise and similarly qualified, or is otherwise qualified, by reason of practical experience in a business allied with or related to real estate;

(2) Is eighteen years of age or older;

(3) Has a high school diploma or its equivalent;

(4) Has furnished proof, as the director may require, that the applicant has completed successfully ninety clock hours of instruction in real estate. Instruction must include one course in brokerage management and one course in real estate law. Each course must be at least thirty clock hours. Courses must be completed within five years prior to applying for the examination.

The requirements of subsections (1) through (4) of this section shall not apply to persons who are licensed as brokers under any real estate license law in Washington which exists prior to this law's enactment and whose license has not been subsequently revoked: PROVIDED, That requirements for brokers created by *this 1972 amendatory act shall apply to any person who is licensed as a salesman on or before May 23, 1972, if such person shall apply to become a broker or associate broker after May 23, 1972. [1985 c 162 § 1; 1972 ex.s. c 139 § 8; 1953 c 235 § 5; 1951 c 222 § 7; 1941 c 252 § 15; Rem. Supp. 1941 § 8340-38.]

*Reviser's note: "This 1972 amendatory act," see note following RCW 18.85.050.

18.85.095 Salespersons—Minimum qualifications of applicant—Renewal. (1) It is hereby established that the minimum requirements for an individual to receive a salesperson's license are that the individual:

(a) Is eighteen years of age or older;

(b) Has passed a salesperson's examination; and

(c) Except as provided in RCW 18.85.097, has successfully completed a thirty clock hour course in real estate fundamentals prior to obtaining a first real estate license.

(2) Except as provided in RCW 18.85.097, no licensed salesperson shall have his or her license renewed a second time unless he or she furnishes proof, as the director may require, that he or she has successfully completed an additional thirty clock hours of instruction in real estate

courses approved by the director. This subsection shall expire January 1, 1991.

Nothing in this section shall apply to persons who are licensed as salespersons under any real estate license law in Washington which exists prior to this law's enactment and whose license has not been subsequently revoked. [1988 c 205 § 3; 1987 c 332 § 3; 1985 c 162 § 2; 1977 ex.s. c 370 § 2; 1972 ex.s. c 139 § 7.]

18.85.097 Waiver of educational requirements. The director may waive the thirty clock-hour requirements in RCW 18.85.095 and 18.85.215 if the director makes a determination that the individual is otherwise and similarly qualified by reason of practical experience in a business allied with or related to real estate. [1987 c 332 § 18.]

18.85.100 License required—Prerequisite to suit for commission. It shall be unlawful for any person to act as a real estate broker, associate real estate broker, or real estate salesman without first obtaining a license therefor, and otherwise complying with the provisions of this chapter.

No suit or action shall be brought for the collection of compensation as a real estate broker, associate real estate broker, or real estate salesman, without alleging and proving that the plaintiff was a duly licensed real estate broker, associate real estate broker, or real estate salesman prior to the time of offering to perform any such act or service or procuring any promise or contract for the payment of compensation for any such contemplated act or service. [1972 ex.s. c 139 § 9; 1951 c 222 § 8. Formerly: (i) 1941 c 252 § 6; Rem. Supp. 1941 § 8340-29. (ii) 1941 c 252 § 25; Rem. Supp. 1941 § 8340-48.]

18.85.110 Exemptions from license requirement. This chapter shall not apply to (1) any person who purchases property and/or a business opportunity for his own account, or that of a group of which he is a member, or who, as the owner or part owner of property, and/or a business opportunity, in any way disposes of the same; nor, (2) any duly authorized attorney in fact acting without compensation, or an attorney at law in the performance of his duties; nor, (3) any receiver, trustee in bankruptcy, executor, administrator, guardian, or any person acting under the order of any court, or selling under a deed of trust; nor, (4) any secretary, bookkeeper, accountant, or other office personnel who does not engage in any conduct or activity specified in any of the definitions under RCW 18.85.010; nor, (5) any owner of rental or lease property, members of the owner's family whether or not residing on such property, or a resident manager of a complex of residential dwelling units wherein such manager resides; nor, (6) any person who manages residential dwelling units on an incidental basis and not as his principal source of income so long as that person does not advertise or hold himself out to the public by any oral or printed solicitation or representation that he is so engaged; nor, (7) only with respect to the rental or lease of individual storage space, any person who owns or manages a self-service storage facility as defined under chapter 19.150 RCW. [1989 c 161 § 1; 1988 c 240 § 20; 1977 ex.s. c 370 § 9; 1972 ex.s. c 139 § 10; 1951 c 222 § 9; 1941 c 252 § 3; Rem. Supp. 1941 § 8340-26. Prior: 1925 ex.s. c 129 § 4.]

Severability—1988 c 240: See RCW 19.150.904.

18.85.120 Applications—Conditions—Fees. Any person desiring to be a real estate broker, associate real estate broker, or real estate salesperson, must pass an examination as provided in this chapter. Such person shall make application for an examination and for a license on a form prescribed by the director. Concurrently, the applicant shall:

(1) Pay an examination fee as prescribed by the director by rule.

(2) If the applicant is a corporation, furnish a certified copy of its articles of incorporation, and a list of its officers and directors and their addresses. If the applicant is a foreign corporation, the applicant shall furnish a certified copy of certificate of authority to conduct business in the state of Washington, a list of its officers and directors and their addresses, and evidence of current registration with the secretary of state. If the applicant is a copartnership, the applicant shall furnish a list of the members thereof and their addresses.

(3) Furnish such other proof as the director may require concerning the honesty, truthfulness, and good reputation, as well as the identity, which may include fingerprints, of any applicants for a license, or of the officers of a corporation making the application. [1987 c 332 § 4; 1980 c 72 § 1; 1979 c 25 § 1. Prior: 1977 ex.s. c 370 § 3; 1977 ex.s. c 24 § 2; 1973 1st ex.s. c 42 § 1; 1953 c 235 § 6; 1951 c 222 § 10. Formerly: (i) 1947 c 203 § 1, part; 1945 c 111 § 3, part; 1943 c 118 § 2, part; 1941 c 252 § 11, part; Rem. Supp. 1947 § 8340-34, part; prior: 1925 ex.s. c 129 §§ 10, 11. (ii) 1947 c 203 § 3; 1945 c 111 § 6; 1941 c 252 § 16; Rem. Supp. 1947 § 8340-39.]

18.85.130 Examinations—Scope—Manual—Disposition of moneys from sale of manual. The director shall provide each original applicant for a license with a manual containing a sample list of questions and answers pertaining to real estate law and the operation of the business and may provide the same at cost to any licensee or to other members of the public. The director shall ascertain by written examination, that each applicant, and in case of a corporation, or copartnership, that each officer, agent, or member thereof whom it proposes to act as licensee, has:

(1) Appropriate knowledge of the English language, including reading, writing, spelling, and arithmetic;

(2) An understanding of the principles of real estate conveyancing, the general purposes and legal effect of deeds, mortgages, land contracts of sale, exchanges, rental and option agreements, and leases;

(3) An understanding of the principles of land economics and appraisals;

(4) An understanding of the obligations between principal and agent;

(5) An understanding of the principles of real estate practice and the canons of business ethics pertaining thereto; and,

(6) An understanding of the provisions of this chapter.

The examination for real estate brokers shall be more exacting than that for real estate salesmen.

All moneys received for the sale of the manual to licensees and members of the public shall be placed in the real estate commission fund to be returned to the current biennium operating budget. [1972 ex.s. c 139 § 11; 1951 c 222 § 11. Formerly: 1947 c 203 § 2, part; 1945 c 111 § 4, part; 1941 c 252 § 12, part; Rem. Supp. 1947 § 8340-35, part.]

18.85.140 License fees—Expiration—Renewal—Identification cards. Before receiving his or her license every real estate broker, every associate real estate broker, and every real estate salesperson must pay a license fee as prescribed by the director by rule. Every license issued under the provisions of this chapter expires on the applicant's second birthday following issuance of the license. Licenses issued to partnerships expire on a date prescribed by the director by rule. Licenses issued to corporations expire on a date prescribed by the director by rule, except that if the corporation registration or certificate of authority filed with the secretary of state expires, the real estate broker's license issued to the corporation shall expire on that date. Licenses must be renewed every two years on or before the date established under this section and a biennial renewal license fee as prescribed by the director by rule must be paid.

If the application for a renewal license is not received by the director on or before the renewal date, a penalty fee as prescribed by the director by rule shall be paid. Acceptance by the director of an application for renewal after the renewal date shall not be a waiver of the delinquency.

The license of any person whose license renewal fee is not received within one year from the date of expiration shall be canceled. This person may obtain a new license by satisfying the procedures and requirements as prescribed by the director by rule.

The director shall issue to each active licensee a license and a pocket identification card in such form and size as he or she shall prescribe. [1991 c 225 § 2; 1989 c 161 § 2; 1987 c 332 § 5; 1979 c 25 § 2. Prior: 1977 ex.s. c 370 § 4; 1977 ex.s. c 24 § 3; 1972 ex.s. c 139 § 12; 1953 c 235 § 7; 1951 c 222 § 12. Formerly: (i) 1947 c 203 § 2, part; 1945 c 111 § 4, part; 1941 c 252 § 12, part; Rem. Supp. 1947 § 8340-35, part. (ii) 1947 c 203 § 1, part; 1945 c 111 § 3, part; 1943 c 118 § 2, part; 1941 c 252 § 11, part; Rem. Supp. 1947 § 8340-34, part; prior: 1925 ex.s. c 129 §§ 10, 11.]

Effective date—1989 c 161 § 2: "Section 2 of this act shall take effect January 1, 1991." [1989 c 161 § 4.]

18.85.150 Temporary permits. A temporary broker's permit may, in the discretion of the director, be issued to the legally accredited representative of a deceased or incapacitated broker, the senior qualified salesman in that office or other qualified representative of the deceased or incapacitated broker, which shall be valid for a period not exceeding four months and in the case of a partnership or a corporation, the same rule shall prevail in the selection of a person to whom a temporary broker's permit may be issued. [1979 c 25 § 3. Prior: 1977 ex.s. c 370 § 5; 1977 ex.s. c 24 § 4; 1972 ex.s. c 139 § 13; 1953 c 235 § 8; 1951 c 222 § 13; prior: (i) 1947 c 203 § 2, part; 1945 c 111 § 4, part; 1941

c 252 § 12, part; Rem. Supp. 1947 § 8340-35, part. (ii) 1947 c 203 § 1, part; 1945 c 111 § 3, part; 1943 c 118 § 2, part; 1941 c 252 § 11, part; Rem. Supp. 1947 § 8340-34, part; prior: 1925 ex.s. c 129 §§ 10, 11.]

18.85.155 Responsibility for conduct of salesman, associate broker or branch manager. Responsibility for any salesman, associate broker or branch manager in conduct covered by this chapter shall rest with the broker to which such licensees shall be licensed.

In addition to the broker, a branch manager shall bear responsibility for salesmen and associate brokers operating under the branch manager at a branch office. [1977 ex.s. c 370 § 6; 1972 ex.s. c 139 § 14.]

18.85.165 Licenses—Continuing education. All real estate brokers and salespersons shall furnish proof as the director may require that they have successfully completed a total of thirty clock hours of instruction every two years in real estate courses approved by the director in order to renew their licenses. Up to fifteen clock hours of instruction beyond the thirty hours in two years may be carried forward for credit in a subsequent two-year period. To count towards this requirement, a course shall be commenced within thirty-six months before the proof date for renewal. Examinations shall not be required to fulfill any part of the education requirement in this section. This section shall apply to renewal dates after January 1, 1991. [1991 c 225 § 1; 1988 c 205 § 1.]

18.85.170 Licenses—Restrictions as to use—Exceptions. No license issued under the provisions of this chapter shall authorize any person other than the person to whom it is issued to do any act by virtue thereof nor to operate in any other manner than under his own name except:

(1) When a license is issued to a corporation it shall entitle one officer thereof, to be named by the corporation in its application, who shall qualify the same as any other agent, to act as a real estate broker on behalf of said corporation, without the payment of additional fees;

(2) When a license is issued to a copartnership it shall entitle one member thereof to be named in the application, who shall qualify to act as a real estate broker on behalf of the copartnership, without the payment of additional license fees;

(3) A licensed broker, associate broker, or salesman may operate and/or advertise under a name other than the one under which the license is issued by obtaining the written consent of the director to do so;

(4) A broker may establish one or more branch offices under a name or names different from that of the main office if the name or names are approved by the director, so long as each branch office is clearly identified as a branch or division of the main office. No broker may establish branch offices under more than three names. Both the name of the branch office and of the main office must clearly appear on the sign identifying the office, if any, and in any advertisement or on any letterhead of any stationery or any forms, or signs used by the real estate firm on which either the name of the main or branch offices appears. [1972 ex.s. c 139 §

16; 1951 c 222 § 14; 1945 c 111 § 2; 1941 c 252 § 10; Rem. Supp. 1945 § 8340-33. Prior: 1925 ex.s. c 129 § 9.]

18.85.180 Licenses—Office required—Display of license. Every licensed real estate broker must have and maintain an office in this state accessible to the public which shall serve as his office for the transaction of business. Any office so established must comply with the zoning requirements of city or county ordinances and the broker's license must be prominently displayed therein. [1957 c 52 § 41; 1951 c 222 § 15. Prior: 1947 c 203 § 4, part; 1945 c 111 § 7, part; 1943 c 118 § 4, part; 1941 c 252 § 18, part; Rem. Supp. 1947 § 8340-41, part; prior: 1925 ex.s. c 129 § 12, part.]

18.85.190 Licenses—Branch office. A real estate broker may apply to the director for authority to establish one or more branch offices under the same name as the main office upon the payment of a fee as prescribed by the director by rule. The director shall issue a duplicate license for each of the branch offices showing the location of the main office and the particular branch. Each duplicate license shall be prominently displayed in the office for which it is issued. Each branch office shall be required to have a branch manager who shall be an associate broker authorized by the designated broker to perform the duties of a branch manager.

A branch office license shall not be required where real estate sales activity is conducted on and, limited to a particular subdivision or tract, if a licensed office or branch office is located within thirty-five miles of the subdivision or tract. [1989 c 161 § 3; 1987 c 332 § 6; 1977 ex.s. c 24 § 5; 1972 ex.s. c 139 § 17; 1957 c 52 § 42. Prior: 1947 c 203 § 4, part; 1945 c 111 § 7, part; 1943 c 118 § 4, part; 1941 c 252 § 18, part; Rem. Supp. 1947 § 8340-41, part; prior: 1925 ex.s. c 129 § 12, part.]

18.85.200 Licenses—Change of location. Notice in writing shall be given to the director of any change by a real estate broker, associate broker, or salesperson of his or her business location or of any branch office. Upon the surrender of the original license for the business or the duplicate license applicable to a branch office, and a payment of a fee as prescribed by the director by rule, the director shall issue a new license or duplicate license, as the case may be, covering the new location. [1987 c 332 § 7; 1971 ex.s. c 266 § 17; 1957 c 52 § 43. Prior: 1947 c 203 § 4, part; 1945 c 111 § 7, part; 1943 c 118 § 4, part; 1941 c 252 § 18, part; Rem. Supp. 1947 § 8340-41, part; prior: 1925 ex.s. c 129 § 12, part.]

18.85.210 Licenses—Annual list—Compilation—Distribution. The director may publish annually a list of names and addresses of brokers and salesmen licensed under the provisions hereof, together with a copy of this chapter and such information relative to the enforcement of the provisions hereof as he may deem of interest to the public; and he may mail one copy thereof to each licensed broker. [1972 ex.s. c 139 § 18; 1953 c 235 § 10; 1947 c 203 § 8; 1941 c 252 § 27; Rem. Supp. 1947 § 8340-50. Prior: 1925 ex.s. c 129 § 22.]

18.85.215 Inactive licenses. (1) Any license issued under this chapter and not otherwise revoked shall be deemed "inactive" at any time it is delivered to the director. Until reissued under this chapter, the holder of an inactive license shall be deemed to be unlicensed.

(2) An inactive license may be renewed on the same terms and conditions as an active license, except that a person with an inactive license need not comply with the continuing education requirements of RCW 18.85.165. Failure to renew shall result in cancellation in the same manner as an active license.

(3) An inactive license may be placed in an active status upon completion of an application as provided by the director and upon compliance with this chapter and the rules adopted pursuant thereto. Subject to RCW 18.85.097, if a holder has an inactive license for more than three years, the holder must show proof of successfully completing a thirty clock hour course in real estate within one year prior to the application for active status. Holders employed by the state and conducting real estate transactions on behalf of the state are exempt from this course requirement.

(4) The provisions of this chapter relating to the denial, suspension, and revocation of a license shall be applicable to an inactive license as well as an active license, except that when proceedings to suspend or revoke an inactive license have been initiated, the license shall remain inactive until the proceedings have been completed. [1988 c 205 § 4. Prior: 1987 c 514 § 1; 1987 c 332 § 17; 1985 c 162 § 4; 1977 ex.s. c 370 § 8.]

Severability—1987 c 514: See RCW 18.118.900.

18.85.220 License fees—Disposition—Real estate commission account. (Effective until July 1, 1993.) All fees required under this chapter shall be set by the director in accordance with RCW 43.24.086 and shall be paid to the state treasurer. The sum of five dollars from each license fee and each renewal fee received from a broker, associate broker, or salesperson, shall be placed in the general fund. The balance of such fees and all other fees paid under the provisions of this chapter shall be placed in the real estate commission account in the state treasury. All money derived from fines imposed under this chapter shall also be deposited in the real estate commission account, shall be used solely for education for the benefit of licensees and shall be subject to appropriation pursuant to chapter 43.88 RCW. [1987 c 332 § 8; 1967 c 22 § 1; 1953 c 235 § 11; 1941 c 252 § 7; Rem. Supp. 1941 § 8340-30.]

18.85.220 License fees—Real estate commission account. (Effective July 1, 1993.) All fees required under this chapter shall be set by the director in accordance with RCW 43.24.086 and shall be paid to the state treasurer. All fees paid under the provisions of this chapter shall be placed in the real estate commission account in the state treasury. All money derived from fines imposed under this chapter shall also be deposited in the real estate commission account, shall be used solely for education for the benefit of licensees and shall be subject to appropriation pursuant to chapter 43.88 RCW. [1991 c 277 § 1; 1987 c 332 § 8; 1967 c 22 § 1; 1953 c 235 § 11; 1941 c 252 § 7; Rem. Supp. 1941 § 8340-30.]

Effective date—1991 c 277: "This act shall take effect July 1, 1993."
[1991 c 277 § 3.]

18.85.230 Disciplinary action—Grounds. The director may, upon his or her own motion, and shall upon verified complaint in writing by any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker, associate real estate broker, or real estate salesperson, regardless of whether the transaction was for his or her own account or in his or her capacity as broker, associate real estate broker, or real estate salesperson, and may impose any one or more of the following sanctions: Suspend or revoke, levy a fine not to exceed one thousand dollars for each offense, require the completion of a course in a selected area of real estate practice relevant to the section of this chapter or rule violated, or deny the license of any holder or applicant who is guilty of:

(1) Obtaining a license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director;

(2) Violating any of the provisions of this chapter or any lawful rules or regulations made by the director pursuant thereto or violating a provision of chapter 64.36, 19.105, or 58.19 RCW or the rules adopted under those chapters;

(3) Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses: PROVIDED, That for the purposes of this section being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended;

(4) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions or promises purport to be made or to be performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions or promises;

(5) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device whereby any other person lawfully relies upon the word, representation or conduct of the licensee;

(6) Accepting the services of, or continuing in a representative capacity, any associate broker or salesperson who has not been granted a license, or after his or her license has been revoked or during a suspension thereof;

(7) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title, to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within thirty days after the owner thereof is entitled thereto, and

makes demand therefor, shall be prima facie evidence of such conversion;

(8) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book or record in his or her possession for inspection of the director or his or her authorized representatives acting by authority of law;

(9) Continuing to sell any real estate, or operating according to a plan of selling, whereby the interests of the public are endangered, after the director has, by order in writing, stated objections thereto;

(10) Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter;

(11) Advertising in any manner without affixing the broker's name as licensed, and in the case of a salesperson or associate broker, without affixing the name of the broker as licensed for whom or under whom the salesperson or associate broker operates, to the advertisement; except, that a real estate broker, associate real estate broker, or real estate salesperson advertising their personally owned real property must only disclose that they hold a real estate license;

(12) Accepting other than cash or its equivalent as earnest money unless that fact is communicated to the owner prior to his or her acceptance of the offer to purchase, and such fact is shown in the earnest money receipt;

(13) Charging or accepting compensation from more than one party in any one transaction without first making full disclosure in writing of all the facts to all the parties interested in the transaction;

(14) Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal;

(15) Accepting employment or compensation for appraisal of real property contingent upon reporting a predetermined value;

(16) Issuing an appraisal report on any real property in which the broker, associate broker, or salesperson has an interest unless his or her interest is clearly stated in the appraisal report;

(17) Misrepresentation of his or her membership in any state or national real estate association;

(18) Discrimination against any person in hiring or in sales activity, on the basis of race, color, creed or national origin, or violating any of the provisions of any state or federal antidiscrimination law;

(19) Failing to keep an escrow or trustee account of funds deposited with him or her relating to a real estate transaction, for a period of three years, showing to whom paid, and such other pertinent information as the director may require, such records to be available to the director, or his or her representatives, on demand, or upon written notice given to the bank;

(20) Failing to preserve for three years following its consummation records relating to any real estate transaction;

(21) Failing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories thereof at the time of execution;

(22) Acceptance by a branch manager, associate broker, or salesperson of a commission or any valuable consideration for the performance of any acts specified in this chapter, from any person, except the licensed real estate broker with whom he or she is licensed;

(23) To direct any transaction involving his or her principal, to any lending institution for financing or to any escrow company, in expectation of receiving a kickback or rebate therefrom, without first disclosing such expectation to his or her principal;

(24) Buying, selling, or leasing directly, or through a third party, any interest in real property without disclosing in writing that he or she holds a real estate license;

(25) In the case of a broker licensee, failing to exercise adequate supervision over the activities of his or her licensed associate brokers and salespersons within the scope of this chapter;

(26) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness or incompetency;

(27) Acting as a mobile home and travel trailer dealer or salesperson, as defined in RCW 46.70.011 as now or hereafter amended, without having a license to do so;

(28) Failing to assure that the title is transferred under chapter 46.12 RCW when engaging in a transaction involving a mobile home as a broker, associate broker, or salesperson; or

(29) Violation of an order to cease and desist which is issued by the director under this chapter. [1990 c 85 § 1; 1988 c 205 § 5. Prior: 1987 c 370 § 15; 1987 c 332 § 9; 1979 c 25 § 4; prior: 1977 ex.s. c 261 § 1; 1977 ex.s. c 204 § 1; 1972 ex.s. c 139 § 19; 1967 c 22 § 3; 1953 c 235 § 12; 1951 c 222 § 16; 1947 c 203 § 5; 1945 c 111 § 8; 1943 c 118 § 5; 1941 c 252 § 19; Rem. Supp. 1947 § 8340-42; prior: 1925 ex.s. c 129 § 13.]

False advertising: Chapter 9.04 RCW.

Obstructing justice: Chapter 9A.72 RCW.

18.85.240 Disciplinary action—Director's delegation of authority. The director may deputize one or more assistants to perform his or her duties with reference to disciplinary action. [1988 c 205 § 6; 1987 c 332 § 10; 1957 c 52 § 45. Prior: 1945 c 111 § 9, part; 1941 c 252 § 20, part; 1925 ex.s. c 129 § 14, part; Rem. Supp. 1945 § 8340-43, part.]

18.85.251 Disciplinary action—Procedure—Investigation—Hearing. The disciplinary proceedings shall be had on motion of the director or after a statement in writing verified by some person or persons familiar with the facts upon which the proposed disciplinary action is based has been filed with the director. Upon receipt of such statement or accusation, the director shall make a preliminary investigation of the facts charged to determine whether the statement or accusation is sufficient. If the director shall determine the statement or accusation is sufficient to require formal action, the director shall thereupon set the matter for hearing at a specified time and place. A copy of such order setting time and place and a copy of the verified statement shall be served upon the licensee or applicant involved not less than twenty days before the day appointed in the order

for said hearing. The department of licensing, the licensee or applicant accused, and the person making the accusation may be represented by counsel at such a hearing. The director or an administrative law judge appointed under chapter 34.12 RCW shall hear and receive pertinent evidence and testimony. [1988 c 205 § 7; 1987 c 332 § 11; 1981 c 67 § 22; 1951 c 222 § 23.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

18.85.261 Disciplinary action—Hearing—Conduct of. If the licensed person or applicant accused does not appear at the time and place appointed for the hearing in person or by counsel, the hearing officer may proceed and determine the facts of the accusation in his or her absence. The proceedings may be conducted at places within the state convenient to all persons concerned as determined by the director, and may be adjourned from day to day or for longer periods. The hearing officer shall cause a transcript of all such proceedings to be kept by a reporter and shall upon request after completion thereof, furnish a copy of such transcript to the licensed person or applicant accused in such proceedings at the expense of the licensee or applicant. The hearing officer shall certify the transcript of proceedings to be true and correct. If the director finds that the statement or accusation is not proved by a fair preponderance of evidence, the director shall notify the licensee or applicant and the person making the accusation and shall dismiss the case. [1987 c 332 § 12; 1951 c 222 § 24.]

18.85.271 Disciplinary action—Order—Judicial review. If the director shall decide, after such hearing, that the evidence supports the accusation by a preponderance of evidence, the director may impose sanctions authorized under RCW 18.85.040. In such event the director shall enter an order to that effect and shall file the same in his or her office and immediately mail a copy thereof to the affected party at the address of record with the department. Such order shall not be operative for a period of ten days from the date thereof. Any licensee or applicant aggrieved by a final decision by the director in an adjudicative proceeding, whether such decision is affirmative or negative in form, is entitled to a judicial review in the superior court under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. Upon instituting appeal in the superior court, the appellant shall give a cash bond to the state of Washington, which bond shall be filed with the clerk of the court, in the sum of five hundred dollars to be approved by the judge of said court, conditioned to pay all costs that may be awarded against such appellant in the event of an adverse decision, such bond and notice to be filed within thirty days from the date of the director's decision. [1989 c 175 § 66; 1988 c 205 § 8; 1987 c 332 § 13; 1972 ex.s. c 139 § 20; 1951 c 222 § 25.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.85.281 Appeal—As stay of order—Transcript. The filing of such notice and bond shall supersede the order of the director until the final determination of such appeal. The director shall prepare at appellant's expense and shall certify a transcript of the whole record to the director's

office of all matters involved in the appeal, which shall be thereupon delivered by the director to the court in which the appeal is pending. The appellant shall be notified of the filing of the transcript and the cost thereof and shall within fifteen days thereafter pay the cost of said transcript. If the cost is not paid in full within fifteen days the appeal shall be dismissed. [1951 c 222 § 26.]

18.85.290 Failure to perfect appeal or pay expenses terminates stay of proceedings—Further appeal. If said appellant shall fail to perfect his appeal or fail to pay the expense of preparing the transcript as provided herein, said stay of proceedings shall automatically terminate.

An aggrieved party may secure review of a final judgment of the superior court under *this 1972 amendatory act by appeal therefrom. Such appeal shall be taken in the manner provided by law for appeals from the superior court in other civil cases. [1972 ex.s. c 139 § 21; 1971 c 81 § 62; 1957 c 52 § 46; 1951 c 222 § 17. Prior: 1945 c 111 § 9, part; 1941 c 252 § 20, part; Rem. Supp. 1945 § 8340-43, part; prior: 1925 ex.s. c 129 § 14, part.]

*Reviser's note: "This 1972 amendatory act," see note following RCW 18.85.050.

18.85.300 Bonds—Remedy upon—Limit of liability. Every bond given under the provisions of this chapter, after approval by the director, shall be filed in his office. Any person who may be damaged by the wrongful conversion of trust funds by any real estate broker, associate real estate broker, or real estate salesman, shall, in addition to other legal remedies, have a right of action on such bond for all damages not exceeding five thousand dollars against a broker or one thousand dollars against a salesman. The aggregate liability of the surety upon the bond of any real estate broker, associate real estate broker, or real estate salesman for all claims which may arise thereunder shall not exceed the sum specified therein. [1951 c 222 § 18; 1943 c 118 § 3; 1941 c 252 § 17; Rem. Supp. 1943 § 8340-40. Prior: 1925 ex.s. c 129 § 11.]

Embezzlement: Chapter 9A.56 RCW.

18.85.310 Broker's records—Separate accounts—Interest-bearing trust accounts—Disposition of interest. (1) Every licensed real estate broker shall keep adequate records of all real estate transactions handled by or through him. The records shall include, but are not limited to, a copy of the earnest money receipt, and an itemized of the broker's receipts and disbursements with each transaction. These records and all other records hereinafter specified shall be open to inspection by the director or his authorized representatives.

(2) Every real estate broker shall also deliver or cause to be delivered to all parties signing the same, at the time of signing, conformed copies of all earnest money receipts, listing agreements and all other like or similar instruments signed by the parties, including the closing statement.

(3) Every real estate broker shall also keep separate real estate fund accounts in a recognized Washington state depository authorized to receive funds in which shall be kept separate and apart and physically segregated from licensee broker's own funds, all funds or moneys of clients which are

being held by such licensee broker pending the closing of a real estate sale or transaction, or which have been collected for said client and are being held for disbursement for or to said client and such funds shall be deposited not later than the first banking day following receipt thereof.

(4) Separate accounts comprised of clients' funds required to be maintained under this section, with the exception of property management trust accounts, shall be interest-bearing accounts from which withdrawals or transfers can be made without delay, subject only to the notice period which the depository institution is required to reserve by law or regulation.

(5) Every real estate broker shall maintain a pooled interest-bearing escrow account for deposit of client funds, with the exception of property management trust accounts, which are nominal. As used in this section, a "nominal" deposit is a deposit of not more than five thousand dollars.

The interest accruing on this account, net of any reasonable and appropriate financial institution service charges or fees, shall be paid to the state treasurer for deposit in the Washington housing trust fund created in RCW 43.185.030. Appropriate service charges or fees are those charges made by financial institutions on other demand deposit or "now" accounts. An agent may, but shall not be required to, notify the client of the intended use of such funds.

(6) All client funds not required to be deposited in the account specified in subsection (5) of this section shall be deposited in:

(a) A separate interest-bearing trust account for the particular client or client's matter on which the interest will be paid to the client; or

(b) The pooled interest-bearing trust account specified in subsection (5) of this section if the parties to the transaction agree.

The department of licensing shall promulgate regulations which will serve as guidelines in the choice of an account specified in subsection (5) of this section or an account specified in this subsection.

(7) For an account created under subsection (5) of this section, an agent shall direct the depository institution to:

(a) Remit interest or dividends, net of any reasonable and appropriate service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the state treasurer for deposit in the housing trust fund created by RCW 43.185.030 and the real estate commission account created by RCW 18.85.220 as directed by RCW 18.85.315; and

(b) Transmit to the director of community development a statement showing the name of the person or entity for whom the remittance is spent, the rate of interest applied, and the amount of service charges deducted, if any, and the account balance(s) of the period in which the report is made, with a copy of such statement to be transmitted to the depositing person or firm.

(8) The director shall forward a copy of the reports required by subsection (7) of this section to the department of licensing to aid in the enforcement of the requirements of this section consistent with the normal enforcement and auditing practices of the department of licensing.

(9) This section does not relieve any real estate broker from any obligation with respect to the safekeeping of clients' funds.

(10) Any violation by a real estate broker of any of the provisions of this section, or RCW 18.85.230, shall be grounds for revocation of the licenses issued to the broker. [1988 c 286 § 2; 1987 c 513 § 1; 1957 c 52 § 44; 1953 c 235 § 13; 1951 c 222 § 19. Prior: 1947 c 203 § 4, part; 1945 c 111 § 7, part; 1943 c 118 § 4, part; 1941 c 252 § 18, part; Rem. Supp. 1947 § 8340-41, part; prior: 1925 ex.s. c 129 § 12, part.]

Effective date—1987 c 513: "This act shall take effect January 1, 1988." [1987 c 513 § 15.]

Severability—1987 c 513: "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 513 § 13.]

18.85.315 Distribution of interest from brokers' trust accounts. Remittances received by the treasurer pursuant to RCW 18.85.310 shall be divided between the housing trust fund created by RCW 43.185.030, which shall receive seventy-five percent and the real estate commission account created by RCW 18.85.220, which shall receive twenty-five percent. [1987 c 513 § 9.]

Effective date—Severability—1987 c 513: See notes following RCW 18.85.310.

18.85.320 Salespersons, associate brokers—Termination of services. The license of a real estate salesperson or associate real estate broker shall be retained at all times by his or her designated broker and when any real estate salesperson or associate real estate broker ceases to represent his or her broker his or her license shall cease to be in force. Notice of such termination shall be given by the broker to the director and such notice shall be accompanied by and include the surrender of the salesperson's or associate real estate broker's license. Failure of any broker to promptly notify the director of such salesperson's or associate real estate broker's termination after demand by the affected salesperson or associate real estate broker shall work a forfeiture of the broker's license. Upon application of the salesperson or associate real estate broker and the payment of a fee as prescribed by the director by rule, the director shall issue a new license for the unexpired term, if such salesperson or associate real estate broker is otherwise entitled thereto. When a real estate salesperson's or associate real estate broker's services shall be terminated by his or her broker for a violation of any of the provisions of RCW 18.85.230, a written statement of the facts in reference thereto shall be filed forthwith with the director by the broker. [1987 c 332 § 14; 1953 c 235 § 14; 1947 c 203 § 7; 1943 c 118 § 7; 1941 c 252 § 26; Rem. Supp. 1947 § 8340-49. Prior: 1925 ex.s. c 129 § 21.]

18.85.330 Sharing commissions. It shall be unlawful for any licensed broker to pay any part of his commission or other compensation to any person who is not a licensed real estate broker in any state of the United States or its possessions or any province of the Dominion of Canada, or to a real estate salesman not licensed to do business for such broker; or for any licensed salesman to pay any part of his

commission or other compensation to any person, whether licensed or not, except through his broker. [1953 c 235 § 15; 1943 c 118 § 6; 1941 c 252 § 24; Rem. Supp. 1943 § 8340-47.]

18.85.340 Violations—Penalty. Any person acting as a real estate broker, associate real estate broker, or real estate salesman, without a license, or violating any of the provisions of this chapter, shall be guilty of a gross misdemeanor. [1951 c 222 § 20; 1941 c 252 § 23; Rem. Supp. 1941 § 8340-46. Prior: 1925 ex.s. c 129 § 17.]

18.85.343 Violations—Cease and desist orders. (1) The director may issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated a provision of this chapter or a lawful order or rule of the director.

(2) If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, he may issue a temporary cease and desist order. Before issuing the temporary cease and desist order, whenever possible the director shall give notice by telephone or otherwise of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include a provision that a hearing will be held upon request to determine whether or not the order will become permanent.

At the time the temporary cease and desist order is served, the licensee shall be notified that he is entitled to request a hearing for the sole purpose of determining whether or not the public interest imperatively requires that the temporary cease and desist order be continued or modified pending the outcome of the hearing to determine whether or not the order will become permanent. The hearing shall be held within thirty days after the department receives the request for hearing, unless the licensee requests a later hearing. A licensee may secure review of any decision rendered at a temporary cease and desist order review hearing in the same manner as an adjudicative proceeding. [1989 c 175 § 67; 1977 ex.s. c 261 § 2.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.85.345 Attorney general as legal advisor. The attorney general shall render to the director opinions upon all questions of law relating to the construction or interpretation of this chapter, or arising in the administration thereof, that may be submitted to him by the director, and shall act as attorney for the director in all actions and proceedings brought by or against him under or pursuant to any provisions of this chapter. [1941 c 252 § 9; Rem. Supp. 1941 § 8340-32. Prior: 1925 ex.s. c 129 § 8.]

18.85.350 Enforcement provisions. The director may prefer a complaint for violation of any section of this chapter before any court of competent jurisdiction.

The prosecuting attorney of each county shall prosecute any violation of the provisions of this chapter which occurs in his county, and if the prosecuting attorney fails to act, the director may request the attorney general to take action in lieu of the prosecuting attorney.

Process issued by the director shall extend to all parts of the state, and may be served by any person authorized to serve process of courts of record, or may be mailed by registered mail to the licensee's last business address of record in the office of the director.

Whenever the director believes from evidence satisfactory to him that any person has violated any of the provisions of this chapter, or any order, license, decision, demand or requirement, or any part or provision thereof, he may bring an action, in the superior court in the county wherein such person resides, against such person to enjoin any such person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof. In this action an order or judgment may be entered awarding such preliminary or final injunction as may be proper.

The director may petition the superior court in any county in this state for the immediate appointment of a receiver to take over, operate or close any real estate office in this state which is found, upon inspection of its books and records to be operating in violation of the provisions of this chapter, pending a hearing as herein provided. [1967 c 22 § 2; 1957 c 52 § 48; 1953 c 235 § 16. Prior: (i) 1941 c 252 § 21, part; Rem. Supp. 1941 § 8340-44, part. (ii) 1947 c 203 § 6; 1941 c 252 § 22; Rem. Supp. 1947 § 8340-45.]

18.85.360 Witnesses—Depositions—Fees—Subpoenas. The director may administer oaths; certify to all official acts; subpoena and bring before him any person in this state as a witness; compel the production of books and papers; and take the testimony of any person by deposition in the manner prescribed for procedure of the superior courts in civil cases, in any hearing in any part of the state.

Each witness, who appears by order of the director, shall receive for his attendance the fees and mileage allowed to a witness in civil cases in the superior court. Witness fees shall be paid by the party at whose request the witness is subpoenaed.

If a witness, who has not been required to attend at the request of any party, is subpoenaed by the director, his fees and mileage shall be paid from funds appropriated for the use of the real estate department in the same manner as other expenses of the department are paid. [1957 c 52 § 49. Prior: 1941 c 252 § 21, part; Rem. Supp. 1941 § 8340-44, part.]

18.85.400 Multiple listing associations—Entrance requirements. Each real estate multiple listing association shall submit to the real estate commission for approval or disapproval its entrance requirements. No later than sixty days after receipt of the real estate multiple listing associations entrance requirements the commission shall, with the directors approval, approve or disapprove the said entrance requirements. In no event shall the real estate commission approve any entrance requirements which shall be more restrictive on the person applying to join a real estate multiple listing association than the following:

- (1) Require the applicant at the time of application and admission to be a licensed broker under chapter 18.85 RCW;
- (2) Require the applicant, if all members of the real estate multiple listing association are so required, to obtain and maintain a policy of insurance, containing specified

coverage within designated limits protecting members from claims by sellers who have made keys to their premises available to members for access to their properties, against losses arising from damage to or theft of contents of such properties;

(3) Require the applicant to pay an initiation fee computed by dividing an amount equal to five times the book value of the real estate multiple listing association concerned (exclusive of any value for listings and exclusive of all investments not related to the operation of the real estate multiple listing association and exclusive of all real estate), by the number of real estate broker members of said organization: PROVIDED, That in no event shall the initiation fee exceed twenty-five hundred dollars;

(4) Require the applicant for membership to have been:

- (a) A broker in the territory of the real estate multiple listing association for a period of one year; or

- (b) An associate broker with one year's experience in the area of the real estate multiple listing association, who in addition has had one year's experience as a broker in any other area of the state.

(5) Require the applicant to follow any other rules of the association which apply to all the members of such association: PROVIDED, That such other rules do not violate federal or state law: PROVIDED, That nothing in *this 1969 amendatory act shall be construed to limit the authority of any real estate multiple listing association to engage in any activities which are not otherwise prohibited by law. [1969 c 78 § 2.]

*Reviser's note: "This 1969 amendatory act" consists of this section and the 1969 c 78 amendment to RCW 18.85.010.

18.85.450 Land development representative—Issuance of registration—Minimum applicant requirements. The director shall issue a land development representative registration for any applicant, upon application made by the employing real estate broker, on a form provided by the department. The minimum requirements for an individual to be registered as a land development representative are that the applicant shall:

- (1) Be eighteen years of age or older; and
- (2) Furnish such proof as the director may require concerning the applicant's honesty, good reputation, and identification which may include finger prints. [1987 c 332 § 15; 1977 ex.s. c 24 § 6.]

18.85.460 Land development representative—Registration issued to employing broker—Display—Fee—Transferability—Period of validity. The registration for a land development representative shall be issued to and retained by the employing broker and shall be displayed as set forth in this chapter for licenses. A fee as prescribed by the director by rule shall accompany each application for registration. Each registration shall be valid for a period of one year from date of issue or until employment with the broker is terminated, whichever occurs first. No registration may be transferred to another broker, nor may a representative be registered to more than one broker at a time. Upon the termination of employment of any representative the broker shall release and return the registration of that

representative to the department. [1987 c 332 § 16; 1977 ex.s. c 24 § 7.]

18.85.470 Land development representative—Authorized activities—"Land development" defined. (1)

The activity of a land development representative registered with a broker under this chapter shall be restricted to land developments as defined in this section and limited to:

- (a) Disseminating information;
- (b) Contacting prospective purchasers; and
- (c) Transporting prospective purchasers to the land development site.

(2) This section shall not be construed to authorize any representative to:

- (a) Engage in the selling of real estate;
- (b) Negotiate for or bind the broker in any agreement relating to the sale of real estate;
- (c) Receive or handle funds;
- (d) Assist in preparation of documentation attendant upon sale of real estate; or
- (e) Engage in any other conduct or activity specified in any of the definitions under RCW 18.85.010, except as provided by subsection (1) of this section.

(3) The words "land development" as used in this chapter mean land which is divided, for the purpose of disposition, into ten or more parcels on which no residential structure exists at the time it is offered for sale. [1977 ex.s. c 24 § 8.]

18.85.480 Land development representative—Responsibility of employing broker—Violations. Full responsibility for the activities of the land development representative registered under this chapter shall rest with the employing broker. The director may deny, suspend, or revoke the registration of any representative or the license of the employing broker for any violation of this chapter by the representative. [1977 ex.s. c 24 § 9.]

18.85.500 Broker's trust account board. There is hereby created the broker's trust account board to consist of seven members as follows:

(1) The governor shall appoint six members with at least two residing east of the Cascade range of mountains. The governor may review nominations from the Washington association of realtors, private, nonprofit housing assistance programs, and any state-wide association of public housing authorities. Three of these appointments shall be real estate brokers or salespersons licensed under chapter 18.85 RCW. The governor shall attempt to maintain a balance of interests represented through the choice of appointees.

(2) The real estate commission, created under this chapter, shall appoint one member.

(3) Members shall serve for terms of three years expiring on January 15: PROVIDED, HOWEVER, That of the members appointed by the governor, two shall be appointed for a term of one year, two for a term of two years, and two for a term of three years. Any vacancy occurring in the membership of the board shall be filled for the remainder of the unexpired term by the individual or entity responsible for the original appointment.

Members shall serve without compensation. [1987 c 513 § 8.]

Effective date—Severability—1987 c 513: See notes following RCW 18.85.310.

18.85.900 Severability—1941 c 252. If any section, subdivision, sentence or clause in this act shall be held invalid or unconstitutional, such fact shall not affect the validity of the remaining portions of this act. [1941 c 252 § 28.]

18.85.910 Severability—1951 c 222. The provisions of this act are to be severable and if any section, subdivision or clause of this act shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of the act. [1951 c 222 § 27.]

18.85.920 Severability—1972 ex.s. c 139. The provisions of this 1972 amendatory act are to be severable and if any section, subdivision, or clause of this act shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of the act. [1972 ex.s. c 139 § 22.]

Chapter 18.88

REGISTERED NURSES

Sections

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Practical nurses: Chapter 18.78 RCW.

Privileged communications for registered nurses: Chapter 5.62 RCW.

18.88.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.88.010 Statement of policy. In order to safeguard life, health and to promote public welfare, any person practicing or offering to practice nursing as a registered nurse in this state shall hereafter be required to submit evidence that he or she is qualified so to practice, and shall be licensed as hereinafter provided. The registered nurse is directly accountable and responsible to the individual consumer for the quality of nursing care rendered. [1973 c 133 § 1; 1949 c 202 § 1; Rem. Supp. 1949 § 10173-1.]

Severability—1973 c 133: "If any provision of this 1973 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." [1973 c 133 § 31.]

18.88.020 Licensing required. After the first day of July, 1949, it shall be unlawful for any person to practice or to offer to practice as a registered nurse in this state or to use any title, sign or device to indicate that such a person is practicing as a registered nurse unless such person has been duly licensed and registered under the provisions of this chapter. [1973 c 133 § 2; 1949 c 202 § 2; Rem. Supp. 1949 § 10173-2. Prior: 1909 c 41 § 1.]

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.030 Definitions—Construction—Exceptions. Whenever used in this chapter, terms defined in this section shall have the meanings herein specified unless the context clearly indicates otherwise.

The practice of nursing means the performance of acts requiring substantial specialized knowledge, judgment and skill based upon the principles of the biological, physiological, behavioral and sociological sciences in either:

(1) The observation, assessment, diagnosis, care or counsel, and health teaching of the ill, injured or infirm, or in the maintenance of health or prevention of illness of others.

(2) The performance of such additional acts requiring education and training and which are recognized jointly by the medical and nursing professions as proper to be performed by nurses licensed under this chapter and which shall be authorized by the board of nursing through its rules and regulations.

(3) The administration, supervision, delegation and evaluation of nursing practice: PROVIDED, HOWEVER, That nothing herein shall affect the authority of any hospital, hospital district, medical clinic or office, concerning its administration and supervision.

(4) The teaching of nursing.

(5) The executing of medical regimen as prescribed by a licensed physician, osteopathic physician, dentist, or *podiatrist.

Nothing in this chapter shall be construed as prohibiting any person from practicing any profession for which a license shall have been issued under the laws of this state or specifically authorized by any other law of the state of Washington.

This chapter shall not be construed as prohibiting the nursing care of the sick, without compensation, by any unlicensed person who does not hold herself or himself out to be a registered nurse, and further, this chapter shall not be construed as prohibiting the practice of practical nursing by any practical nurse, with or without compensation in either homes or hospitals.

The word "board" means the Washington state board of nursing.

The term "department" means the department of health.

The word "diagnosis", in the context of nursing practice, means the identification of, and discrimination between, the person's physical and psycho-social signs and symptoms which are essential to effective execution and management of the nursing care regimen.

The term "diploma" means written official verification of completion of an approved nursing education program.

The term "secretary" means the secretary of health or the secretary's designee.

The terms "nurse" or "nursing" wherever they occur in this chapter, unless otherwise specified, for the purposes of this chapter shall mean a registered nurse or registered nursing. [1991 c 3 § 213; 1989 c 114 § 1; 1979 c 158 § 69; 1973 c 133 § 3; 1961 c 288 § 1; 1949 c 202 § 4; Rem. Supp. 1949 § 10173-3. Prior: 1909 c 41 § 10.]

***Reviser's note:** The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.050 State board of nursing—Members—Terms. The state board of nursing shall consist of seven members to be appointed by the governor. All appointments shall be for terms of five years. No person shall serve as a member of the board for more than two consecutive terms.

The governor may remove any member from the board for neglect of any duty required by law, or for incompetency or unprofessional conduct as defined in chapter 18.130 RCW. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor as herein provided. [1989 c 114 § 2; 1973 c 133 § 4; 1949 c 202 § 5; Rem. Supp. 1949 § 10173-4. Prior: 1909 c 41 § 2.]

Severability—1973 c 133: See note following RCW 18.88.010.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.88.060 Qualifications of board members. There shall be six nurse members and one public member on the board.

Each member of the board shall be a citizen of the United States and a resident of this state.

(1) Nurse members of the board shall be:

(a) Licensed as registered nurses under the provisions of this chapter.

(b) Have had at least five years experience in the active practice of nursing and shall have been engaged in practice within two years of appointment.

(2) The public member shall not be or have been a member of any other licensing board, nor a licensee of any health occupation board, an employee of any health facility, nor derive his primary livelihood from the provision of health services at any level of responsibility. [1973 c 133 § 5; 1961 c 288 § 3; 1949 c 202 § 6; Rem. Supp. 1949 § 10173-5. Prior: 1923 c 150 § 3; 1909 c 41 § 2.]

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.070 Meetings of board. The board shall annually elect from among its members a chairperson and a vice-chairperson. The board shall meet at least quarterly at times and places it designates. It shall hold such other meetings during the year as may be deemed necessary to transact its business. A majority of the board shall constitute a quorum at any meeting. All meetings of the board shall be open and public except the board may hold executive sessions to the extent permitted by chapter 42.30 RCW. [1989 c 114 § 3; 1973 c 133 § 6; 1949 c 202 § 7; Rem. Supp. 1949 § 10173-6. Prior: 1909 c 41 § 3.]

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.080 Powers and duties of board—Compensation and travel expenses of members. The board may adopt such rules not inconsistent with the law, as may be necessary to enable it to carry into effect the provisions of this chapter. The board shall approve curricula and shall establish criteria for minimum standards for schools preparing persons for licensure under this chapter. It shall keep a record of all its proceedings and make such reports to the governor as may be required. The board shall define by rules what constitutes specialized and advanced levels of nursing practice as recognized by the medical and nursing professions. The board may adopt rules or issue advisory opinions in response to questions put to it by professional health associations, nursing practitioners, and consumers in this state concerning the authority of various categories of nursing practitioners to perform particular acts.

The board shall approve such schools of nursing as meet the requirements of this chapter and the board, and the board shall approve establishment of basic nursing education programs and shall establish criteria as to the need for and the size of a program and the type of program and the geographical location. The board shall establish criteria for proof of reasonable currency of knowledge and skill as a basis for safe practice after three years inactive or lapsed status. The board shall establish criteria for licensure by endorsement. The board shall examine all applications for registration under this chapter, and shall certify to the secretary for licensing duly qualified applicants.

The department shall furnish to the board such secretarial, clerical and other assistance as may be necessary to effectively administer the provisions of this chapter. Each member of the board shall, in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060 while away from home, be compensated in accordance with RCW

43.03.240. [1991 c 3 § 214; 1988 c 211 § 8; 1984 c 287 § 50; 1977 c 75 § 12; 1975-'76 2nd ex.s. c 34 § 50; 1973 c 133 § 7; 1961 c 288 § 4; 1949 c 202 § 8; Rem. Supp. 1949 § 10173-7. Prior: 1933 c 180 § 1; 1923 c 150 § 1; 1913 c 81 § 1; 1909 c 41 § 3.]

Legislative declaration—1988 c 211: "The legislature recognizes the need to increase the pool of available nursing resources to meet new demands on the health care delivery system. The more complex nature of illnesses, constraints on reimbursement pressuring accelerated treatment and earlier patient discharge, the explosion of technology, and the parameters established by third-party payers requiring intense monitoring, may be diverting nurses from the bedside into early burnout, retirement, or employment elsewhere.

The state's nursing educational program, encompassing nursing assistants, licensed practical nurses, and licensed (registered) nurses should be better articulated for career mobility in order to make the nursing profession more attractive to individuals and for retaining qualified nurses in the health care delivery system. Barriers to licensure and employment should be eliminated to increase the number of nurses available for patient care.

The legislature declares this act is in the interest of the public health, safety, and welfare." [1988 c 211 § 1.]

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.

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.086 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 57; 1986 c 259 § 135.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.88.090 Executive secretary—Assistants—Employees—Compensation, travel expenses. The secretary shall appoint, after consultation with the board, an executive secretary who shall act to carry out the provisions of this chapter. The secretary shall also employ such assistants licensed under the provisions of this chapter as shall be necessary to carry out the provisions of this chapter. The secretary shall fix the compensation and provide for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for such appointee and all such employees. [1991 c 3 § 215; 1975-'76 2nd ex.s. c 34 § 51; 1973 c 133 § 8; 1961 c 288 § 5; 1949 c 202 § 9; Rem. Supp. 1949 § 10173-8.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.100 Qualifications of executive secretary. The executive secretary shall be a graduate of an approved nursing education program and of a college and/or university, with a masters degree, and currently licensed under the provisions of this chapter; shall have a minimum of at least eight years experience in nursing in any combination of administration and nursing education; and shall have been actively engaged in practice of nursing or nursing education within two years immediately prior to the time of appointment. [1973 c 133 § 9; 1961 c 288 § 6; 1949 c 202 § 10; Rem. Supp. 1949 § 10173-8a.]

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.110 Approval of nursing schools. An institution desiring to conduct a school of professional nursing shall apply to the board and submit evidence that:

(1) It is prepared to carry out the approved basic professional nursing curriculum, and

(2) It is prepared to meet other standards established by this law and by the board. Surveys of the schools and institutions and agencies to be used by the schools shall be made as determined by the board. If, in the opinion of the board, the requirements for an approved school of nursing are met, such school shall be approved. [1973 c 133 § 10; 1949 c 202 § 11; Rem. Supp. 1949 § 10173-9.]

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.120 Periodic survey of schools. From time to time as deemed necessary by the board, it shall be its duty to survey all schools of nursing in the state. Written reports of such survey shall be reviewed by the board. If the board determines that any approved school of nursing is not maintaining the standards required by the statutes and by the board, notice thereof in writing, specifying the defect or defects shall be given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall, upon due notice to the school, be removed from the list of approved schools of nursing to be maintained by the department. [1973 c 133 § 11; 1949 c 202 § 12; Rem. Supp. 1949 § 10173-10.]

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.130 Qualifications of applicants for license.

An applicant for a license to practice as a registered nurse shall submit to the board (1) an attested written application on department form; (2) written official evidence of diploma from an approved school of nursing; and (3) any other official records specified by the board. The applicant at the time of such submission shall not be in violation of chapter 18.130 RCW or any provision of this chapter.

The board, by regulation, shall establish criteria for evaluating the education of all applicants. [1989 c 114 § 4; 1973 c 133 § 12; 1961 c 288 § 7; 1949 c 202 § 13; Rem. Supp. 1949 § 10173-11. Prior: 1933 c 180 § 2; 1923 c 150 § 2; 1909 c 41 § 4.]

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.140 Examinations—Permits to practice. The applicant shall be required to pass a written examination in such subjects as the board shall determine. Each written examination may be supplemented by an oral or practical examination. The board shall establish the standards for passing.

Upon approval by the board, the department shall issue an interim permit authorizing the applicant to practice nursing pending notification of the results of the first licensing examination following verification of diploma from an approved school of nursing. Upon the applicant passing the examination, the department shall issue to the applicant a license to practice as a registered nurse. If the applicant fails the examination, the interim permit expires upon notification and is not renewable. The board shall establish,

by rule and regulation, the requirements necessary to qualify for reexamination of applicants who have failed. [1989 c 114 § 5; 1973 c 133 § 13; 1961 c 288 § 8; 1949 c 202 § 14; Rem. Supp. 1949 § 10173-12. Prior: 1933 c 180 § 2; 1923 c 150 § 2; 1909 c 41 § 4.]

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.150 Reciprocity. Upon board approval of the application, the department shall issue a license by endorsement to practice nursing as a registered nurse without examination to an applicant who is duly licensed as a registered nurse by examination under the laws of another state, territory or possession of the United States and who meets all other qualifications for licensure.

An applicant graduated from a school of nursing outside the United States and licensed by a country outside the United States shall meet all qualifications required by this chapter and by the board and shall pass examinations as determined by the board. [1989 c 114 § 6; 1988 c 211 § 5; 1973 c 133 § 14; 1961 c 288 § 9; 1949 c 202 § 15; Rem. Supp. 1949 § 10173-13. Prior: 1909 c 41 § 9.]

Legislative declaration—1988 c 211: See note following RCW 18.88.080.

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.160 License fee. Each applicant for a license to practice as a registered nurse or a specialized or advanced registered nurse shall pay a fee determined by the secretary as provided in RCW 43.70.250 to the state treasurer. [1991 c 3 § 216; 1985 c 7 § 68; 1975 1st ex.s. c 30 § 77; 1973 c 133 § 15; 1961 c 288 § 10; 1949 c 202 § 16; Rem. Supp. 1949 § 10173-14.]

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.170 Use of nomenclature. Any person who holds a license to practice as a registered nurse in this state shall have the right to use the title "registered nurse" and the abbreviation "R.N.". No other person shall assume such title or use such abbreviation or any other words, letters, signs or figures to indicate that the person using same is a registered nurse. [1973 c 133 § 16; 1949 c 202 § 17; Rem. Supp. 1949 § 10173-15.]

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.175 Advanced registered nurse practitioner. Upon approval by the board and following verification of satisfactory completion of an advanced formal education, the department of health shall issue an interim permit authorizing the applicant to practice specialized and advanced nursing practice pending notification of the results of the first certification examination. If the applicant passes the examination, the department shall grant advanced registered nurse practitioner status. If the applicant fails the examination, the interim permit shall expire upon notification and is not renewable. The holder of the interim permit is subject to chapter 18.130 RCW. [1991 c 3 § 217; 1988 c 211 § 13.]

Legislative declaration—1988 c 211: See note following RCW 18.88.080.

18.88.190 Renewal of licenses—Fee. Every license issued under the provisions of this chapter, whether in an

active or inactive status, shall be renewed, except as herein-after provided. At least thirty days prior to expiration, the secretary shall mail a notice for renewal of license to every person licensed for the current licensing period. The applicant shall return the notice to the department with a renewal fee determined by the secretary as provided in RCW 43.70.250 before the expiration date. Upon receipt of the notice and appropriate fee, the department shall issue to the applicant a license which shall render the holder thereof a legal practitioner of nursing in either active or inactive status for the period stated on the license. [1991 c 3 § 218; 1988 c 211 § 9; 1985 c 7 § 69; 1979 ex.s. c 106 § 1; 1975 1st ex.s. c 30 § 78; 1973 c 133 § 18; 1971 ex.s. c 266 § 18; 1961 c 288 § 11; 1949 c 202 § 19; Rem. Supp. 1949 § 10173-17. Prior: 1933 c 180 § 1; 1909 c 41 § 3.]

Legislative declaration—1988 c 211: See note following RCW 18.88.080.

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.200 Penalty for failure to renew. Any licensee who allows his or her license to lapse by failing to renew the license, shall upon application for renewal pay a penalty determined by the secretary as provided in RCW 43.70.250. If the applicant fails to renew the license before the end of the current licensing period, the license shall be issued for the next licensing period by the department upon written application and fee determined by the secretary as provided in RCW 43.70.250. Persons on lapsed status for three or more years must provide evidence of knowledge and skill of current practice as required by the board. [1991 c 3 § 219; 1988 c 211 § 10; 1985 c 7 § 70; 1975 1st ex.s. c 30 § 79; 1973 c 133 § 19; 1961 c 288 § 12; 1949 c 202 § 20; Rem. Supp. 1949 § 10173-18. Prior: 1933 c 180 § 1.]

Legislative declaration—1988 c 211: See note following RCW 18.88.080.

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.220 Temporary retirement—Evidence of knowledge and skill after inactive status for three or more years. A person licensed under the provisions of this chapter desiring to retire temporarily from the practice of nursing in this state shall send a written notice to the secretary.

Upon receipt of such notice the name of such person shall be placed on inactive status. While remaining on this status the person shall not practice nursing in the state as provided in this chapter. When such person desires to resume practice, application for renewal of license shall be made to the board and renewal fee payable to the state treasurer. Persons on inactive status for three years or more must provide evidence of knowledge and skill of current practice as required by the board or as hereinafter in this chapter provided. [1991 c 3 § 220; 1988 c 211 § 11; 1973 c 133 § 20; 1949 c 202 § 22; Rem. Supp. 1949 § 10173-20. Prior: 1933 c 180 § 1.]

Legislative declaration—1988 c 211: See note following RCW 18.88.080.

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.270 Violations—Penalty. It shall be a gross misdemeanor for any person to:

(1) Sell or fraudulently obtain or furnish any nursing diploma, license, record or registration, or aid or abet therein;

(2) Practice nursing as defined by this chapter under cover of any diploma, license, record or registration illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation or mistake of fact in a material regard; or

(3) Otherwise violate any of the provisions of this chapter. [1986 c 259 § 136; 1973 c 133 § 26; 1949 c 202 § 27; Rem. Supp. 1949 § 10173-25.]

Savings—1986 c 259 §§ 136, 137: "The repeal of RCW 18.88.230 and the amendment of RCW 18.88.270 by this act shall not be construed as affecting any rights and duties which matured, penalties which were incurred, and proceedings which were begun before June 11, 1986." [1986 c 259 § 138.]

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.280 Excepted activities—Limitation of practice. This chapter shall not be construed as (1) prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers, so long as they do not practice professional nursing within the meaning of this chapter, (2) or preventing any person from the domestic administration of family remedies or the furnishing of nursing assistance in case of emergency; (3) nor shall it be construed as prohibiting such practice of nursing by students enrolled in approved schools as may be incidental to their course of study nor shall it prohibit such students working as nursing aides; (4) nor shall it be construed as prohibiting auxiliary services provided by persons carrying out duties necessary for the support of nursing service including those duties which involve minor nursing services for persons performed in hospitals, nursing homes or elsewhere under the direction of licensed physicians or the supervision of licensed, registered nurses; (5) nor shall it be construed as prohibiting or preventing the practice of nursing in this state by any legally qualified nurse of another state or territory whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six months in length, if such person does not represent or hold himself or herself out as a nurse licensed to practice in this state; (6) nor shall it be construed as prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any church by adherents thereof so long as they do not engage in the practice of nursing as defined in this chapter; (7) nor shall it be construed as prohibiting the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of his or her official duties; (8) permitting the measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses or frames for the aid thereof; (9) permitting the prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training or orthoptics; (10) permitting the prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the

human eye; (11) prohibiting the performance of routine visual screening; (12) permitting the practice of dentistry or dental hygiene as defined in chapters 18.32 and 18.29 RCW respectively; (13) permitting the practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulations of the spine; (14) permitting the practice of *podiatry as defined in chapter 18.22 RCW; (15) permitting the performance of major surgery, except such minor surgery as the board may have specifically authorized by rule or regulation duly adopted in accordance with the provisions of chapter 34.05 RCW; (16) permitting the prescribing of controlled substances as defined in schedules I through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW; (17) prohibiting the determination and pronouncement of death. [1989 c 114 § 7; 1988 c 37 § 1; 1973 c 133 § 27; 1961 c 288 § 13; 1949 c 202 § 28; Rem. Supp. 1949 § 10173-26.]

***Reviser's note:** The term "podiatry" was changed to "podiatric medicine and surgery" by 1990 c 147.

Severability—1973 c 133: See note following RCW 18.88.010.
Exceptions from chapter: RCW 18.88.030.

18.88.285 Acts which may be performed only by licensed registered nurse—Exception. A registered nurse under her or his license may perform for compensation nursing care (as that term is usually understood) of the ill, injured or infirm, and in the course thereof, she or he is authorized to do the following things which shall not be done by any person not so licensed, except as provided in RCW 18.78.182:

(1) At or under the general direction of a licensed physician, dentist, osteopath or *podiatrist (acting within the scope of his or her license) to administer medications, treatments, tests and inoculations, whether or not the severing or penetrating of tissues is involved and whether or not a degree of independent judgment and skill is required.

(2) To delegate to other persons engaged in nursing, the functions outlined in the preceding paragraph.

(3) To perform specialized and advanced levels of nursing as defined by the board.

(4) To instruct students of nursing in technical subjects pertaining to nursing.

(5) To hold herself or himself out to the public or designate herself or himself as a registered nurse or nurse. [1989 c 114 § 8; 1973 c 133 § 28; 1967 c 79 § 9; 1961 c 288 § 14.]

***Reviser's note:** The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.290 Supervised treatment authorized. It shall not be a violation of chapter 18.71 RCW, or chapter 18.57 RCW, for a registered nurse, at or under the general direction of a licensed practitioner of medicine and surgery, osteopathy, or osteopathy and surgery (within the scope of his license), to administer prescribed drugs, injections, inoculations, tests, or treatment whether or not piercing of tissues is involved. [1955 c 62 § 1.]

18.88.295 Catheterization of public and private school students. (1) In accordance with rules adopted by

the state board of nursing, public school districts and private schools that offer classes for any of grades kindergarten through twelve may provide for clean, intermittent bladder catheterization of students or assisted self-catheterization of students who are in the custody of the school district or private school at the time. The state board of nursing shall adopt rules in accordance with chapter 34.05 RCW, following consultation with staff of the superintendent of public instruction and the state board of practical nursing, which provide for the following and such other matters as the board deems necessary to the proper implementation of this section:

(a) A requirement for a written, current, and unexpired request from a parent, legal guardian, or other person having legal control over the student that the school district or private school provide for the catheterization of the student;

(b) A requirement for a written, current, and unexpired request from a physician licensed under chapter 18.57 or 18.71 RCW that catheterization of the student be provided for during the hours when school is in session or the hours when the student is under the supervision of school officials;

(c) A requirement for written, current, and unexpired instructions from a registered nurse licensed under chapter 18.88 RCW regarding catheterization which include (i) a designation of the school district or private school employee or employees who may provide for the catheterization, and (ii) a description of the nature and extent of any required supervision; and

(d) The nature and extent of acceptable training that shall (i) be provided by a physician or nurse licensed pursuant to chapter 18.57, 18.71, 18.78, or 18.88 RCW, and (ii) be required of school district and private school employees who provide for the catheterization of a student pursuant to this section, except that a practical nurse licensed pursuant to chapter 18.78 RCW shall be exempt from training.

(2) This section does not require school districts to provide intermittent bladder catheterization of students. [1988 c 48 § 1.]

18.88.300 Rules and regulations. The department, subject to chapter 34.05 RCW, the Washington Administrative Procedure Act may adopt such reasonable rules and regulations as may be necessary to carry out the duties herein imposed upon it in the administration of this chapter. [1973 c 133 § 29.]

Severability—1973 c 133: See note following RCW 18.88.010.

18.88.900 Severability—1949 c 202. Should any section of this chapter, or any portion of any section, be for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. [1949 c 202 § 29.]

Chapter 18.88A NURSING ASSISTANTS

Sections

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18.88A.010 Legislative declaration. The legislature takes special note of the contributions made by nursing assistants in health care facilities whose tasks are arduous and whose working conditions may be contributing to the high and often critical turnover among the principal cadre of health care workers who provide for the basic needs of patients. The legislature also recognizes the growing shortage of nurses as the proportion of the elderly population grows and as the acuity of patients in hospitals and nursing homes becomes generally more severe.

The legislature finds and declares that occupational nursing assistants should have a formal system of educational and experiential qualifications leading to career mobility and advancement. The establishment of such a system should bring about a more stabilized work force in health care facilities, as well as provide a valuable resource for recruitment into licensed nursing practice.

The legislature finds that the quality of patient care in health care facilities is dependent upon the competence of the personnel who staff their facilities. To assure the availability of trained personnel in health care facilities the legislature recognizes the need for training programs for nursing assistants.

The legislature declares that the registration of nursing assistants and providing for voluntary certification of those who wish to seek higher levels of qualification is in the interest of the public health, safety, and welfare. [1991 c 16 § 1; 1989 c 300 § 3; 1988 c 267 § 1. Formerly RCW 18.52B.010.]

18.88A.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Department" means the department of health.
- (2) "Secretary" means the secretary of health.
- (3) "Board" means the Washington state board of nursing.
- (4) "Nursing assistant" means an individual, regardless of title, who, under the direction and supervision of a registered nurse or licensed practical nurse, assists in the delivery of nursing and nursing-related activities to patients in a health care facility. The two levels of nursing assistants are (a) "nursing assistant-certified," an individual certified under this chapter, (b) "nursing assistant-registered," an individual registered under this chapter.
- (5) "Committee" means the Washington state nursing assistant advisory committee.
- (6) "Approved training program" means a nursing assistant-certified training program approved by the board.

For community college, vocational-technical institutes, skill centers, and secondary school as defined in chapter 28B.50 RCW, nursing assistant-certified training programs shall be approved by the board in cooperation with the *board for community college education or the superintendent of public instruction.

(7) "Health care facility" means a nursing home, hospital, hospice care facility, home health care agency, hospice agency, or other entity for delivery of health care services as defined by the board.

(8) "Competency evaluation" means the measurement of an individual's knowledge and skills as related to safe, competent performance as a nursing assistant. [1991 c 16 § 2; (1991 c 3 § 221 repealed by 1991 sp.s. c 11 § 2); 1989 c 300 § 4; 1988 c 267 § 2. Formerly RCW 18.52B.020.]

***Reviser's note:** The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

18.88A.030 Scope of practice—Voluntary certification—Rules. (1) A nursing assistant may assist in the care of individuals as delegated by and under the direction and supervision of a licensed (registered) nurse or licensed practical nurse.

(2) A health care facility shall not assign a nursing assistant-registered to provide care until the nursing assistant-registered has demonstrated skills necessary to perform competently all assigned duties and responsibilities.

(3) Nothing in this chapter shall be construed to confer on a nursing assistant the authority to administer medication or to practice as a licensed (registered) nurse as defined in chapter 18.88 RCW or licensed practical nurse as defined in chapter 18.78 RCW.

(4) Certification is voluntary for nursing assistants working in health care facilities other than nursing homes unless otherwise required by state or federal law or regulation.

(5) The board of nursing shall have the authority to adopt rules to implement the provisions of this chapter. [1991 c 16 § 3; 1989 c 300 § 5; 1988 c 267 § 3. Formerly RCW 18.52B.030.]

18.88A.040 Registration and certification. (1) No person may practice or represent himself or herself as a nursing assistant-registered by use of any title or description without being registered by the department pursuant to this chapter.

(2) After October 1, 1990, no person may by use of any title or description, practice or represent himself or herself as a nursing assistant-certified without applying for certification, meeting the qualifications, and being certified by the department pursuant to this chapter. [1991 c 16 § 4; 1989 c 300 § 6; 1988 c 267 § 4. Formerly RCW 18.52B.040.]

18.88A.050 Powers of secretary. In addition to any other authority provided by law, the secretary has the authority to:

- (1) Set all certification, registration, and renewal fees in accordance with RCW 43.70.250 and to collect and deposit all such fees in the health professions account established under RCW 43.70.320;

(2) Establish forms, procedures, and examinations necessary to administer this chapter;

(3) Hire clerical, administrative, and investigative staff as needed to implement this chapter;

(4) Issue a registration to any applicant who has met the requirements for registration;

(5) After January 1, 1990, issue a certificate to any applicant who has met the education, training, and conduct requirements for certification;

(6) Maintain the official record for the department of all applicants and persons with registrations and certificates;

(7) Exercise disciplinary authority as authorized in chapter 18.130 RCW;

(8) Deny registration to any applicant who fails to meet requirement for registration;

(9) Deny certification to applicants who do not meet the education, training, competency evaluation, and conduct requirements for certification. [1991 c 16 § 6; (1991 c 3 § 222 repealed by 1991 sp.s. c 11 § 2); 1989 c 300 § 7; 1988 c 267 § 6. Formerly RCW 18.52B.060.]

18.88A.060 Powers of state board of nursing. In addition to any other authority provided by law, the state board of nursing has the authority to:

(1) Determine minimum education requirements and approve training programs;

(2) Prepare, grade, and administer, or determine the nature of, and supervise the grading and administration of, examinations of training and competency for applicants for certification;

(3) Determine whether alternative methods of training are equivalent to approved training programs, and establish forms, procedures, and criteria for evaluation of an applicant's alternative training to determine the applicant's eligibility to take any qualifying examination for certification;

(4) Define and approve any experience requirement for certification;

(5) Adopt rules implementing a continuing competency evaluation program;

(6) Adopt rules to enable it to carry into effect the provisions of this chapter. [1991 c 16 § 8; 1989 c 300 § 8; 1988 c 267 § 7. Formerly RCW 18.52B.070.]

18.88A.070 Advisory committee. (1) The secretary has the authority to appoint an advisory committee to the state board of nursing and the department to further the purposes of this chapter. The committee shall be composed of ten members, two members initially appointed for a term of one year, three for a term of two years, and four for a term of three years. Subsequent appointments shall be for terms of three years. No person may serve as a member of the committee for more than two consecutive terms. The committee shall consist of: A nursing assistant certified under this chapter, a representative of nursing homes, a representative of the office of the superintendent of public instruction, a representative of the *state board for community college education, a representative of the department of social and health services responsible for aging and adult services in nursing homes, a consumer of nursing assistant services who shall not be or have been a member of any

other licensing board or committee; nor a licensee of any health occupation board, an employee of any health care facility, nor derive primary livelihood from the provision of health services at any level of responsibility, a representative of an acute care hospital, a representative of home health care, and one member who is a licensed (registered) nurse and one member who is a licensed practical nurse.

(2) The secretary may remove any member of the advisory committee for cause as specified by rule. In the case of a vacancy, the secretary shall appoint a person to serve for the remainder of the unexpired term.

(3) The advisory committee shall meet at the times and places designated by the secretary or the board and shall hold meetings during the year as necessary to provide advice to the secretary. [1991 c 16 § 9; 1991 c 3 § 223; 1989 c 300 § 9; 1988 c 267 § 9. Formerly RCW 18.52B.090.]

Reviser's note: (1) This section was amended by 1991 c 3 § 223 and by 1991 c 16 § 9, 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) The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

18.88A.080 Registration requirements. (1) The secretary shall issue a registration to any applicant who pays any applicable fees and submits, on forms provided by the secretary, the applicant's name, address, and other information as determined by the secretary, provided there are no grounds for denial of registration or issuance of a conditional registration under this chapter or chapter 18.130 RCW.

(2) Applicants must file an application with the board for registration within three days of employment. [1991 c 16 § 10; (1991 c 3 § 224 repealed by 1991 sp.s. c 11 § 2); 1989 c 300 § 10; 1988 c 267 § 10. Formerly RCW 18.52B.100.]

18.88A.085 Certification of requirements. (1) After January 1, 1990, the secretary shall issue a certificate to any applicant who demonstrates to the secretary's satisfaction that the following requirements have been met:

(a) Completion of an approved training program or successful completion of alternate training meeting established criteria approved by the board; and

(b) Successful completion of a competency evaluation.

(2) In addition, applicants shall be subject to the grounds for denial of certification under chapter 18.130 RCW. [1991 c 16 § 11.]

18.88A.090 Examinations. (1) The date and location of examinations shall be established by the secretary. Applicants who have been found by the secretary to meet the requirements for certification shall be scheduled for the next examination following the filing of the application. The secretary shall establish by rule the examination application deadline.

(2) The board shall examine each applicant, by a written or oral and a manual component of competency evaluation. Examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) The examination papers, all grading of the papers, and the grading of skills demonstration shall be preserved for

a period of not less than one year after the board has made and published the decisions. All examinations shall be conducted under fair and wholly impartial methods.

(4) Any applicant failing to make the required grade in the first examination may take up to three subsequent examinations as the applicant desires upon prepaying a fee determined by the secretary under RCW 43.70.250 for each subsequent examination. Upon failing four examinations, the secretary may invalidate the original application and require such remedial education before the person may take future examinations.

(5) The board may approve an examination prepared or administered by a private testing agency or association of licensing agencies for use by an applicant in meeting the credentialing requirements. [1991 c 3 § 225; 1989 c 300 § 11; 1988 c 267 § 13. Formerly RCW 18.52B.130.]

18.88A.100 Waiver of examination for initial applications. The secretary shall waive the competency evaluation and certify a person to practice within the state of Washington if the board determines that the person meets commonly accepted standards of education and experience for the nursing assistants. This section applies only to those individuals who file an application for waiver by December 31, 1991. [1991 c 16 § 12; 1991 c 3 § 226; 1989 c 300 § 12; 1988 c 267 § 15. Formerly RCW 18.52B.140.]

Reviser's note: This section was amended by 1991 c 3 § 226 and by 1991 c 16 § 12, 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).

18.88A.110 Certificates for applicants holding a credential from another state. An applicant holding a credential in another state may be certified by endorsement to practice in this state without examination if the secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1991 c 16 § 13.]

18.88A.120 Applications for registration and certification—Fee. Applications for registration and certification shall be submitted on forms provided by the secretary. The secretary may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria for registration and certification credentialing provided for in this chapter and chapter 18.120 RCW. Each applicant shall pay a fee determined by the secretary under RCW 43.70.250. The fee shall accompany the application. [1991 c 16 § 14.]

18.88A.130 Renewal of registration or certification. The secretary shall establish by rule the procedural requirements and fees for renewal of a registration or certificate. Failure to renew shall invalidate the credential and all privileges granted by the credential. If a certificate has lapsed for a period longer than three years, the person shall demonstrate competence to the satisfaction of the board by taking continuing education courses, or meeting other standards determined by the board. [1991 c 16 § 15.]

18.88A.140 Exemptions. Nothing in this chapter may be construed to prohibit or restrict:

(1) The practice by an individual licensed, certified, or registered under the laws of this state and performing services within their authorized scope of practice;

(2) The practice by an individual employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States;

(3) The practice by a person who is a regular student in an educational program approved by the secretary, and whose performance of services [is] pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor. [1991 c 16 § 5.]

18.88A.150 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unregistered or uncertified practice, issuance of certificates and registrations, and the discipline of persons registered or with certificates under this chapter. The secretary shall be the disciplinary authority under this chapter. [1991 c 16 § 7.]

18.88A.900 Severability—1991 c 16. 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 16 § 17.]

Chapter 18.89

RESPIRATORY CARE PRACTITIONERS

Sections

18.89.010	Legislative findings—Insurance coverage not mandated.
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18.89.900	Effective date of RCW 18.89.030—Application of chapter to rural hospitals.
18.89.901	Severability—1987 c 415.

Regulation of health professions—Criteria: Chapter 18.120 RCW.

18.89.010 Legislative findings—Insurance coverage not mandated. The legislature finds that it is necessary to regulate the practice of respiratory care at the level of certification in order to protect the public health and safety. The settings for these services may include, health facilities licensed in this state, clinics, home health agencies, physicians' offices, and public or community health services. Nothing in this chapter shall be construed to require that individual or group policies or contracts of an insurance

carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person certified under this chapter. [1987 c 415 § 1.]

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

(1) "Advisory committee" means the Washington state advisory respiratory care committee.

(2) "Department" means the department of health.

(3) "Secretary" means the secretary of health or the secretary's designee.

(4) "Respiratory care practitioner" means an individual certified under this chapter.

(5) "Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

(6) "Rural hospital" means a hospital located anywhere in the state except the following areas:

(a) The entire counties of Snohomish (including Camano Island), King, Kitsap, Pierce, Thurston, Clark, and Spokane;

(b) Areas within a twenty-mile radius of an urban area with a population exceeding thirty thousand persons; and

(c) Those cities or city-clusters located in rural counties but which for all practical purposes are urban. These areas are Bellingham, Aberdeen-Hoquiam, Longview-Kelso, Wenatchee, Yakima, Sunnyside, Richland-Kennewick-Pasco, and Walla Walla. [1991 c 3 § 227; 1987 c 415 § 2.]

18.89.030 Respiratory care practitioner—What constitutes. A respiratory care practitioner is a person who adopts or uses any title or any description of services which incorporates one or more of the following terms or designations: (1) RT, (2) RCP, (3) respiratory care practitioner, (4) respiratory therapist, (5) respiratory technician, (6) inhalation therapist, or (7) any other words, abbreviation, or insignia indicating that he or she is a respiratory care practitioner. [1987 c 415 § 4.]

18.89.040 Scope of practice. A respiratory care practitioner certified under this chapter is employed in the treatment, management, diagnostic testing, rehabilitation, and care of patients with deficiencies and abnormalities which affect the cardiopulmonary system and associated aspects of other systems, and is under the direct order and under the qualified medical direction of a physician. The practice of respiratory care includes, but is not limited to:

(1) The use and administration of medical gases, exclusive of general anesthesia;

(2) The use of air and oxygen administering apparatus;

(3) The use of humidification and aerosols;

(4) The administration of prescribed pharmacologic agents related to respiratory care;

(5) The use of mechanical or physiological ventilatory support;

(6) Postural drainage, chest percussion, and vibration;

(7) Bronchopulmonary hygiene;

(8) Cardiopulmonary resuscitation as it pertains to establishing airways and external cardiac compression;

(9) The maintenance of natural and artificial airways and insertion, without cutting tissues, of artificial airways, as ordered by the attending physician;

(10) Diagnostic and monitoring techniques such as the measurement of cardiorespiratory volumes, pressures, and flows; and

(11) The drawing and analyzing of arterial, capillary, and mixed venous blood specimens as ordered by the attending physician or an advanced registered nurse practitioner as authorized by the board of nursing under chapter 18.88 RCW. [1987 c 415 § 5.]

18.89.050 Powers of secretary—Application of uniform disciplinary act. (1) In addition to any other authority provided by law, the secretary, in consultation with the advisory committee, may:

(a) Adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;

(b) Set all certification, examination, and renewal fees in accordance with RCW 43.70.250;

(c) Establish forms and procedures necessary to administer this chapter;

(d) Issue a certificate to any applicant who has met the education, training, and examination requirements for certification;

(e) Hire clerical, administrative, and investigative staff as needed to implement this chapter and hire individuals certified under this chapter to serve as examiners for any practical examinations;

(f) Approve those schools from which graduation will be accepted as proof of an applicant's eligibility to take the certification examination;

(g) Prepare, grade, and administer, or determine the nature of, and supervise the grading and administration of, examinations for applicants for certification;

(h) Determine whether alternative methods of training are equivalent to formal education and establish forms, procedures, and criteria for evaluation of an applicant's alternative training to determine the applicant's eligibility to take the examination;

(i) Determine which states have legal credentialing requirements equivalent to those of this state and issue certificates to individuals legally credentialed in those states without examination; and

(j) Define and approve any experience requirement for certification.

(2) The provisions of chapter 18.130 RCW shall govern the issuance and denial of certificates, uncertified practice, and the disciplining of persons certified under this chapter. The secretary shall be the disciplining authority under this chapter. [1991 c 3 § 228; 1987 c 415 § 6.]

18.89.060 Record of proceedings. The secretary shall keep an official record of all proceedings, a part of which record shall consist of a register of all applicants for certification under this chapter, with the result of each application. [1991 c 3 § 229; 1987 c 415 § 7.]

18.89.070 Respiratory care advisory committee—Members—Meetings. (1) There is created a state respiratory care advisory committee consisting of five members

appointed by the secretary. Three members of the advisory committee shall be respiratory care practitioners who are certified under this chapter. The initial members, however, may be appointed to the advisory committee if they meet all the requirements for certification under this chapter and have been engaged in the practice of respiratory care for at least five years. One member of the advisory committee shall be an individual representing the public who is unaffiliated with the profession. One member of the advisory committee shall be a physician, who is a pulmonary specialist. Each member shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term and the terms of office of the members first taking office shall expire, as designated at the time of appointment, one at the end of the first year, one at the end of the second year, one at the end of the third year, and two at the end of the fourth year after the date of appointment. Thereafter all appointments shall be for four years. Any advisory committee member may be removed for just cause. The secretary may appoint a new member to fill any vacancy on the advisory committee for the remainder of the unexpired term. No advisory committee member may serve more than two consecutive terms, whether full or partial.

(2) Advisory committee members shall be entitled to be compensated in accordance with RCW 43.03.240, and to be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(3) The advisory committee shall have the authority to elect annually a chairperson and vice-chairperson to direct the meetings of the advisory committee. The advisory committee shall meet at least once each year, and may hold additional meetings as called by the secretary or the chairperson. Three members of the advisory committee constitute a quorum. [1991 c 3 § 230; 1987 c 415 § 8.]

18.89.080 Secretary and advisory committee immune from liability. The secretary, members of the advisory committee, or individuals acting on their behalf are immune from suit in any civil action based on any certification or disciplinary proceedings, or other official acts performed in the course of their duties. [1991 c 3 § 231; 1987 c 415 § 9.]

18.89.090 Certification—Qualifications. The secretary shall issue a certificate to any applicant who demonstrates to the secretary's satisfaction that the following requirements have been met:

(1) Graduation from a school approved by the secretary or successful completion of alternate training which meets the criteria established by the secretary;

(2) Successful completion of an examination administered or approved by the secretary;

(3) Successful completion of any experience requirement established by the secretary;

(4) Good moral character.

In addition, applicants shall be subject to the grounds for denial or issuance of a conditional certificate under chapter 18.130 RCW.

A person who meets the qualifications to be admitted to the examination for certification as a respiratory care practitioner may practice as a respiratory care practitioner under the supervision of a respiratory care practitioner certified under this chapter between the date of filing an application for certification and the announcement of the results of the next succeeding examination for certification if that person applies for and takes the first examination for which he or she is eligible.

The secretary shall establish by rule what constitutes adequate proof of meeting the criteria. [1991 c 3 § 232; 1987 c 415 § 10.]

18.89.100 Certification—Competency requirements. The secretary shall approve only those persons who have achieved the minimum level of competency as defined by the secretary. The secretary shall establish by rule the standards and procedures for approval of alternate training and shall have the authority to contract with individuals or organizations having expertise in the profession, or in education, to assist in evaluating those applying for approval. The standards and procedures set shall apply equally to schools and training within the United States and those in foreign jurisdictions. [1991 c 3 § 233; 1987 c 415 § 11.]

18.89.110 Certification—Examination. (1) The date and location of the examination shall be established by the secretary. Applicants who have been found by the secretary to meet the other requirements for certification shall be scheduled for the next examination following the filing of the application. However, the applicant shall not be scheduled for any examination taking place sooner than sixty days after the application is filed.

(2) The secretary shall examine each applicant, by means determined most effective, on subjects appropriate to the scope of practice. Such examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently, and shall meet generally accepted standards of fairness and validity for certification examinations.

(3) All examinations shall be conducted by the secretary, and all grading of the examinations shall be under fair and wholly impartial methods.

(4) Any applicant who fails to make the required grade in the first examination is entitled to take up to three subsequent examinations, upon the prepayment of a fee determined by the secretary as provided in RCW 43.70.250 for each subsequent examination. Upon failure of four examinations, the secretary may invalidate the original application and require such remedial education as is deemed necessary.

(5) The secretary may approve an examination prepared and administered by a private testing agency or association of credentialing boards for use by an applicant in meeting the certification requirement. [1991 c 3 § 234; 1987 c 415 § 12.]

18.89.120 Certification—Application form—Fee. Applications for certification shall be submitted on forms provided by the secretary. The secretary may require any information and documentation which reasonably relates to

the need to determine whether the applicant meets the criteria for certification provided in this chapter and chapter 18.130 RCW. All applications shall be accompanied by a fee determined by the secretary under RCW 43.70.250. [1991 c 3 § 235; 1987 c 415 § 13.]

18.89.130 Certification—Waiver of examination.

(1) The secretary shall waive the examination and grant a certificate to a person engaged in the profession of respiratory care in this state on July 26, 1987, if the secretary determines the person meets commonly accepted standards of education and experience for the profession and has previously achieved an acceptable grade on an approved examination administered by a private testing agency or respiratory care association as established by rule of the secretary.

(2) If an individual is engaged in the practice of respiratory care on July 26, 1987, but has not achieved an acceptable grade on an approved examination administered by a private testing agency, the individual may apply to the secretary for examination. This section shall only apply to those individuals who file an application within one year of July 26, 1987. [1991 c 3 § 236; 1987 c 415 § 14.]

18.89.140 Renewal of certificates. The secretary shall establish by rule the requirements and fees for renewal of certificates. Failure to renew shall invalidate the certificate and all privileges granted by the certificate. In the event a certificate has lapsed for a period longer than three years, the certified respiratory care practitioner shall demonstrate competence to the satisfaction of the secretary by continuing education or under the other standards determined by the secretary. [1991 c 3 § 237; 1987 c 415 § 15.]

18.89.900 Effective date of RCW 18.89.030—Application of chapter to rural hospitals. RCW 18.89.030 shall take effect September 15, 1987. This chapter shall not affect respiratory care practitioners employed by rural hospitals until September 15, 1988. [1987 c 415 § 20.]

18.89.901 Severability—1987 c 415. 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 415 § 21.]

Chapter 18.90 SANITARIANS

Sections

18.90.010 Definitions.

18.90.010 Definitions.

Reviser's note: RCW 18.90.010 was both amended and repealed during the 1979 legislative sessions, each without reference to the other. The repeal took effect on June 30, 1982. This section has been decodified for publication purposes pursuant to RCW 1.12.025. See Table of Disposition of Former RCW Sections.

Chapter 18.92

VETERINARY MEDICINE, SURGERY AND DENTISTRY

Sections

- 18.92.010 Veterinary practice defined.
- 18.92.012 Authority to dispense legend drugs prescribed by other veterinarians.
- 18.92.015 Definitions.
- 18.92.021 Veterinary board of governors—Appointment, qualifications, terms, officers—Quorum.
- 18.92.030 General duties of board.
- 18.92.035 Board to certify successful examinees.
- 18.92.040 Compensation and travel expenses of board members.
- 18.92.046 Application of uniform disciplinary act.
- 18.92.047 Impaired veterinarian program—Content—License surcharge.
- 18.92.051 Compliance with chapter required.
- 18.92.060 Licensing exemptions.
- 18.92.070 Applications—Procedure—Qualifications—Eligibility to take examination.
- 18.92.100 Examinations—Time of—Subjects—Manner.
- 18.92.115 Reexamination—Fee.
- 18.92.120 License—Temporary certificates, restrictions.
- 18.92.125 Animal technicians.
- 18.92.130 License—Reciprocity with other states—Fee.
- 18.92.135 License to practice specialized veterinary medicine.
- 18.92.140 License—Renewal.
- 18.92.145 License, certificates of registration, permit, examination, and renewal fees.
- 18.92.150 License—Display.
- 18.92.230 Use of another's license or diploma a felony—Penalty.
- 18.92.240 Violations generally—Penalty.
- 18.92.900 Severability—1941 c 71.

Duty of veterinarians to report diseases: RCW 16.36.080.

18.92.010 Veterinary practice defined. Any person shall be regarded as practicing veterinary medicine, surgery and dentistry within the meaning of this chapter who shall, within this state, (1) by advertisement, or by any notice, sign, or other indication, or by a statement written, printed or oral, in public or private, made, done, or procured by himself or herself, or any other, at his or her request, for him or her, represent, claim, announce, make known or pretend his or her ability or willingness to diagnose or prognose or treat diseases, deformities, defects, wounds, or injuries of animals; (2) or who shall so advertise, make known, represent or claim his or her ability and willingness to prescribe or administer any drug, medicine, treatment, method or practice, or to perform any operation, manipulation, or apply any apparatus or appliance for cure, amelioration, correction or reduction or modification of any animal disease, deformity, defect, wound or injury, for hire, fee, compensation, or reward, promised, offered, expected, received, or accepted directly or indirectly; (3) or who shall within this state diagnose or prognose any animal diseases, deformities, defects, wounds or injuries, for hire, fee, reward, or compensation promised, offered, expected, received, or accepted directly or indirectly; (4) or who shall within this state prescribe or administer any drug, medicine, treatment, method or practice, or perform any operation, or manipulation, or apply any apparatus or appliance for the cure, amelioration, alleviation, correction, or modification of any animal disease, deformity, defect, wound, or injury, for hire, fee, compensation, or reward, promised, offered, expected, received or accepted directly or indirectly; (5) or who

performs any manual procedure for the diagnosis of pregnancy, sterility, or infertility upon livestock.

The opening of an office or place of business for the practice of veterinary medicine, the use of a sign, card, device or advertisement as a practitioner of veterinary medicine or as a person skilled in such practice shall be prima facie evidence of engaging in the practice of veterinary medicine, surgery and dentistry. [1959 c 92 § 1; 1941 c 71 § 1; Rem. Supp. 1941 § 10040-1. Prior: 1907 c 124 § 1. FORMER PART OF SECTION: 1941 c 71 § 21; Rem. Supp. 1941 § 10040-21, now codified as RCW 18.92.015.]

18.92.012 Authority to dispense legend drugs prescribed by other veterinarians. A veterinarian licensed under this chapter may dispense veterinary legend drugs prescribed by other veterinarians licensed under this chapter, so long as, during any year, the total drugs so dispensed do not constitute more than five percent of the total dosage units of legend drugs the veterinarian dispenses and the veterinarian maintains records of his or her dispensing activities consistent with the requirements of chapters 18.64, 69.04, 69.41, and 69.50 RCW. For purposes of this section, a "veterinary legend drug" is a legend drug, as defined in chapter 69.41 RCW, which is either: (1) Restricted to use by licensed veterinarians by any law or regulation of the federal government, or (2) designated by rule by the state board of pharmacy as being a legend drug that one licensed veterinarian may dispense for another licensed veterinarian under this section. [1991 c 47 § 1.]

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

"Animal technician" means a person who has successfully completed an examination administered by the board and who has either successfully completed a post high school course approved by the board in the care and treatment of animals or had five years' practical experience, acceptable to the board, with a licensed veterinarian.

"Board" means the Washington state veterinary board of governors.

"Department" means the department of health.

"Secretary" means the secretary of the department of health. [1991 c 332 § 40; 1991 c 3 § 238; 1983 c 102 § 1; 1979 c 158 § 71; 1974 ex.s. c 44 § 1; 1967 ex.s. c 50 § 1; 1959 c 92 § 2; 1941 c 71 § 21; Rem. Supp. 1941 § 10040-21. Formerly RCW 18.92.010, part.]

Captions not law—1991 c 332: See note following RCW 18.130.010.

18.92.021 Veterinary board of governors—Appointment, qualifications, terms, officers—Quorum. (1) There is created a Washington state veterinary board of governors consisting of six members, five of whom shall be licensed veterinarians, and one of whom shall be a lay member.

(2) The licensed members shall be appointed by the governor. At the time of their appointment the licensed members of the board must be actual residents of the state in active practice as licensed practitioners of veterinary

medicine, surgery, and dentistry and must be citizens of the United States. Not more than one licensed member shall be from the same congressional district. The board shall not be deemed to be unlawfully constituted and a member of the board shall not be deemed ineligible to serve the remainder of the member's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts.

The terms of the first licensed members of the board shall be as follows: One member for five, four, three, two, and one years respectively. Thereafter the terms shall be for five years and until their successors are appointed and qualified.

(3) The lay member shall be appointed by the governor for a five year term and until the lay member's successor is appointed.

(4) A member may be appointed to serve a second term, if that term does not run consecutively. Vacancies in the board shall be filled by the governor, the appointee to hold office for the remainder of the unexpired term.

(5) Officers of the board shall be a chairman and a secretary-treasurer to be chosen by the members of the board from among its members.

(6) Four members of the board shall constitute a quorum at meetings of the board. [1983 c 2 § 2. Prior: 1982 1st ex.s. c 30 § 5; 1982 c 134 § 1; 1979 ex.s. c 31 § 1; 1967 ex.s. c 50 § 2; 1959 c 92 § 3.]

Severability—1983 c 2: See note following RCW 18.71.030.

18.92.030 General duties of board. It shall be the duty of the board to prepare examination questions, conduct examinations, and grade the answers of applicants. The board, pursuant to chapter 34.05 RCW, shall have the power to adopt such rules and regulations as may be necessary to effectuate the purposes of this chapter including the performance of the duties and responsibilities of animal technicians: PROVIDED, HOWEVER, That such rules are adopted in the interest of good veterinary health care delivery to the consuming public, and do not prevent animal technicians from inoculating an animal. The board shall further have the power to adopt, by reasonable rules and regulations, standards prescribing requirements for veterinary medical facilities and to fix minimum standards of continuing veterinary medical education.

The department shall be the official office of record. [1986 c 259 § 140; 1983 c 102 § 2; 1982 c 134 § 2; 1981 c 67 § 23; 1974 ex.s. c 44 § 2; 1967 ex.s. c 50 § 3; 1961 c 157 § 2; 1959 c 92 § 4; 1941 c 71 § 4; Rem. Supp. 1941 § 10040-4. FORMER PART OF SECTION: 1941 c 71 § 9; Rem. Supp. 1941 § 10040-9 now codified as RCW 18.92.035.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

18.92.035 Board to certify successful examinees. The board shall certify to the secretary the names of all applicants who have successfully passed an examination and are entitled to a license to practice veterinary medicine, surgery and dentistry. The secretary shall thereupon issue a license to practice veterinary medicine, surgery and dentistry

to such applicant. [1991 c 3 § 239; 1941 c 71 § 9; Rem. Supp. 1941 § 10040-9. Formerly RCW 18.92.030, part.]

18.92.040 Compensation and travel expenses of board members. Each member of the board shall be compensated in accordance with RCW 43.70.250 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. No expense may be incurred by members of the board except in connection with board meetings without prior approval of the secretary. [1991 c 3 § 240; 1984 c 287 § 51; 1983 c 102 § 4; 1975-'76 2nd ex.s. c 34 § 53; 1974 ex.s. c 44 § 3; 1967 ex.s. c 50 § 4; 1959 c 92 § 5; 1941 c 71 § 5; 1913 c 79 § 2; 1907 c 124 § 13; Rem. Supp. 1941 § 10040-5.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Severability—Effective date—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

18.92.046 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 58; 1986 c 259 § 139.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.92.047 Impaired veterinarian program—Content—License surcharge. (1) To implement an impaired veterinarian program as authorized by RCW 18.130.175, the veterinary board of governors shall enter into a contract with a voluntary substance abuse monitoring program. The impaired veterinarian program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired veterinarians to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired veterinarians including those ordered by the board;
- (f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired veterinarians; and
- (g) Performing other related activities as determined by the board.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to twenty-five dollars on each license issuance or renewal of a new license to be collected by the department of health from every veterinarian licensed under chapter 18.92 RCW. These moneys shall be placed in the health professions account to be used solely for the implementation of the impaired veterinarian program. [1991 c 3 § 241; 1989 c 125 § 2.]

18.92.051 Compliance with chapter required. It is a violation of RCW 18.130.190 for any person to practice the profession of veterinary medicine, surgery, or dentistry in this state, who has not complied with the provisions of this chapter. [1987 c 150 § 59.]

Severability—1987 c 150: See RCW 18.122.901.

18.92.060 Licensing exemptions. Nothing in this chapter shall be construed to apply to:

(1) Commissioned veterinarians in the United States military services, veterinarians employed by Washington state and federal agencies while performing official duties;

(2) Persons practicing veterinary medicine upon a person's own animals;

(3) A person advising with respect to or performing the castrating and dehorning of cattle, castrating and docking of sheep, castrating of swine or caaponizing of poultry or artificial insemination of animals;

(4) A person who is a regularly enrolled student in a veterinary school, or regularly enrolled in a training course approved under the provisions of RCW 18.92.015 and while performing duties or actions assigned by his instructors, or working under the direct supervision of a licensed veterinarian during a school vacation period or a person performing assigned duties under supervision of a veterinarian within the established framework of an internship program recognized by the board;

(5) A veterinarian regularly licensed in another state consulting with a licensed veterinarian in this state;

(6) An animal technician acting under the supervision and control of a licensed veterinarian: PROVIDED, HOWEVER, That the practice of an animal technician is limited to the performance of those services which are authorized by the board;

(7) An owner being assisted in such practice by his employees when employed in the conduct of such person's business;

(8) An owner being assisted in such practice by some other person gratuitously. [1974 ex.s. c 44 § 4; 1967 ex.s. c 50 § 5; 1959 c 92 § 13; 1941 c 71 § 20; Rem. Supp. 1941 § 10040-20. Prior: 1907 c 124 § 15.]

18.92.070 Applications—Procedure—Qualifications—Eligibility to take examination. No person, unless registered or licensed to practice veterinary medicine, surgery, and dentistry in this state at the time this chapter shall become operative, shall begin the practice of veterinary medicine, surgery and dentistry without first applying for and obtaining a license for such purpose from the secretary. In order to procure a license to practice veterinary medicine, surgery, and dentistry in the state of Washington, the applicant for such license shall file his or her application at least sixty days prior to date of examination upon a form furnished by the secretary of health, which, in addition to the fee provided by this chapter, shall be accompanied by satisfactory evidence that he or she is at least eighteen years of age and of good moral character, and by official transcripts or other evidence of graduation from a veterinary college satisfactory to and approved by the board. Said application shall be signed by the applicant and sworn to by him or her before some person authorized to administer oaths. When such application and the accompanying evidence are found satisfactory, the secretary shall notify the applicant to appear before the board for the next examination. In addition, applicants shall be subject to

grounds for denial or issuance of a conditional license under chapter 18.130 RCW.

Nothing in this chapter shall preclude the board from permitting a person who has completed a portion of his or her educational program as determined by the board, in a veterinary college recognized by the board, to take the examination or any part thereof prior to satisfying the requirements for application for a license: PROVIDED HOWEVER, That no license shall be issued to such applicant until such requirements are satisfied. [1991 c 3 § 242; 1986 c 259 § 141; 1982 c 134 § 3; 1979 c 158 § 72; 1974 ex.s. c 44 § 5; 1971 ex.s. c 292 § 28; 1941 c 71 § 6; Rem. Supp. 1941 § 10040-6. Formerly RCW 18.92.050, part, 18.92.070, part, and 18.92.080, part.]

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

18.92.100 Examinations—Time of—Subjects—Manner. Examinations for license to practice veterinary medicine, surgery and dentistry shall be held at least once each year at such times and places as the secretary may authorize and direct. Said examination, which shall be conducted in the English language shall be, in whole or in part, in writing on the following subjects: Veterinary anatomy, surgery, obstetrics, pathology, chemistry, hygiene, veterinary diagnosis, materia medica, therapeutics, parasitology, physiology, sanitary medicine, and such other subjects which are ordinarily included in the curricula of veterinary colleges, as the board may prescribe. All examinees shall be tested by written examination, supplemented by such oral interviews and practical demonstrations as the board deems necessary. The board may accept the examinee's results on the National Board of Veterinary Examiners in lieu of the written portion of the state examination. [1991 c 3 § 243; 1967 ex.s. c 50 § 6; 1959 c 92 § 7; 1941 c 71 § 7; Rem. Supp. 1941 § 10040-7.]

18.92.115 Reexamination—Fee. Any applicant who shall fail to secure the required grade in his first examination may take the next regular veterinary examination. The fee for reexamination shall be determined by the secretary as provided in RCW 43.70.250. [1991 c 3 § 244; 1985 c 7 § 71; 1975 1st ex.s. c 30 § 82; 1967 ex.s. c 50 § 7; 1959 c 92 § 8; 1941 c 71 § 10; Rem. Supp. 1941 § 10040-10. Prior: 1907 c 124 § 17. Formerly RCW 18.92.090, part.]

18.92.120 License—Temporary certificates, restrictions. Any person who shall make application for examination, as provided by RCW 18.92.070, and who has not previously failed to pass the veterinary examination, and whose application is found satisfactory by the secretary, may be given a temporary certificate to practice veterinary medicine, surgery and dentistry valid only until the results of the next examination for licenses are available. In addition, applicants shall be subject to the grounds for denial or issuance of a conditional license under chapter 18.130 RCW. No more than one temporary certificate may be issued to any applicant. Such permittee shall be employed by a licensed veterinary practitioner or by the state of Washington. [1991 c 3 § 245; 1986 c 259 § 142; 1967 ex.s. c 50 § 8; 1959 c 92

§ 9; 1941 c 71 § 11; 1907 c 124 § 11; Rem. Supp. 1941 § 10040-11.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.92.125 Animal technicians. No veterinarian who uses the services of an animal technician shall be considered as aiding and abetting any unlicensed person to practice veterinary medicine. A veterinarian shall retain professional and personal responsibility for any act which constitutes the practice of veterinary medicine as defined in this chapter when performed by an animal technician in his employ. [1986 c 259 § 143; 1983 c 102 § 5; 1974 ex.s. c 44 § 6.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.92.130 License—Reciprocity with other states—Fee. Any person who has been lawfully licensed to practice veterinary medicine, surgery, and dentistry in another state or territory which has and maintains a standard for the practice of veterinary medicine, surgery and dentistry which is substantially the same as that maintained in this state, and who has been lawfully and continuously engaged in the practice of veterinary medicine, surgery and dentistry for two years or more immediately before filing his or her application to practice in this state and who shall submit to the secretary a duly attested certificate from the examining board of the state or territory in which he or she is registered, certifying to the fact of his or her registration and of his or her being a person of good moral character and of professional attainments, may upon the payment of the fee as provided herein, be granted a license to practice veterinary medicine, surgery and dentistry in this state, without being required to take an examination: PROVIDED, HOWEVER, That no license shall be issued to any applicant, unless the state or territory from which such certificate has been granted to such applicant shall have extended a like privilege to engage in the practice of veterinary medicine, surgery and dentistry within its own borders to veterinarians heretofore and hereafter licensed by this state, and removing to such other state: AND PROVIDED FURTHER, That the secretary of health shall have power to enter into reciprocal relations with other states whose requirements are substantially the same as those provided herein. The board shall make recommendations to the secretary upon all requests for reciprocity. [1991 c 3 § 246; 1959 c 92 § 10; 1941 c 71 § 12; Rem. Supp. 1941 § 10040-12.]

18.92.135 License to practice specialized veterinary medicine. (1) The department may issue a license to practice specialized veterinary medicine in this state to a veterinarian who:

(a) Submits an application on a form provided by the secretary for a license in a specialty area recognized by the board by rule;

(b) Holds a current certification as a diplomate of a national specialty board or college recognized by the board by rule in the specialty area for which application is submitted;

(c) Is not subject to license investigation, suspension, revocation, or other disciplinary action in any state, United States territory, or province of Canada;

(d) Has successfully completed an examination established by the board regarding this state's laws and rules regulating the practice of veterinary medicine; and

(e) Provides other information and verification required by the board.

(2) A veterinarian licensed to practice specialized veterinary medicine shall not practice outside his or her licensed specialty unless he or she meets licensing requirements established for practicing veterinary medicine, surgery, and dentistry under RCW 18.92.070 and 18.92.100.

(3) The board shall determine by rule the limits of the practice of veterinary medicine, surgery, and dentistry represented by a license to practice specialized veterinary medicine.

(4) The board may deny, revoke, suspend, or modify a license to practice specialized veterinary medicine if the national specialty board or college certifying the licensee denies, revokes, suspends, modifies, withdraws, or otherwise limits the certification or if the certification expires. [1991 c 332 § 41.]

Captions not law—1991 c 332: See note following RCW 18.130.010.

18.92.140 License—Renewal. Each person now qualified to practice veterinary medicine, surgery and dentistry or registered as an animal technician in this state or who shall hereafter be licensed or registered to engage in such practice, shall register with the secretary of health annually or on the date prescribed by the secretary and pay the renewal registration fee set by the secretary as provided in RCW 43.70.250. A person who fails to renew a license or certificate prior to its expiration shall be subject to a late renewal fee equal to one-third of the regular renewal fee set by the secretary. [1991 c 3 § 247; 1985 c 7 § 72; 1983 c 102 § 6; 1941 c 71 § 16; Rem. Supp. 1941 § 10040-16. FORMER PARTS OF SECTION: (i) 1941 c 71 § 17; Rem. Supp. 1941 § 10040-17, now codified as RCW 18.92.142. (ii) 1941 c 71 § 19, part; Rem. Supp. 1941 § 10040-19, part, now codified as RCW 18.92.145.]

18.92.145 License, certificates of registration, permit, examination, and renewal fees. The secretary shall determine the fees, as provided in RCW 43.70.250, for the issuance, renewal, or administration of the following licenses, certificates of registration, permits, duplicate licenses, renewals, or examination:

(1) For a license to practice veterinary medicine, surgery, and dentistry issued upon an examination given by the examining board;

(2) For a license to practice veterinary medicine, surgery, and dentistry issued upon the basis of a license issued in another state;

(3) For a certificate of registration as an animal technician;

(4) For a temporary permit to practice veterinary medicine, surgery, and dentistry. The temporary permit fee shall be accompanied by the full amount of the examination fee;

(5) For a license to practice specialized veterinary medicine. [1991 c 332 § 42; 1991 c 3 § 248; 1985 c 7 § 73; 1983 c 102 § 7; 1975 1st ex.s. c 30 § 84; 1971 ex.s. c 266

§ 20; 1967 ex.s. c 50 § 9; 1959 c 92 § 12; 1941 c 71 § 19; Rem. Supp. 1941 § 10040-19. Prior: 1907 c 124 §§ 9, 10. Formerly RCW 18.92.090 and 18.92.140.]

Captions not law—1991 c 332: See note following RCW 18.130.010.

18.92.150 License—Display. Every person holding a license under the provisions of this chapter shall conspicuously display it in his principal place of business, together with the annual renewal license certificate. [1941 c 71 § 18; Rem. Supp. 1941 § 10040-18.]

18.92.230 Use of another's license or diploma a felony—Penalty. Any person filing or attempting to file, as his own, the diploma or license of another shall be deemed guilty of a felony, and upon conviction thereof, shall be subject to such fine and imprisonment as is made and provided by the statutes of this state for the crime of forgery. [1941 c 71 § 23; Rem. Supp. 1941 § 10040-23.]

Forgery: RCW 9A.60.020.

18.92.240 Violations generally—Penalty. Violation of any of the provisions of this chapter, or of any rule or regulation made pursuant thereto, shall constitute a misdemeanor and punishable by fine of not less than fifty dollars. [1941 c 71 § 24; Rem. Supp. 1941 § 10040-24.]

18.92.900 Severability—1941 c 71. Should any section of this chapter, or any portion of any section be for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. [1941 c 71 § 25.]

Chapter 18.96

LANDSCAPE ARCHITECTS

Sections

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18.96.010 Evidence of qualifications required. In order to safeguard human health and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire, shall be required to submit evidence that he is qualified so to practice and shall be registered under the provisions of this chapter. [1969 ex.s. c 158 § 1.]

18.96.020 Registration required. It shall be unlawful for any person to use, or advertise the title landscape architect, landscape architecture, or landscape architectural, unless such person has duly registered under the provisions of this chapter. [1969 ex.s. c 158 § 2.]

18.96.030 Definitions. The following words and phrases as hereinafter used in this chapter shall have the following meanings:

"Director" means the director of licensing of the state of Washington.

"Board" means the state board of registration for landscape architects.

"Landscape architect" means a person who engages in the practice of landscape architecture as hereinafter defined. A person practices landscape architecture within the meaning and intent of this chapter who performs for hire professional services such as consultations, investigations, reconnaissance, research, planning, design or teaching supervision in connection with the development of land areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement, or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings and approaches to structures or other improvements, or natural drainage and erosion control. This practice shall include the location, design, and arrangement of such tangible objects as pools, walls, steps, trellises, canopies, and other nonhabitable structures, and such features as are incidental and necessary to the purposes outlined herein. It involves the design and arrangement of land forms and the development of outdoor space including, but not limited to, the design of public parks, playgrounds, cemeteries, home and school grounds, and the development of industrial and recreational sites. [1979 c 158 § 73; 1969 ex.s. c 158 § 3.]

18.96.040 Board of registration for landscape architects—Created—Members—Qualifications. There is created a state board of registration for landscape architects. The board shall consist of three landscape architects and two members of the general public. Members of the board shall be appointed by the governor and must be residents of this state having the qualifications required by this chapter.

No public member of the board may be a past or present member of any other licensing board under this title. No public member may make his or her own livelihood from, nor have a parent, spouse, or child make their respective livelihood from providing landscape architect services, or from enterprises dealing in landscape architecture.

The landscape architect members of the board must, while serving on the board, be actively engaged in their profession or trade and, immediately preceding appointment, have had at least five years experience in responsible charge

of work or teaching within their profession or trade. [1985 c 18 § 1; 1969 ex.s. c 158 § 4.]

Effective date—1985 c 18: "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 June 30, 1985." [1985 c 18 § 6.]

18.96.050 Board—Terms of office—Removal—Compensation and travel expenses. The members of the first board shall serve for the following terms:

One member for one year, one member for two years, one member for three years, one member for four years, and one member for five years from the date of appointment or until successors are duly appointed and qualified. Every member of the board shall receive a certificate of his appointment from the governor, and before beginning his term of office shall file with the secretary of state his written oath or affirmation for the faithful discharge of his official duties. On the expiration of the term of each member, the governor shall appoint a successor to serve for a term of five years, or until his successor has been appointed and qualified: PROVIDED, That no member shall serve more than ten consecutive years.

The governor may remove any member of the board for cause. Vacancies in the board for any reason shall be filled by appointment for the unexpired term. In carrying out the provisions of this chapter, the members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses according to the provisions of RCW 43.03.050 and 43.03.060, such funds to be provided from the landscape architects' account in the state general fund. [1984 c 287 § 52; 1975-'76 2nd ex.s. c 34 § 54; 1969 ex.s. c 158 § 5.]

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.

18.96.060 Board—Rules—Quorum—Hearings—Subpoena power. The board shall adopt rules for its own organization and procedure and such other rules as it may deem necessary to the proper performance of its duties. Three members of the board shall constitute a quorum for the conduct of any business of the board.

The board may conduct hearings concerning alleged violations of the provisions of this chapter. In conducting such hearings the chairman of the board, or any member of the board acting in his place, may administer oaths or affirmations to witnesses appearing before the board, subpoena witnesses and compel their attendance, and require the production of books, records, papers and documents. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or to produce any books, records, papers or documents so required to be produced, the board may present its petition to the superior court of the county in which such person resides, setting forth the facts, and thereupon the court shall, in any proper case, enter a suitable order compelling compliance with the provisions of this chapter and imposing such other terms and conditions as the court may deem equitable. [1969 ex.s. c 158 § 6.]

18.96.070 Qualifications of applicants. The following will be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional landscape architect.

The applicant must have completed a course of study in landscape architecture and have been graduated from a college or school approved by the board as offering a curriculum in landscape architecture, or the equivalent thereof, in any form of training, as determined by the board. Each complete year of study in any registered college or school of landscape architecture may be accepted in lieu of one year of equivalent training.

He must have a minimum of seven years in any combination of training and experience, and shall present proof to the director of passing such written examinations as may be prescribed by the board.

Registration under this chapter shall be on an individual, personal basis, and the director shall not register any firm, company, partnership, corporation, nor any public agency. Corporate practice is not permitted under the provisions of this chapter. [1969 ex.s. c 158 § 7.]

18.96.080 Applications—Contents—Fees—Practitioners at time of enactment. Application for registration shall be filed with the director prior to the date set for examination and shall contain statements made under oath showing the applicant's education and a detailed summary of his practical experience, and shall contain not less than five references, of whom three or more shall be landscape architects having personal knowledge of his landscape architectural experience.

The application fee shall be determined by the director as provided in RCW 43.24.086 and shall include a nonrefundable examination fee, and a fee for issuance of the certificate.

The application fee for reexamination shall be determined by the director as provided in RCW 43.24.086 and shall include, and must be filed with the director not less than six days prior to the date set for examination.

At any time within the first two years following August 11, 1969, the board shall certify for registration, without examination, any applicant who submits proof that he has had at least a combination of education and experience substantially equivalent to six years of practice in landscape architecture prior to August 11, 1969. [1985 c 7 § 74; 1975 1st ex.s. c 30 § 85; 1969 ex.s. c 158 § 8.]

18.96.090 Examinations. Examinations of applicants for certificates of registration shall be held at least annually or at such times and places as the board may determine. The board shall determine from the examination and the material submitted with the applications whether or not the applicants possess sufficient knowledge, ability and moral fitness to safely and properly practice landscape architecture and to hold themselves out to the public as persons qualified for that practice.

The scope of the examination and methods of procedure shall be prescribed by the board with special reference to landscape construction materials and methods, grading and drainage, plant materials suited for use in the northwest, specifications and supervisory practice, history and theory of

landscape architecture relative to landscape architectural design, site planning and land design, subdivision, urban design, and a practical knowledge of botany, horticulture and similar subjects related to the practice of landscape architecture.

Applicants who fail to pass any subjects shall be permitted to retake the examination in the subjects failed. A passing grade in any subject area shall exempt the applicant from examination in that subject for five years: PROVIDED, That failure to complete successfully the entire examination within five years will result in requiring a retake of the entire examination. The board may determine the standard for passing grades computed on a scale of one hundred percent. A certificate of registration shall be granted by the director to all qualified applicants who shall be certified by the board as having passed the required examination and as having given satisfactory proof of completion of the required experience. [1985 c 18 § 2; 1969 ex.s. c 158 § 9.]

Effective date—1985 c 18: See note following RCW 18.96.040.

18.96.100 Reciprocity. The director may, upon payment of a filing and investigation fee including the current registration fee in an amount as determined by the director as provided in RCW 43.24.086, grant a certificate of registration without examination to any applicant who is a registered landscape architect in any other state or country whose requirements for registration are at least substantially equivalent to the requirements of this state for registration by examination, and which extends the same privileges of reciprocity to landscape architects registered in this state. [1985 c 7 § 75; 1975 1st ex.s. c 30 § 86; 1969 ex.s. c 158 § 10.]

18.96.110 Expiration date—Renewals. Certificates of registration shall expire on the last day of June three years following their issuance or renewal. The director shall set the fee for renewal which shall be determined as provided in RCW 43.24.086. Renewal may be effected during the month of June by payment to the director of the required fee.

In case any registrant fails to pay the renewal fee before thirty days after the due date, the renewal fee shall be the current fee plus an amount equal to one year's fee at the discretion of the board: PROVIDED, That any registrant in good standing, upon fully retiring from landscape architectural practice, may withdraw from practice by giving written notice to the director, and may thereafter resume practice at any time upon payment of the then current annual renewal fee. Any registrant, other than a properly withdrawn licensee, who fails to renew his registration for a period of one year may reinstate only on reexamination as is required for new registrants. [1985 c 18 § 3; 1985 c 7 § 76; 1975 1st ex.s. c 30 § 87; 1969 ex.s. c 158 § 11.]

Reviser's note: This section was amended by 1985 c 7 § 76 and 1985 c 18 § 3, 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—1985 c 18: See note following RCW 18.96.040.

18.96.120 Refusal, suspension or revocation of certificates—Grounds. The director may refuse to renew,

or may suspend or revoke, a certificate of registration to use the titles landscape architect, landscape architecture, or landscape architectural in this state upon the following grounds:

(1) The holder of the certificate of registration is impersonating a practitioner or former practitioner.

(2) The holder of the certificate of registration is guilty of fraud, deceit, gross negligence, gross incompetency or gross misconduct in the practice of landscape architecture.

(3) The holder of the certificate of registration permits his seal to be affixed to any plans, specifications or drawings that were not prepared by him or under his personal supervision by employees subject to his direction and control.

(4) The holder of the certificate has committed fraud in applying for or obtaining a certificate. [1969 ex.s. c 158 § 12.]

18.96.130 Charges against registrants—Hearings—Findings—Penalties. Any person may prefer charges of fraud, deceit, gross negligence, incompetency, or misconduct against any registrant. Such charges shall be in writing and shall be sworn to by the person making them and shall be filed with the director.

All charges unless dismissed by the director as unfounded or trivial, shall be heard by the board within three months after the date on which they have been preferred.

An action of suspension, revocation, refusal to renew, or a fine not exceeding one thousand dollars per violation by the director, shall be based upon the findings of the board after charges and evidence in support thereof have been heard and determined. [1985 c 18 § 4; 1969 ex.s. c 158 § 13.]

Effective date—1985 c 18: See note following RCW 18.96.040.

18.96.140 Restoration of suspended or revoked licenses—Reissuance of lost or destroyed certificates. Upon the recommendations of the board, the director may restore a license to any person whose license has been suspended or revoked. Application for the reissuance of a license shall be made in such a manner as indicated by the board.

A new certificate of registration to replace any certificate lost or destroyed, or mutilated may be issued by the director, and a charge determined by the director as provided in RCW 43.24.086 shall be made for such issuance. [1985 c 7 § 77; 1975 1st ex.s. c 30 § 88; 1969 ex.s. c 158 § 14.]

18.96.150 Certificates of registration—Issuance—Contents—Seal. The director shall issue a certificate of registration upon payment of the registration fee as provided in this chapter to any applicant who has satisfactorily met all requirements for registration. All certificates of registration shall show the full name of the registrant, shall have a serial number and shall be signed by the chairman and the secretary of the board, and by the director.

Each registrant shall obtain a seal of a design authorized by the board, bearing the registrant's name and the legend, "registered landscape architect". All sheets of drawings and title pages of specifications prepared by the registrant shall be stamped with said seal. [1969 ex.s. c 158 § 15.]

18.96.160 Misuse of seal. It shall be unlawful for anyone to stamp or seal any document with the seal after the certificate of registrant named thereon has expired or been revoked, or while the certificate is suspended. [1969 ex.s. c 158 § 16.]

18.96.170 Penalty. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor. [1969 ex.s. c 158 § 17.]

18.96.180 Injunctions—Board members not personally liable—Prosecutions. The board is authorized to apply for relief by injunction without bond to restrain a person from the commission of any act which is prohibited by this chapter. The members of the board shall not be personally liable for their action in any such proceeding or in any other proceeding instituted by the board under the provisions of this chapter. The board, in any proper case, shall cause prosecution to be instituted in any county or counties where any violation of this chapter occurs, and shall aid in the prosecution of the violator. [1969 ex.s. c 158 § 18.]

18.96.900 Severability—1969 ex.s. c 158. 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. [1969 ex.s. c 158 § 19.]

Chapter 18.100

PROFESSIONAL SERVICE CORPORATIONS

Sections

- 18.100.010 Legislative intent.
- 18.100.020 Short title.
- 18.100.030 Definitions.
- 18.100.035 Fees for services by secretary of state.
- 18.100.040 Application of chapter to previously organized corporations.
- 18.100.050 Organization of professional service corporations authorized generally—Provisions applicable to architects, engineers, and health care professionals—Nonprofit corporations.
- 18.100.060 Rendering of services through legally authorized individuals required.
- 19.100.065 Directors, officers to be legally authorized to render same services as corporation.
- 18.100.070 Professional relationships and liabilities not abolished, modified, restricted or limited.
- 18.100.080 Engaging in other business prohibited—Investments.
- 18.100.090 Stock issuance.
- 18.100.095 Validity of share voting agreements.
- 18.100.100 Legal disqualification of officer, shareholder or employee to render professional service, effect.
- 18.100.110 Sale or transfer of shares.
- 18.100.114 Merger or consolidation.
- 18.100.116 Treatment of shares upon death of shareholder or transfer of shares by law or court decree to ineligible person.
- 18.100.118 Eligibility of certain representatives and transferees to serve as directors, officers, or shareholders.
- 18.100.120 Name—Abbreviations—Listing of shareholders.
- 18.100.130 Application of business corporation act and nonprofit corporation act.
- 18.100.132 Nonprofit professional service corporations formed under prior law.
- 18.100.133 Business corporations under Title 23B RCW may elect to conform with this chapter.
- 18.100.134 Professional services—Deletion from stated purposes of corporation.
- 18.100.140 Illegal, unethical or unauthorized conduct not authorized.

18.100.150 Indemnification of agents of any corporation authorized.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

18.100.010 Legislative intent. It is the legislative intent to provide for the incorporation of an individual or group of individuals to render the same professional service to the public for which such individuals are required by law to be licensed or to obtain other legal authorization. [1969 c 122 § 1.]

18.100.020 Short title. This chapter may be cited as "the professional service corporation act". [1969 c 122 § 2.]

18.100.030 Definitions. As used in this chapter the following words shall have the meaning indicated:

(1) The term "professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which prior to the passage of this chapter and by reason of law could not be performed by a corporation, including, but not by way of limitation, certified public accountants, chiropractors, dentists, osteopaths, physicians, *podiatrists, chiropodists, architects, veterinarians and attorneys at law.

(2) The term "professional corporation" means a corporation which is organized under this chapter for the purpose of rendering professional service.

(3) The term "ineligible person" means any individual, corporation, partnership, fiduciary, trust, association, government agency, or other entity which for any reason is or becomes ineligible under this chapter to own shares issued by a professional corporation. [1983 c 51 § 2; 1969 c 122 § 3.]

***Reviser's note:** The term "podiatrists" was changed to "podiatric physicians and surgeons" by 1990 c 147.

18.100.035 Fees for services by secretary of state. See RCW 43.07.120.

18.100.040 Application of chapter to previously organized corporations. This chapter shall not apply to any individuals or groups of individuals within this state who prior to the passage of this chapter were permitted to organize a corporation and perform personal services to the public by means of a corporation, and this chapter shall not apply to any corporation organized by such individual or group of individuals prior to the passage of this chapter: PROVIDED, That any such individual or group of individuals or any such corporation may bring themselves and such corporation within the provisions of this chapter by amending the articles of incorporation in such a manner so as to be consistent with all the provisions of this chapter and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this chapter. [1969 c 122 § 4.]

18.100.050 Organization of professional service corporations authorized generally—Provisions applicable

to architects, engineers, and health care professionals—Nonprofit corporations. An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of Title 23B RCW for the purpose of rendering professional service: PROVIDED, That one or more of such legally authorized individuals shall be the incorporators of such professional corporation: PROVIDED FURTHER, That notwithstanding any other provision of this chapter, registered architects and registered engineers may own stock in and render their individual professional services through one professional service corporation: PROVIDED FURTHER, That licensed health care professionals, providing services to enrolled participants either directly or through arrangements with a health maintenance organization registered under chapter 48.46 RCW or federally qualified health maintenance organization, may own stock in and render their individual professional services through one professional service corporation: AND PROVIDED FURTHER, That professionals may organize a nonprofit nonstock corporation under this chapter and chapter 24.03 RCW to provide professional services, and the provisions of this chapter relating to stock and referring to Title 23B RCW shall not apply to any such corporation. [1991 c 72 § 3; 1986 c 261 § 1; 1983 c 100 § 1; 1969 c 122 § 5.]

18.100.060 Rendering of services through legally authorized individuals required. No corporation organized under this chapter may render professional services except through individuals who are duly licensed or otherwise legally authorized to render such professional services within this state: PROVIDED, That nothing in this chapter shall be interpreted to require the licensing of clerks, secretaries, bookkeepers, technicians, and other assistants employed by a professional corporation who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required. [1983 c 51 § 3; 1969 c 122 § 6.]

18.100.065 Directors, officers to be legally authorized to render same services as corporation. Except as otherwise provided in RCW 18.100.118, all directors of a corporation organized under this chapter and all officers other than the secretary and the treasurer shall be duly licensed or otherwise legally authorized to render the same specific professional services within this state as those for which the corporation was incorporated. [1983 c 51 § 7.]

18.100.070 Professional relationships and liabilities not abolished, modified, restricted or limited. Nothing contained in this chapter shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and the standards for professional conduct. Any director, officer, shareholder, agent or employee of a corporation organized under this chapter shall remain personally and fully liable

and accountable for any negligent or wrongful acts or misconduct committed by him or by any person under his direct supervision and control, while rendering professional services on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be liable for any negligent or wrongful acts of misconduct committed by any of its directors, officers, shareholders, agents or employees while they are engaged on behalf of the corporation, in the rendering of professional services. [1969 c 122 § 7.]

18.100.080 Engaging in other business prohibited—Investments. No professional service corporation organized under this chapter shall engage in any business other than the rendering of the professional services for which it was incorporated or service as a trustee as authorized by RCW 11.36.021 or as a personal representative as authorized by RCW 11.36.010: PROVIDED, That nothing in this chapter or in any other provisions of existing law applicable to corporations shall be interpreted to prohibit such corporation from investing its funds in real estate, personal property, mortgages, stocks, bonds, insurance, or any other type of investments. [1984 c 149 § 170; 1969 c 122 § 8.]

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

18.100.090 Stock issuance. Except as otherwise provided in RCW 18.100.118, no professional corporation organized under the provisions of this chapter may issue any of its capital stock to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same specific professional services within this state as those for which the corporation was incorporated. [1983 c 51 § 4; 1969 c 122 § 9.]

18.100.095 Validity of share voting agreements. A proxy, voting trust, or other voting agreement with respect to shares of a professional corporation shall not be valid unless all holders thereof, all trustees and beneficiaries thereof, or all parties thereto, as the case may be, are eligible to be shareholders of the corporation. [1983 c 51 § 12.]

18.100.100 Legal disqualification of officer, shareholder or employee to render professional service, effect. If any director, officer, shareholder, agent or employee of a corporation organized under this chapter who has been rendering professional service to the public becomes legally disqualified to render such professional services within this state, he shall sever all employment with, and financial interests in, such corporation forthwith. A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a corporation's failure to comply with this provision is brought to the attention of the office of the secretary of state, the secretary of state forthwith shall certify that fact to the attorney general for appropriate action to dissolve the corporation. [1969 c 122 § 10.]

18.100.110 Sale or transfer of shares. No shareholder of a corporation organized as a professional corporation

may sell or transfer his shares in such corporation except to another individual who is eligible to be a shareholder of such corporation. Any transfer of shares in violation of this section shall be void. However, nothing in this section prohibits the transfer of shares of a professional corporation by operation of law or court decree. [1983 c 51 § 5; 1969 c 122 § 11.]

18.100.114 Merger or consolidation. (1) A corporation organized under this chapter may merge or consolidate with another corporation, domestic or foreign, organized to render the same specific professional services, only if every shareholder of each corporation is eligible to be a shareholder of the surviving or new corporation.

(2) Upon the merger or consolidation of a corporation organized under this chapter, the surviving or new corporation, as the case may be, may render professional services in this state only if it is organized under, and complies with, the provisions of this chapter. [1983 c 51 § 8.]

18.100.116 Treatment of shares upon death of shareholder or transfer of shares by law or court decree to ineligible person. If a shareholder of a professional corporation dies, or if shares of a professional corporation are transferred by operation of law or court decree to an ineligible person, and if the shares held by the deceased shareholder or by such ineligible person are less than all of the outstanding shares of the corporation:

(1) The shares held by the deceased shareholder or by the ineligible person may be transferred to remaining shareholders of the corporation or may be redeemed by the corporation pursuant to terms stated in the articles of incorporation or by laws of the corporation, or in a private agreement. In the absence of any such terms, such shares may be transferred to any individual eligible to be a shareholder of the corporation.

(2) If such a redemption or transfer of the shares held by a deceased shareholder or an ineligible person is not completed within twelve months after the death of the deceased shareholder or the transfer, as the case may be, such shares shall be deemed to be shares with respect to which the holder has elected to exercise the right of dissent described in chapter 23B.13 RCW and has made written demand on the corporation for payment of the fair value of such shares. The corporation shall forthwith cancel the shares on its books and the deceased shareholder or ineligible person shall have no further interest in the corporation other than the right to payment for the shares as is provided in RCW 23B.13.250. For purposes of the application of RCW 23B.13.250, the date of the corporate action and the date of the shareholder's written demand shall be deemed to be one day after the date on which the twelve-month period from the death of the deceased shareholder, or from the transfer, expires. [1991 c 72 § 4; 1983 c 51 § 10.]

18.100.118 Eligibility of certain representatives and transferees to serve as directors, officers, or shareholders. If all of the outstanding shares of a professional corporation are held by an administrator, executor, guardian, conservator, or receiver of the estate of a former shareholder, or by a transferee who received such shares by operation of law or

court decree, such administrator, executor, guardian, conservator, receiver, or transferee for a period of twelve months following receipt or transfer of such shares may be a director, officer, or shareholder of the professional corporation. [1983 c 51 § 11.]

18.100.120 Name—Abbreviations—Listing of shareholders. Corporations organized pursuant to this chapter shall render professional service and exercise its authorized powers under a name permitted by law and the professional ethics of the profession in which the corporation is so engaged. In the event that the words "company", "corporation" or "incorporated" or any other word, abbreviation, affix or prefix indicating that it is a corporation shall be used, it shall be accompanied with the abbreviation "P.S." or "P.C." or the words "professional service". With the filing of its first annual report and any filings thereafter, professional service corporation shall list its then shareholders: PROVIDED, That notwithstanding the foregoing provisions of this section, the corporate name of a corporation organized to render dental services shall contain the full names or surnames of all shareholders and no other word than "chartered" or the words "professional services" or the abbreviation "P.S." or "P.C." [1982 c 35 § 169; 1969 c 122 § 12.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

18.100.130 Application of business corporation act and nonprofit corporation act. (1) For a professional service corporation organized for pecuniary profit under this chapter, the provisions of Title 23B RCW shall be applicable except to the extent that any of the provisions of this chapter are interpreted to be in conflict with the provisions thereof, and in such event the provisions and sections of this chapter shall take precedence with respect to a corporation organized pursuant to the provisions of this chapter.

(2) For a professional service corporation organized under this chapter and chapter 24.03 RCW as a nonprofit nonstock corporation, the provisions of chapter 24.03 RCW shall be applicable except to the extent that any of the provisions of this chapter are interpreted to be in conflict with the provisions thereof, and in such event the provisions and sections of this chapter shall take precedence with respect to a corporation organized under the provisions of this chapter. [1991 c 72 § 5; 1986 c 261 § 2; 1983 c 51 § 6; 1969 c 122 § 13.]

18.100.132 Nonprofit professional service corporations formed under prior law. A nonprofit professional service corporation formed pursuant to *chapter 431, Laws of 1985, may amend its articles of incorporation at any time before July 31, 1987, to comply with the provisions of this chapter. Compliance under this chapter shall relate back and take effect as of the date of formation of the corporation under *chapter 431, Laws of 1985, and the corporate existence shall be deemed to have continued without interruption from that date. [1986 c 261 § 4.]

***Reviser's note:** Chapter 431, Laws of 1985 enacted RCW 24.03.038, which was repealed by 1986 c 261 § 7.

18.100.133 Business corporations under Title 23B RCW may elect to conform with this chapter. A business corporation formed under the provisions of Title 23B RCW may amend its articles of incorporation to change its stated purpose to the rendering of professional services and to conform to the requirements of this chapter. Upon the effective date of such amendment, the corporation shall be subject to the provisions of this chapter and shall continue in existence as a professional corporation under this chapter. [1991 c 72 § 6; 1986 c 261 § 5.]

18.100.134 Professional services—Deletion from stated purposes of corporation. A professional corporation may amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform to the requirements of Title 23B RCW, or to the requirements of chapter 24.03 RCW if organized pursuant to RCW 18.100.050 as a nonprofit nonstock corporation. Upon the effective date of such amendment, the corporation shall no longer be subject to the provisions of this chapter and shall continue in existence as a corporation under Title 23B RCW or chapter 24.03 RCW. [1991 c 72 § 7; 1986 c 261 § 3; 1983 c 51 § 9.]

18.100.140 Illegal, unethical or unauthorized conduct not authorized. Nothing in this chapter shall authorize a director, officer, shareholder, agent or employee of a corporation organized under this chapter, or a corporation itself organized under this chapter, to do or perform any act which would be illegal, unethical or unauthorized conduct under the provisions of the following acts: (1) Medical disciplinary act, chapter 18.72 RCW; (2) anti-rebating act, chapter 19.68 RCW; (3) state bar act, chapter 2.48 RCW; (4) professional accounting act, chapter 18.04 RCW; (5) professional architects act, chapter 18.08 RCW; (6) professional auctioneers act, chapter 18.11 RCW; (7) cosmetologists, barbers, and manicurists, chapter 18.16 RCW; (8) boarding homes act, chapter 18.20 RCW; (9) *podiatry, chapter 18.22 RCW; (10) chiropractic act, chapter 18.25 RCW; (11) registration of contractors, chapter 18.27 RCW; (12) debt adjusting act, chapter 18.28 RCW; (13) dental hygienist act, chapter 18.29 RCW; (14) dentistry, chapter 18.32 RCW; (15) dispensing opticians, chapter 18.34 RCW; (16) naturopathic act, chapter 18.36A RCW; (17) embalmers and funeral directors, chapter 18.39 RCW; (18) engineers and land surveyors, chapter 18.43 RCW; (19) escrow agents registration act, chapter 18.44 RCW; (20) maternity homes, chapter 18.46 RCW; (21) midwifery, chapter 18.50 RCW; (22) nursing homes, chapter 18.51 RCW; (23) optometry, chapter 18.53 RCW; (24) osteopathy, chapter 18.57 RCW; (25) pharmacists, chapter 18.64 RCW; (26) physical therapy, chapter 18.74 RCW; (27) practical nurses, chapter 18.78 RCW; (28) psychologists, chapter 18.83 RCW; (29) real estate brokers and salesmen, chapter 18.85 RCW; (30) registered professional nurses, chapter 18.88 RCW; (31) veterinarians, chapter 18.92 RCW. [1987 c 447 § 16; 1982 c 35 § 170; 1969 c 122 § 14.]

***Reviser's note:** The term "podiatry" was changed to "podiatric medicine and surgery" by 1990 c 147.

Severability—1987 c 447: See RCW 18.36A.901.

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

18.100.150 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

Chapter 18.104

WATER WELL CONSTRUCTION

Sections

- 18.104.005 Transfer of duties to the department of health.
- 18.104.010 Purpose.
- 18.104.020 Definitions.
- 18.104.030 Compliance enjoined.
- 18.104.040 Powers of department.
- 18.104.043 Well sealing and decommissioning—Delegation of authority.
- 18.104.048 Prior notice of water well construction, reconstruction, and abandonment.
- 18.104.050 Reports of water well construction or alteration.
- 18.104.060 Violations—Cease and desist orders.
- 18.104.070 License required—Qualifications—Fee—Examination.
- 18.104.080 Examinations—Subjects—Times and places.
- 18.104.100 Licenses—Duration—Renewal—Fee—Failure to renew, procedure.
- 18.104.110 Suspension or revocation of licenses—Grounds—Duration.
- 18.104.120 Complaints against contractors or operators—Department's response—Review.
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- 18.104.150 Receipts paid to general fund.
- 18.104.155 Civil penalties.
- 18.104.160 Criminal penalties—Prosecutions.
- 18.104.170 Remedies cumulative.
- 18.104.180 Exemptions.
- 18.104.900 Short title.
- 18.104.910 Effective date—1971 ex.s. c 212.
- 18.104.920 Severability—1971 ex.s. c 212.

18.104.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services under this chapter shall be performed by the department of health. [1989 1st ex.s. c 9 § 237.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.104.010 Purpose. The legislature declares that the drilling, making or constructing of water wells using the ground water resources within the state is a business and activity of vital interest to the public. In order to protect the public health, welfare, and safety of the people it is necessary that provision be made for the regulation and licensing of water well contractors and operators and for the regulation of water well construction. [1971 ex.s. c 212 § 1.]

18.104.020 Definitions. The definitions set forth in this section apply throughout this chapter, unless a different meaning is plainly required by the context.

(1) "Constructing a well" or "construct a well" means and includes boring, digging, drilling, or excavating and installing casing, sheeting, lining, or well screens, whether in the installation of a new well or in the alteration of an existing well.

(2) "Department" means the department of ecology.

(3) "Director" means the director of the department of ecology.

(4) "Ground water" means and includes ground waters as defined in RCW 90.44.035, as now or hereafter amended.

(5) "Operator" means any person, other than a person exempted by RCW 18.104.180, who is employed by a water well contractor for the control and supervision of the construction of a water well or for the operation of water well construction equipment.

(6) "Water well" means and includes any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of the well is for the location, diversion, artificial recharge, or withdrawal of ground water. "Water well" does not mean an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

(7) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity engaged in the business of constructing water wells. [1983 1st ex.s. c 27 § 14; 1971 ex.s. c 212 § 2.]

18.104.030 Compliance enjoined. It is unlawful:

(1) For any water well contractor to construct a water well for compensation without complying with the licensing provisions of this chapter;

(2) For any water well contractor to construct a water well for compensation without complying with the rules and regulations for water well construction adopted pursuant to this chapter;

(3) For any water well construction operator to supervise the construction of a water well without having an operators license as provided in this chapter. [1971 ex.s. c 212 § 3.]

18.104.040 Powers of department. The department shall have the power:

(1) To issue, deny, suspend or revoke licenses pursuant to the provisions of this chapter;

(2) To enter upon lands for the purpose of inspecting any water well, drilled or being drilled, at all reasonable times;

(3) To call upon or receive professional or technical advice from any public agency or any person;

(4) To make such rules governing licensing hereunder and water well construction as may be appropriate to carry out the purposes of this chapter. Without limiting the generality of the foregoing, the department may in cooperation with the department of health make rules regarding:

(a) Standards for the construction and maintenance of water wells and their casings;

(b) Methods of sealing artesian wells and water wells to be abandoned or which may contaminate other water resources;

(c) Methods of artificial recharge of ground water bodies and of construction of wells which insure separation of individual water bearing formations;

(d) The manner of conducting and the content of examinations required to be taken by applicants for license hereunder;

(e) Reporting requirements of water well contractors;

(f) Limitations on water well construction in areas identified by the department as requiring intensive control of withdrawals in the interests of sound management of the ground water resource. [1991 c 3 § 249; 1971 ex.s. c 212 § 4.]

18.104.043 Well sealing and decommissioning—Delegation of authority. (Expires June 30, 1996.) (1) If requested in writing by the governing body of a local health district or county, the department by memorandum of agreement may delegate to the governing body the authority to administer and enforce the well sealing and decommissioning portions of the water well construction program.

(2) The department shall determine whether a local health district or county that seeks delegation under this section has the resources, capability, and expertise, including qualified field inspectors, to administer the delegated program. If the department determines the local government has these resources, it shall notify drilling contractors, consultants, and operators of the proposal. The department shall accept written comments on the proposal for sixty days after the notice is mailed.

(3) If the department determines that a delegation of authority to a local health district or county to administer and enforce the well sealing and decommissioning portions of the water well construction program will enhance the public health and safety and the environment, the department and the local governing body may enter into a memorandum of agreement setting forth the specific authorities delegated by the department to the local governing body. The memorandum of agreement shall provide for an initial review of the delegation within one year and for periodic review thereafter.

(4) The local governing body shall exercise any authority delegated under this section in accordance with this chapter, other applicable laws, the memorandum of agreement, and applicable ordinances. If, after a public hearing, the department determines that a local governing body is not administering the program in accordance with this chapter, it shall notify the local governing body of the deficiencies. If corrective action is not taken within a reasonable time, not to exceed sixty days, the department by order shall withdraw the delegation of authority.

(5) The department shall promptly furnish the local governing body with a copy of each water well report and notification of start cards received in the area covered by a delegated program.

(6) The department and the local governing body shall coordinate to reduce duplication of effort and shall share all appropriate information including technical reports, violations, and well reports.

(7) Any person aggrieved by a decision of a local health district or county under a delegated program may appeal the decision to the department. The department's decision is subject to review by the pollution control hearings board as provided in RCW 18.104.130.

(8) The department shall not delegate the authority to license water well contractors, renew licenses, receive notices of intent to commence drilling a well, receive well reports, or collect state fees provided for in this chapter. [1992 c 67 § 2.]

Legislative findings—1992 c 67: "The legislature finds that the public health and safety and the environment would be enhanced by permitting qualified local governmental agencies to administer and enforce portions of the water well construction program." [1992 c 67 § 1.]

Expiration date—1992 c 67: "Sections 1 and 2 of this act shall expire June 30, 1996." [1992 c 67 § 3.]

18.104.048 Prior notice of water well construction, reconstruction, and abandonment. To enable the department to monitor the construction, reconstruction, and abandonment of water wells more efficiently and effectively, water well contractors shall provide notification to the department of their intent to begin construction, reconstruction, or abandonment procedures at least seventy-two hours in advance of commencing work. The notification shall be submitted on forms provided by the department and shall contain the name of the owner of the well, location of the well, proposed use, approximate start date, driller's name and license number, drilling company's name, and other pertinent information as prescribed by rule of the department. Rules of the department shall also provide for prior telephonic notification by well drillers in exceptional situations. [1987 c 394 § 3.]

18.104.050 Reports of water well construction or alteration. In order to enable the state to protect the welfare, health and safety of its citizens, any water well contractor shall furnish a water well report to the director within thirty days after the completion of the construction or alteration by him of any water well. The director, by regulation, shall prescribe the form of the report and the information to be contained therein. [1971 ex.s. c 212 § 5.]

18.104.060 Violations—Cease and desist orders. Notwithstanding and in addition to any other powers granted to the department, whenever it appears to the director, or to an assistant authorized by the director to issue regulatory orders under this section, that a person is violating or is about to violate any of the provisions of this chapter, the director, or his authorized assistant, may cause a written regulatory order to be served upon said person either personally, or by registered or certified mail delivered to the addressee only with return receipt requested and acknowledged by him. The order shall specify the provision of this chapter, and if applicable, the rule or regulation adopted pursuant to this chapter alleged to be or about to be violated, and the facts upon which the conclusion of violating or potential violation is based, and shall order the act constituting the violation or the potential violation to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific and reasonable time. A regulatory order issued hereunder shall become effective immediately upon receipt by the person to whom the order is directed, and shall become final unless review thereof is requested as provided in this chapter. [1971 ex.s. c 212 § 6.]

18.104.070 License required—Qualifications—Fee—Examination. Except as provided in RCW 18.104.180, no person may contract to engage in the construction of a water well and no person may act as an operator without first obtaining a license by applying to the department.

A person shall be qualified to receive a water well construction operators license if he:

(1) Has made application therefor to the department and has paid to the department an application fee of twenty-five dollars; and

(2) Has at least two years of field experience with a licensed well driller or one year of field experience and an equivalent of at least one school year of qualifying educational training that satisfies the criteria established by department rule; and

(3) Has passed a written examination as provided for in RCW 18.104.080: PROVIDED, That should any applicant establish his illiteracy to the satisfaction of the department, such applicant shall be entitled to an oral examination in lieu of the written examination authorized herein. [1987 c 394 § 2; 1971 ex.s. c 212 § 7.]

18.104.080 Examinations—Subjects—Times and places. The examination, which is made a prerequisite for obtaining a license hereunder, shall be prepared to test knowledge and understanding of the following subjects:

(1) Washington ground water laws as they relate to well construction;

(2) Sanitary standards for water well drilling and construction of water wells;

(3) Types of water well construction;

(4) Drilling tools and equipment;

(5) Underground geology as it relates to water well construction; and

(6) Rules of the department and the department of health relating to water well construction.

Examinations shall be held at such times and places as may be determined by the department but not later than thirty days after an applicant has filed a completed application with the department. The department shall make a determination of the applicant's qualifications for a license within ten days after the examination. [1991 c 3 § 250; 1971 ex.s. c 212 § 8.]

18.104.100 Licenses—Duration—Renewal—Fee—Failure to renew, procedure. The term for the effectiveness of any license issued pursuant to this chapter shall be one year, commencing on the date the license is issued. Every license shall be renewed annually upon payment of a renewal fee of ten dollars. If a licensee fails to submit an application for renewal, together with the renewal fee, before the end of the effective term of his license, his license shall be suspended for thirty days on notice by the director. If his renewal fee is paid prior to the end of said suspension period, the suspension shall automatically terminate. If during the period of suspension renewal is not completed, his license shall be revoked: PROVIDED, That the director shall give the licensee ten days notice prior to the revocation of any license for failure to renew.

A person whose license is revoked under this section and who thereafter desires to engage in the supervision of construction of water wells must make application for a new license and pay twenty-five dollars as provided in RCW 18.104.070. [1971 ex.s. c 212 § 10.]

18.104.110 Suspension or revocation of licenses—Grounds—Duration. In cases other than those relating to the failure of a licensee to renew a license, any license issued hereunder may be suspended or revoked by the director for any of the following reasons:

(1) For fraud or deception in obtaining the license;

(2) For fraud or deception in reporting under RCW 18.104.050;

(3) For violating the provisions of this chapter, or of any lawful rule or regulation of the department or the department of health.

No license shall be suspended for more than six months. No person whose license is revoked shall be eligible to apply for a license for one year from the effective date of the final order of revocation. [1991 c 3 § 251; 1971 ex.s. c 212 § 11.]

18.104.120 Complaints against contractors or operators—Department's response—Review. Any person with an economic or noneconomic interest may make a complaint against any water well contractor or operator for violating this chapter or any regulations under it to the department of ecology. The complaint shall be in writing, signed by the complainant, and specify the grievances against the licensee. The department shall respond to the complaint by issuance of an order it deems appropriate. Review of the order shall be subject to the hearings procedures set forth in RCW 18.104.130. [1983 c 93 § 1; 1971 ex.s. c 212 § 12.]

18.104.130 Appeals. Any person who feels aggrieved by an order of the department including the granting, denial, revocation, or suspension of a license issued by the department pursuant to this chapter shall be entitled to an appeal pursuant to RCW 43.21B.310. [1987 c 109 § 24; 1971 ex.s. c 212 § 13.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

18.104.150 Receipts paid to general fund. All receipts realized in the administration of this chapter shall be paid into the general fund. [1971 ex.s. c 212 § 15.]

18.104.155 Civil penalties. The department of ecology may levy a civil penalty of up to one hundred dollars per day for violation of this chapter or rules or orders of the department adopted or issued pursuant to it. Procedures of RCW 90.48.144 shall be applicable to all phases of levying of such a penalty as well as review and appeal of them. For each notice regarding a violation, resulting from the improper construction of a well, that is sent to a water well contractor or water well construction operator, the department shall send a copy of the notice for information purposes only to the owner of the land on which the improperly constructed well is located. [1987 c 394 § 1.]

18.104.160 Criminal penalties—Prosecutions. Any person who shall violate any provision of this chapter, shall be guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not more than two hundred fifty dollars, or imprisonment in a county jail for a term not to exceed

thirty days, or both. Criminal prosecutions for violations of this chapter shall be prosecuted by the prosecuting attorney in the county in which the violation occurred. [1971 ex.s. c 212 § 16.]

18.104.170 Remedies cumulative. The remedies provided for in this chapter shall be cumulative and nothing herein shall alter, abridge or foreclose alternative actions at common law or in equity or under statutory law, civil or criminal. [1971 ex.s. c 212 § 17.]

18.104.180 Exemptions. No license hereunder shall be required of:

(1) Any individual who personally drills a well on land which is owned or leased by him or in which he has a beneficial interest as a contract purchaser and is used by the individual for farm or noncommercial domestic use only.

(2) Any individual who performs labor or services for a water well contractor in connection with the drilling of a well at the direction and under the supervision and control of a licensed operator. [1971 ex.s. c 212 § 18.]

18.104.900 Short title. This chapter shall be known and may be cited as the "Washington Water Well Construction Act". [1971 ex.s. c 212 § 19.]

18.104.910 Effective date—1971 ex.s. c 212. This act shall take effect on July 1, 1971. [1971 ex.s. c 212 § 20.]

18.104.920 Severability—1971 ex.s. c 212. If any provision of the 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. [1971 ex.s. c 212 § 21.]

Chapter 18.106 PLUMBERS

Sections

- 18.106.010 Definitions.
- 18.106.020 Journeyman certificate, specialty certificate, temporary permit, or supervision required—Penalty.
- 18.106.025 Violation of RCW 18.106.020—Separate infractions.
- 18.106.030 Application for certificate of competency—Evidence of competency required.
- 18.106.040 Examinations—Eligibility requirements—Determination.
- 18.106.050 Examinations—Scope—Results—Retaking.
- 18.106.070 Certificates of competency—Issuance—Renewal—Rights of holder—Plumbing training certificates—Supervision.
- 18.106.080 Persons engaged in plumbing business or trade on effective date.
- 18.106.090 Temporary permits.
- 18.106.100 Revocation of certificate of competency—Grounds—Procedure.
- 18.106.110 Advisory board of plumbers.
- 18.106.125 Fees.
- 18.106.130 Plumbing certificate fund.
- 18.106.140 Powers and duties of director.
- 18.106.150 Exemptions from chapter requirements.
- 18.106.155 Reciprocity.
- 18.106.170 Violations—Investigations—Evidence of compliance.
- 18.106.180 Notice of infraction—Service.
- 18.106.190 Notice of infraction—Form—Contents.

- 18.106.200 Notice of infraction—Filing—Hearing in district court.
- 18.106.210 Notice of infraction—Determination infraction committed.
- 18.106.220 Notice of infraction—Response—Requesting a hearing—Failure to respond or appear—Order set aside.
- 18.106.230 Notice of infraction—Failure to respond—Misdemeanor.
- 18.106.240 Representation by attorney—Department represented by attorney general.
- 18.106.250 Infraction—Hearing—Procedure—Burden of proof—Order—Appeal.
- 18.106.260 Record of court's order—Transmittal.
- 18.106.270 Infraction—Monetary penalty.

18.106.010 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 meaning:

(1) "Advisory board" means the state advisory board of plumbers;

(2) "Department" means the department of labor and industries;

(3) "Director" means the director of department of labor and industries;

(4) "Journeyman plumber" means any person who has been issued a certificate of competency by the department of labor and industries as provided in this chapter;

(5) "Specialty plumber" means anyone who has been issued a specialty certificate of competency limited to installation, maintenance, and repair of the plumbing of single family dwellings, duplexes, and apartment buildings which do not exceed three stories;

(6) "Plumbing" means that craft involved in installing, altering, repairing and renovating potable water systems and liquid waste systems within a building: PROVIDED, That installation in a water system of water softening or water treatment equipment shall not be within the meaning of plumbing as used in this chapter. [1983 c 124 § 1; 1977 ex.s. c 149 § 1; 1975 1st ex.s. c 71 § 1; 1973 1st ex.s. c 175 § 1.]

18.106.020 Journeyman certificate, specialty certificate, temporary permit, or supervision required—Penalty. (1) No person may engage in the trade of plumbing without having a journeyman certificate, specialty certificate, temporary permit or without being supervised by a person who has a journeyman certificate, specialty certificate, or temporary permit.

(2) Violation of subsection (1) of this section is an infraction. [1983 c 124 § 4; 1977 ex.s. c 149 § 2; 1975 1st ex.s. c 71 § 2; 1973 1st ex.s. c 175 § 2.]

Effective date—1983 c 124: "Sections 4 through 16 of this act shall take effect on January 1, 1984." [1983 c 124 § 21.] "Sections 4 through 16 of this act" consist of the amendment to RCW 18.106.020 and the enactment of RCW 18.106.025, 18.106.170, 18.106.180, 18.106.190, 18.106.200, 18.106.210, 18.106.220, 18.106.230, 18.106.240, 18.106.250, 18.106.260, and 18.106.270.

18.106.025 Violation of RCW 18.106.020—Separate infractions. Each day in which a person engages in the trade of plumbing in violation of RCW 18.106.020 is a separate infraction. Each work site at which a person engages in the trade of plumbing in violation of RCW 18.106.020 is a separate infraction. [1983 c 124 § 5.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.030 Application for certificate of competency—Evidence of competency required. Any person desiring to be issued a certificate of competency as provided in this chapter shall deliver evidence in a form prescribed by the department affirming that said person has had sufficient experience in as well as demonstrated general competency in the trade of plumbing or specialty plumbing so as to qualify him to make an application for a certificate of competency as a journeyman plumber or specialty plumber: PROVIDED, That completion of a course of study in the plumbing trade in the armed services of the United States or at a school accredited by the coordinating council on occupational education shall constitute sufficient evidence of experience and competency to enable such person to make application for a certificate of competency.

In addition to supplying the evidence as prescribed in this section, each applicant for a certificate of competency shall submit an application for such certificate on such form and in such manner as shall be prescribed by the director of the department. [1977 ex.s. c 149 § 3; 1973 1st ex.s. c 175 § 3.]

18.106.040 Examinations—Eligibility requirements—Determination. Upon receipt of the application and evidence set forth in RCW 18.106.030, the director shall review the same and make a determination as to whether the applicant is eligible to take an examination for the certificate of competency. To be eligible to take the examination each applicant for a journeyman plumber's certificate of competency shall furnish written evidence that he has either completed a course of study in the plumbing trade in the armed services of the United States or at a school accredited by the coordinating council on occupational education; or that he has four or more years of experience under the direct supervision of a licensed journeyman plumber. Each applicant for a specialty plumber's certificate of competency shall furnish written evidence that he has either completed a course of study in the plumbing trade in the armed services of the United States or at a school accredited by the *commission for vocational education or its designee, or that he has had at least three years practical experience in his specialty. No other requirement for eligibility may be imposed. The director shall establish reasonable rules and regulations for the examinations to be given applicants for certificates of competency. In establishing said rules, regulations, and criteria, the director shall consult with the state advisory board of plumbers as established in RCW 18.106.110. Upon determination that the applicant is eligible to take the examination, the director shall so notify him, indicating the time and place for taking the same. [1977 ex.s. c 149 § 4; 1975 1st ex.s. c 71 § 3; 1973 1st ex.s. c 175 § 4.]

***Reviser's note:** The commission on vocational education and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1986, and repealed June 30, 1987. See 1983 c 197 §§ 17 and 43.

18.106.050 Examinations—Scope—Results—Retaking. The department, with the advice of the advisory board, shall prepare a written examination to be administered to applicants for certificates of competency for journeyman

plumber and specialty plumber. The examination shall be constructed to determine:

(1) Whether the applicant possesses varied general knowledge of the technical information and practical procedures that are identified with the trade of journeyman plumber or specialty plumber; and

(2) Whether the applicant is familiar with the applicable plumbing codes and the administrative rules of the department pertaining to plumbing and plumbers.

The department shall administer the examination to eligible persons. All applicants shall, before taking the examination, pay to the department a fee.

The department shall certify the results of the examination, and shall notify the applicant in writing whether he or she has passed or failed. Any applicant who has failed the examination may retake the examination, upon the terms and after a period of time that the director shall set by rule. The director may not limit the number of times that a person may take the examination. [1983 c 124 § 2; 1977 ex.s. c 149 § 5; 1973 1st ex.s. c 175 § 5.]

18.106.070 Certificates of competency—Issuance—Renewal—Rights of holder—Plumbing training certificates—Supervision. (1) The department shall issue a certificate of competency to all applicants who have passed the examination and have paid the fee for the certificate. The certificate shall bear the date of issuance, and shall expire on the birthdate of the holder immediately following the date of issuance. The certificate shall be renewable every other year, upon application, on or before the birthdate of the holder. A renewal fee shall be assessed for each certificate. If a person fails to renew the certificate by the renewal date, he or she must pay a doubled fee. If the person does not renew the certificate within ninety days of the renewal date, he or she must retake the examination and pay the examination fee.

The certificate of competency and the temporary permit provided for in this chapter grant the holder the right to engage in the work of plumbing as a journeyman plumber or specialty plumber in accordance with their provisions throughout the state and within any of its political subdivisions on any job or any employment without additional proof of competency or any other license or permit or fee to engage in the work. This section does not preclude employees from adhering to a union security clause in any employment where such a requirement exists.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the plumbing construction trade or who is learning the plumbing construction trade may work in the plumbing construction trade if supervised by a certified journeyman plumber or a certified specialty plumber in that plumber's specialty. All apprentices and individuals learning the plumbing construction trade shall obtain a plumbing training certificate from the department. The certificate shall authorize the holder to learn the plumbing construction trade while under the direct supervision of a journeyman plumber or a specialty plumber working in his or her specialty. The holder of the plumbing training certificate shall renew the certificate annually. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the

plumbing construction industry for the previous year and the number of hours worked for each employer. An annual fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. Apprentices and individuals learning the plumbing construction trade shall have their plumbing training certificates in their possession at all times that they are performing plumbing work. They shall show their certificates to an authorized representative of the department at the representative's request.

(3) Any person who has been issued a plumbing training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a journeyman plumber or an appropriate specialty plumber who has an applicable certificate of competency issued under this chapter. Either a journeyman plumber or an appropriate specialty plumber shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter. The ratio of noncertified individuals to certified journeymen or specialty plumbers working on a job site shall be: (a) From July 28, 1985, through June 30, 1988, not more than three noncertified plumbers working on any one job site for every certified journeyman or specialty plumber; (b) effective July 1, 1988, not more than two noncertified plumbers working on any one job site for every certified specialty plumber or journeyman plumber working as a specialty plumber; and (c) effective July 1, 1988, not more than one noncertified plumber working on any one job site for every certified journeyman plumber working as a journeyman plumber.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in a technical school program in the plumbing construction trade in a school approved by the *commission for vocational education, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter. [1985 c 465 § 1; 1983 c 124 § 3; 1977 ex.s. c 149 § 7; 1973 1st ex.s. c 175 § 7.]

***Reviser's note:** The commission on vocational education and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1986, and repealed June 30, 1987. See 1983 c 197 §§ 17 and 43.

18.106.080 Persons engaged in plumbing business or trade on effective date. No examination shall be required of any applicant for a certificate of competency who, on July 16, 1973, was engaged in a bona fide business or trade of plumbing, or on said date held a valid journeyman plumber's license issued by a political subdivision of the state of Washington and whose license is valid at the time of making his application for said certificate. Applicants qualifying under this section shall be issued a certificate by the department upon making an application as provided in RCW 18.106.030 and paying the fee required under RCW 18.106.050: PROVIDED, That no applicant under this section shall be required to furnish such evidence as required by RCW 18.106.030. [1973 1st ex.s. c 175 § 8.]

18.106.090 Temporary permits. The department is authorized to grant and issue temporary permits in lieu of certificates of competency whenever a plumber coming into the state of Washington from another state requests the department for a temporary permit to engage in the trade of plumbing as a journeyman plumber or as a specialty plumber during the period of time between filing of an application for a certificate as provided in RCW 18.106.030 as now or hereafter amended and taking the examination provided for in RCW 18.106.050: PROVIDED, That no temporary permit shall be issued to:

(1) Any person who has failed to pass the examination for a certificate of competency;

(2) Any applicant under this section who has not furnished the department with such evidence required under RCW 18.106.030;

(3) To any apprentice plumber. [1985 c 7 § 78; 1977 ex.s. c 149 § 8; 1973 1st ex.s. c 175 § 9.]

18.106.100 Revocation of certificate of competency—Grounds—Procedure. (1) The department may revoke any certificate of competency upon the following grounds:

(a) The certificate was obtained through error or fraud;

(b) The holder thereof is judged to be incompetent to carry on the trade of plumbing as a journeyman plumber or specialty plumber;

(c) The holder thereof has violated any of the provisions of this chapter or any rule or regulation promulgated thereto.

(2) Before any certificate of competency shall be revoked, the holder thereof shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to said holder's last known address. Said notice shall enumerate the allegations against such holder, and shall give him the opportunity to request a hearing before the advisory board. At such hearing, the department and the holder shall have opportunity to produce witnesses and give testimony. The hearing shall be conducted in accordance with the provisions of chapter 34.05 RCW. The board shall render its decision based upon the testimony and evidence presented, and shall notify the parties immediately upon reaching its decision. A majority of the board shall be necessary to render a decision. [1977 ex.s. c 149 § 9; 1973 1st ex.s. c 175 § 10.]

18.106.110 Advisory board of plumbers. (1) There is created a state advisory board of plumbers, to be composed of three members appointed by the governor. One member shall be a journeyman plumber, one member shall be a person conducting a plumbing business, and one member from the general public who is familiar with the business and trade of plumbing.

(2) The initial terms of the members of the advisory board shall be one, two, and three years respectively as set forth in subsection (1) of this section. Upon the expiration of said terms, the governor shall appoint a new member to serve for a period of three years. In the case of any vacancy on the board for any reason, the governor shall appoint a new member to serve out the term of the person whose position has become vacant.

(3) The advisory board shall carry out all the functions and duties enumerated in this chapter, as well as generally advise the department on all matters relative to this chapter.

(4) Each member of the advisory board shall receive travel expenses in accordance with the provisions of RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day in which such member is actually engaged in attendance upon the meetings of the advisory board. [1975-'76 2nd ex.s. c 34 § 56; 1973 1st ex.s. c 175 § 11.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

18.106.125 Fees. The department shall charge fees for issuance, renewal, and reinstatement of all certificates and permits and for examinations required by this chapter. The department shall set the fees by rule.

The fees shall cover the full cost of issuing the certificates and permits, devising and administering the examinations, and administering and enforcing this chapter. The costs shall include travel, per diem, and administrative support costs. [1983 c 124 § 17.]

18.106.130 Plumbing certificate fund. All moneys received from certificates, permits, or other sources, shall be paid to the state treasurer as ex officio custodian thereof and by him placed in a special fund designated as the "plumbing certificate fund". He shall pay out upon vouchers duly and regularly issued therefor and approved by the director. The treasurer shall keep an accurate record of payments into said fund, and of all disbursement therefrom. Said fund shall be charged with its pro rata share of the cost of administering said fund. [1973 1st ex.s. c 175 § 13.]

18.106.140 Powers and duties of director. The director may promulgate rules, make specific decisions, orders, and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of his duties under this chapter: **PROVIDED**, That in the administration of this chapter the director shall not enter any controversy arising over work assignments with respect to the trades involved in the construction industry. [1973 1st ex.s. c 175 § 14.]

18.106.150 Exemptions from chapter requirements. Nothing in this chapter shall be construed to require that a person obtain a license or a certified plumber in order to do plumbing work at his residence or farm or place of business or on other property owned by him. Any person performing plumbing work on a farm may do so without having a current certificate of competency or apprentice permit: **PROVIDED, HOWEVER**, That nothing in this chapter shall be intended to derogate from or dispense with the requirements of any valid plumbing code enacted by a political subdivision of the state, except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the trade of plumbing: **AND PROVIDED FURTHER**, That this chapter shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees: **AND**

PROVIDED FURTHER, That nothing in this chapter shall be construed to apply to any farm, business, industrial plant, or corporation doing plumbing work on premises it owns or operates: **AND PROVIDED FURTHER**, That nothing in this chapter shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing such plumbing hold themselves out as engaged in the trade or business of plumbing. [1973 1st ex.s. c 175 § 15.]

18.106.155 Reciprocity. The director may, upon payment of the appropriate fees, grant a certificate of competency without examination to any applicant who is a registered journeyman plumber or specialty plumber in any other state whose requirements for registration are at least substantially equivalent to the requirements of this state, and which extends the same privileges of reciprocity to journeymen plumbers or specialty plumbers registered in this state. [1977 ex.s. c 149 § 11.]

18.106.170 Violations—Investigations—Evidence of compliance. An authorized representative of the department may investigate alleged or apparent violations of this chapter. An authorized representative of the department upon presentation of credentials may inspect sites at which a person is doing plumbing work for the purpose of determining whether that person has a certificate or permit issued by the department in accordance with this chapter or is supervised by a person who has such a certificate or permit. Upon request of the authorized representative of the department, a person doing plumbing work shall produce evidence that the person has a certificate or permit issued by the department in accordance with this chapter or is supervised by a person who has such a certificate or permit. [1983 c 124 § 6.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.180 Notice of infraction—Service. An authorized representative of the department may issue a notice of infraction if a person who is doing plumbing work fails to produce evidence of having a certificate or permit issued by the department in accordance with this chapter or of being supervised by a person who has such a certificate or permit. A notice of infraction issued under this section shall be personally served on the person named in the notice by an authorized representative of the department. [1983 c 124 § 7.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.190 Notice of infraction—Form—Contents. (1) The form of the notice of infraction issued under this chapter shall [be] prescribed by the supreme court following consultation with the department. To the extent practicable, the notice of infraction issued under this chapter shall conform to the notice of traffic infraction prescribed by the supreme court pursuant to RCW 46.63.060.

(2) The notice of infraction shall include the following:

(a) A statement that the notice represents a determination that the infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

(c) A statement of the specific infraction for which the notice was issued;

(d) A statement that a one hundred dollar monetary penalty has been established for the infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses, including the authorized representative of the department who issued and served the notice of infraction;

(g) A statement, which the person shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter;

(h) A statement that refusal to sign the infraction as directed in subsection (2)(g) of this section is a misdemeanor; and

(i) A statement that failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine or imprisonment in jail. [1983 c 124 § 9.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.200 Notice of infraction—Filing—Hearing in district court. A violation designated as an infraction under this chapter shall be heard and determined by a district court. A notice of infraction shall be filed in the district court district in which the infraction is alleged to have occurred. If a notice of infraction is filed in a court which is not the proper venue, the notice shall be dismissed without prejudice on motion of either party. [1983 c 124 § 8.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.210 Notice of infraction—Determination infraction committed. Unless contested in accordance with this chapter, the notice of infraction represents a determination that the person to whom the notice was issued committed the infraction. [1983 c 124 § 10.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.220 Notice of infraction—Response—Requesting a hearing—Failure to respond or appear—Order set aside. (1) A person who receives a notice of infraction shall respond to the notice as provided in this section within fourteen days of the date the notice was served.

(2) If the person named in the notice of infraction does not wish to contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's

records, and a record of the response and order shall be furnished to the department.

(3) If the person named in the notice of infraction wishes to contest the determination, the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than fourteen days from the date of the notice, except by agreement of the parties.

(4) If any person issued a notice of infraction:

(a) Fails to respond to the notice of infraction as provided in subsection (2) of this section; or

(b) Fails to appear at a hearing requested pursuant to subsection (3) of this section;

the court shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and shall notify the department of the failure to respond to the notice of infraction or to appear at a requested hearing.

(5) An order entered by the court under subsection (4)(b) of this section may, for good cause shown and upon such terms as the court deems just, be set aside for the same grounds a default judgment may be set aside in civil actions in courts of limited jurisdiction. [1983 c 124 § 11.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.230 Notice of infraction—Failure to respond—Misdemeanor. It is a misdemeanor for any person who has been personally served with a notice of infraction:

(1) To refuse to sign a written promise to respond to the notice; or

(2) To wilfully violate the written promise to respond to a notice of infraction as provided in this chapter, regardless of the ultimate disposition of the infraction. [1983 c 124 § 14.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.240 Representation by attorney—Department represented by attorney general. A person subject to proceedings under this chapter may appear or be represented by counsel. The department shall be represented by the attorney general in any proceeding under this chapter. [1983 c 124 § 12.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.250 Infraction—Hearing—Procedure—Burden of proof—Order—Appeal. (1) A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.

(2) The court may consider the notice of infraction and any other written report made under oath submitted by the department's authorized representative who issued and served the notice in lieu of his or her personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the authorized representative who issued and served the notice, and has the right to present evidence and examine witnesses present in court.

(3) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence. The notice of infraction shall be dismissed if

the defendant establishes that, at the time the notice was issued, the defendant was registered by the department or was exempt from registration.

(4) After consideration of the evidence and argument, the court shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. If it has been established that the infraction was committed, an appropriate order shall be entered in the court's records. A record of the court's determination and order shall be furnished to the department.

(5) An appeal from the court's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure. [1983 c 124 § 13.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.260 Record of court's order—Transmittal.

The court shall, within thirty days after entry of an order under this chapter, forward a record of the court's order to the department on a form prescribed by the department. [1983 c 124 § 15.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.270 Infraction—Monetary penalty. (1) A person found to have committed an infraction under RCW 18.106.020 shall be assessed a monetary penalty of one hundred dollars.

(2) The court may waive, reduce, or suspend the monetary penalty imposed for the infraction.

(3) Monetary penalties collected under this chapter shall be remitted as provided in chapter 3.62 RCW. [1983 c 124 § 16.]

Effective date—1983 c 124: See note following RCW 18.106.020.

Chapter 18.108

MASSAGE PRACTITIONERS

Sections

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18.108.005 Intent—Health care insurance not affected. The legislature finds it necessary to license the practice of massage and massage therapy in order to protect the public health and safety. It is the legislature's intent that only individuals who meet and maintain minimum standards of competence and conduct may provide services to the public. This chapter shall not be construed to require or prohibit individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization from providing benefits or coverage for services and supplies provided by a person registered or certified under this chapter. [1987 c 443 § 1.]

18.108.010 Definitions. In this chapter, unless the context otherwise requires, the following meanings shall apply:

(1) "Board" means the Washington state board of massage.

(2) "Massage" and "massage therapy" mean a health care service involving the external manipulation or pressure of soft tissue for therapeutic purposes. Massage therapy includes massage techniques such as methods of effleurage, petrissage, tapotement, tapping, compressions, vibration, friction, nerve strokes, and Swedish gymnastics or movements either by manual means, as they relate to massage, with or without the aids of superficial heat, cold, water, lubricants, or salts. Massage therapy does not include diagnosis or attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of a thrusting force.

(3) "Massage practitioner" means an individual licensed under this chapter.

(4) "Secretary" means the secretary of health or the secretary's designee.

(5) Massage business means the operation of a business where massages are given. [1991 c 3 § 252; 1987 c 443 § 2; 1979 c 158 § 74; 1975 1st ex.s. c 280 § 1.]

18.108.020 Board of massage—Generally. The Washington state board of massage is hereby created. The board shall consist of four members who shall be appointed by the governor for a term of four years each. Members shall be residents of this state and shall have not less than three years experience in the practice of massage immediately preceding their appointment and shall be licensed under this chapter and actively engaged in the practice of massage during their incumbency.

In addition to the members specified in this section, the governor shall appoint a consumer member of the board, who shall serve for a term of four years. The consumer member of the board shall be an individual who does not derive his or her livelihood by providing health care services or massage therapy and is not a licensed health professional. The consumer member shall not be an employee of the state nor a present or former member of another licensing board.

In the event that a member cannot complete his or her term of office, another appointment shall be made by the governor in accordance with the procedures stated in this section to fill the remainder of the term. No member may serve more than two successive terms whether full or partial. The governor may remove any member of the board for

neglect of duty, incompetence, or unprofessional or disorderly conduct as determined under chapter 18.130 RCW.

Each member of the board shall be compensated in accordance with RCW 43.03.240. Members shall be reimbursed for travel expenses incurred in the actual performance of their duties, as provided in RCW 43.03.050 and 43.03.060.

The board may annually elect a chairperson to direct the meetings of the board. The board shall meet as called by the chairperson or the secretary. Three members of the board shall constitute a quorum of the board. [1991 c 3 § 253; 1987 c 443 § 9. Prior: 1984 c 287 § 53; 1984 c 279 § 56; 1975-'76 2nd ex.s. c 34 § 57; 1975 1st ex.s. c 280 § 2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Severability—1984 c 279: See RCW 18.130.901.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

18.108.025 Board powers and duties. In addition to any other authority provided by law, the board may:

(1) Adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter, subject to the approval of the secretary;

(2) Define, evaluate, approve, and designate those schools, programs, and apprenticeship programs including all current and proposed curriculum, faculty, and health, sanitation, and facility standards from which graduation will be accepted as proof of an applicant's eligibility to take the licensing examination;

(3) Review approved schools and programs periodically;

(4) Prepare, grade, administer, and supervise the grading and administration of, examinations for applicants for licensure; and

(5) Determine which states have educational and licensing requirements equivalent to those of this state.

The board shall establish by rule the standards and procedures for approving courses of study and may contract with individuals or organizations having expertise in the profession or in education to assist in evaluating courses of study. The standards and procedures set shall apply equally to schools and training within the United States of America and those in foreign jurisdictions. [1991 c 3 § 254; 1987 c 443 § 10.]

18.108.030 License required. (1) No person may practice or represent himself or herself as a massage practitioner without first applying for and receiving from the department a license to practice.

(2) A person represents himself or herself as a massage practitioner when the person adopts or uses any title or any description of services that incorporates one or more of the following terms or designations: Massage, massage practitioner, massage therapist, massage therapy, therapeutic massage, massage technician, massage technology, massagist, masseur, masseuse, myotherapist or myotherapy, touch therapist, reflexologist, accupressurist, body therapy or body therapist, or any derivation of those terms that implies a massage technique or method. [1987 c 443 § 3; 1975 1st ex.s. c 280 § 3.]

18.108.040 Advertising practice of massage by unlicensed person unlawful. It shall be unlawful to advertise the practice of massage using the term massage or any other term that implies a massage technique or method in any public or private publication or communication by a person not licensed by the secretary as a massage practitioner. Any person who holds a license to practice as a massage practitioner in this state may use the title "licensed massage practitioner" and the abbreviation "L.M.P.". No other persons may assume such title or use such abbreviation or any other word, letters, signs, or figures to indicate that the person using the title is a licensed massage practitioner. [1991 c 3 § 255; 1987 c 443 § 4; 1975 1st ex.s. c 280 § 4.]

18.108.050 Exemptions. This chapter does not apply to:

(1) An individual giving massage to members of his or her immediate family;

(2) The practice of a profession by individuals who are licensed, certified, or registered under other laws of this state and who are performing services within their authorized scope of practice;

(3) Massage practiced at the athletic department of any institution maintained by the public funds of the state, or any of its political subdivisions;

(4) Massage practiced at the athletic department of any school or college approved by the department by rule using recognized national professional standards. [1987 c 443 § 5; 1975 1st ex.s. c 280 § 5.]

Exemptions: RCW 18.108.130.

18.108.060 License—Issuance—Expiration—Renewal—Fees. All licenses issued under the provisions of this chapter, unless otherwise provided shall expire on the annual anniversary date of the individual's date of birth.

The secretary shall prorate the licensing fee for massage practitioner based on one-twelfth of the annual license fee for each full calendar month between the issue date and the next anniversary of the applicant's birth date, a date used as the expiration date of such license.

Every applicant for a license shall pay an examination fee determined by the secretary as provided in RCW 43.70.250, which fee shall accompany their application. Applications for licensure shall be submitted on forms provided by the secretary.

Applicants granted a license under this chapter shall pay to the secretary a license fee determined by the secretary as provided in RCW 43.70.250, prior to the issuance of their license, and an annual renewal fee determined by the secretary as provided in RCW 43.70.250. Failure to renew shall invalidate the license and all privileges granted to the licensee, but such license may be reinstated upon written application to the secretary and payment to the state of all delinquent fees and penalties as determined by the secretary. In the event a license has lapsed for a period longer than three years, the licensee shall demonstrate competence to the satisfaction of the secretary by proof of continuing education or other standard determined by the secretary with the advice of the board. [1991 c 3 § 256; 1987 c 443 § 6; 1985 c 7 § 79; 1975 1st ex.s. c 280 § 6.]

18.108.070 Qualifications for license. The secretary shall issue a massage practitioner's license to an applicant who demonstrates to the secretary's satisfaction that the following requirements have been met:

(1) Effective June 1, 1988, successful completion of a course of study in an approved massage program or approved apprenticeship program;

(2) Successful completion of an examination administered or approved by the board; and

(3) Be eighteen years of age or older.

In addition, applicants shall be subject to the grounds for denial or issuance of a conditional license under chapter 18.130 RCW.

The secretary may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria for licensure provided for in this chapter and chapter 18.130 RCW. The secretary shall establish by rule what constitutes adequate proof of meeting the criteria. The board shall give an appropriate alternate form of examination for persons who cannot read or speak English to determine equivalent competency. [1991 c 3 § 257; 1987 c 443 § 7; 1975 1st ex.s. c 280 § 7.]

18.108.073 Examination. (1) The date and location of the examination shall be established by the secretary. Applicants who demonstrate to the secretary's satisfaction that the following requirements have been met shall be scheduled for the next examination following the filing of the application:

(a) Effective June 1, 1988, successful completion of a course of study in an approved massage program; or

(b) Effective June 1, 1988, successful completion of an apprenticeship program established by the board; and

(c) Be eighteen years of age or older.

In addition, completed and approved applications shall be received sixty days before the scheduled examination.

(2) The board or its designee shall examine each applicant in a written and practical examination determined most effective on subjects appropriate to the massage scope of practice. The subjects may include anatomy, kinesiology, physiology, pathology, principles of human behavior, massage theory and practice, hydrotherapy, hygiene, first aid, Washington law pertaining to the practice of massage, and such other subjects as the board may deem useful to test applicant's fitness to practice massage therapy. Such examinations shall be limited in purpose to determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) The examination papers, all grading of examinations, and the grading of any practical work, shall be preserved for a period of not less than one year after the board has made and published decisions thereupon. All examinations shall be conducted by the board under fair and impartial methods as determined by the secretary.

(4) An applicant who fails to make the required grade in the first examination is entitled to take up to two additional examinations upon the payment of a fee for each subsequent examination determined by the secretary as provided in RCW 43.70.250. Upon failure of three examinations, the secretary may invalidate the original application and require

such remedial education as is required by the board before admission to future examinations.

(5) The board may approve an examination prepared or administered, or both, by a private testing agency or association of licensing boards for use by an applicant in meeting the licensing requirement. [1991 c 3 § 258; 1987 c 443 § 8.]

18.108.076 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 60; 1986 c 259 § 146.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.108.085 Powers and duties of secretary—Application of uniform disciplinary act. (1) In addition to any other authority provided by law, the secretary may:

(a) Adopt rules, in accordance with chapter 34.05 RCW necessary to implement this chapter;

(b) Set all license, examination, and renewal fees in accordance with RCW 43.70.250;

(c) Establish forms and procedures necessary to administer this chapter;

(d) Issue a license to any applicant who has met the education, training, and examination requirements for licensure; and

(e) Hire clerical, administrative, and investigative staff as necessary to implement this chapter, and hire individuals licensed under this chapter to serve as examiners for any practical examinations.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of licenses and the disciplining of persons under this chapter. The secretary shall be the disciplining authority under this chapter.

(3) The secretary shall keep an official record of all proceedings under this chapter, a part of which record shall consist of a register of all applicants for licensure under this chapter, with the result of each application. [1991 c 3 § 259; 1987 c 443 § 11.]

18.108.095 Out-of-state applicants. An applicant holding a license in another state or foreign jurisdiction may be granted a Washington license without examination, if, in the opinion of the board, the other state's or foreign jurisdiction's examination and educational requirements are substantially equivalent to Washington's: PROVIDED, That the applicant demonstrates to the satisfaction of the board a working knowledge of Washington law pertaining to the practice of massage. The applicant shall provide proof in a manner approved by the department that the examination and requirements are equivalent to Washington's. [1987 c 443 § 12.]

Effective date—1987 c 443 § 12: "Section 12 of this act shall take effect June 1, 1988." [1987 c 443 § 19.]

18.108.100 Provisions relating to licensing of persons nonexclusive. The provisions of this chapter relating to the licensing of any person shall not be exclusive, and any political subdivision of the state of Washington

within whose jurisdiction the practice of massage is performed may require additional registrations or licenses, regulating the practice of massage or massage operators, and charge any fee for the same or similar purpose. [1975 1st ex.s. c 280 § 11.]

18.108.115 Persons licensed under prior law. Any person holding a valid license to practice massage issued by authority of the state on July 26, 1987, shall continue to be licensed as a massage practitioner under the provisions of this chapter. [1987 c 443 § 13.]

18.108.130 Exemptions. This chapter does not apply to:

(1) Massage practiced at the athletic department of any institution maintained by the public funds of the state, or any of its political subdivisions;

(2) Massage practiced at the athletic department of any primary or secondary school, or institution of higher education; and

(3) Massage practiced at the athletic department of any nonprofit organization licensed under RCW 66.24.400 and 66.24.450. [1975 1st ex.s. c 280 § 14.]

Exemptions: RCW 18.108.050.

18.108.190 Inspection of premises by law enforcement personnel. State and local law enforcement personnel shall have the authority to inspect the premises at any time including business hours. [1975 1st ex.s. c 280 § 20.]

18.108.210 Provisions relating to licensing of massage businesses nonexclusive—Authority of local political subdivisions. The provisions of this chapter relating to the registration and licensing of any massage business shall not be exclusive and any political subdivision of the state of Washington within whose jurisdiction the massage business is located may require any registrations or licenses, or charge any fee for the same or similar purpose; and nothing herein shall limit or abridge the authority of any political subdivision to levy and collect a general and nondiscriminatory license fee levied upon all businesses, or to levy a tax based upon gross business conducted by any firm within said political subdivision. [1975 1st ex.s. c 280 § 22.]

18.108.900 Severability—1975 1st ex.s. c 280. If any provision of this 1975 act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this 1975 act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1975 1st ex.s. c 280 § 23.]

18.108.901 Severability—1987 c 443. 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 443 § 18.]

18.108.902 Savings—1987 c 443. This chapter shall not be construed as affecting any existing right acquired or liability or obligations incurred under the sections amended or repealed in this chapter or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections. [1987 c 443 § 14.]

Chapter 18.110 ART DEALERS—ARTISTS

Sections

18.110.010 Definitions.

18.110.020 Rights—Duties—Liabilities.

18.110.030 Contract required—Provisions.

18.110.040 Violations—Penalties—Attorney fees.

18.110.900 Application of chapter.

18.110.905 Construction—Chapter controls over any conflicting provision of Title 62A RCW.

18.110.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Art dealer" means a person, partnership, firm, association, or corporation, other than a public auctioneer, which undertakes to sell a work of fine art created by another.

(2) "Artist" means the creator of a work of fine art.

(3) "On consignment" means delivered to an art dealer for the purpose of sale or exhibition, or both, to the public by the art dealer other than at a public auction.

(4) "Work of fine art" means an original art work which is:

(a) A visual rendition including a painting, drawing, sculpture, mosaic, or photograph;

(b) A work of calligraphy;

(c) A work of graphic art including an etching, lithograph, offset print, or silk screen;

(d) A craft work in materials including clay, textile, fiber, wood, metal, plastic, or glass; or

(e) A work in mixed media including a collage or a work consisting of any combination of works included in this subsection. [1981 c 33 § 1.]

18.110.020 Rights—Duties—Liabilities. If an art dealer accepts a work of fine art on a fee, commission, or other compensation basis, on consignment from the artist:

(1) The art dealer is, with respect to that work of fine art, the agent of the artist.

(2) The work of fine art is trust property and the art dealer is trustee for the benefit of the artist until the work of fine art is sold to a bona fide third party.

(3) The proceeds of the sale of the work of fine art are trust property and the art dealer is trustee for the benefit of the artist until the amount due the artist from the sale is paid. These trust funds shall be paid to the artist within thirty days of receipt by the art dealer unless the parties expressly agree otherwise in writing. If the sale of the work of fine art is on installment, the funds from the installment shall first be applied to pay any balance due the artist on the sale, unless the artist expressly agrees in writing that the

proceeds on each installment shall be paid according to a percentage established by the consignment agreement.

(4) The art dealer is strictly liable for the loss of or damage to the work of fine art while it is in the art dealer's possession. For the purpose of this subsection the value of the work of fine art is the value established in a written agreement between the artist and art dealer prior to the loss or damage or, if no written agreement regarding the value of the work of fine art exists, the fair market value of the work of fine art.

A work of fine art which is trust property when initially accepted by the art dealer remains trust property notwithstanding the subsequent purchase of the work of fine art by the art dealer directly or indirectly for the art dealer's own account until the purchase price is paid in full to the artist. No property which is trust property under this section is subject to the claims, liens, or security interests of the creditors of the art dealer. [1981 c 33 § 2.]

18.110.030 Contract required—Provisions. (1) An art dealer may accept a work of fine art on a fee, commission, or other compensation basis, on consignment from the artist only if prior to or at the time of acceptance the art dealer enters into a written contract with the artist which states:

- (a) The value of the work of fine art;
- (b) The minimum price for the sale of the work of fine art; and
- (c) The fee, commission, or other compensation basis of the art dealer.

(2) An art dealer who accepts a work of fine art on a fee, commission, or other compensation basis, on consignment from the artist may use or display the work of fine art or a photograph of the work of fine art or permit the use or display of the work or photograph only if:

- (a) Notice is given to users or viewers that the work of fine art is the work of the artist; and
- (b) The artist gives prior written consent to the particular use or display.

(3) Any portion of a contract which waives any provision of this chapter is void. [1981 c 33 § 3.]

18.110.040 Violations—Penalties—Attorney fees. An art dealer violating RCW 18.110.030 is liable to the artist for fifty dollars plus actual damages, including incidental and consequential damages, sustained as a result of the violation. If an art dealer violates RCW 18.110.030, the artist's obligation for compensation to the art dealer is voidable. In an action under this section the court may, in its discretion, award the artist reasonable attorney's fees. [1981 c 33 § 4.]

18.110.900 Application of chapter. This chapter applies to any work of fine art accepted on consignment on or after July 26, 1981. If a work of fine art is accepted on consignment on or after July 26, 1981 under a contract made before that date, this section applies only to the extent that it does not conflict with the contract. [1981 c 33 § 5.]

18.110.905 Construction—Chapter controls over any conflicting provision of Title 62A RCW. See RCW 62A.1-110.

Chapter 18.118

REGULATION OF BUSINESS PROFESSIONS

Sections

- 18.118.005 Legislative findings—Intent.
- 18.118.010 Purpose—Intent.
- 18.118.020 Definitions.
- 18.118.030 Applicants for regulation—Information.
- 18.118.040 Applicants for regulation—Written report—Recommendation of department of licensing.
- 18.118.900 Severability—1987 c 514.

18.118.005 Legislative findings—Intent. The legislature recognizes the value of an analytical review, removed from the political process, of proposals for increased regulation of real estate and other business professions which the legislature already regulates, as well as of proposals for regulation of professions not currently regulated. The legislature further finds that policies and standards set out for regulation of the health professions in chapter 18.120 RCW have equal applicability to other professions. To further the goal of governmental regulation only as necessary to protect the public interest and to promote economic development through employment, the legislature expands the scope of chapter 18.120 RCW to apply to business professions. The legislature intends that the reviews of proposed business profession regulation be conducted by the department of licensing's policy and research rather than regulatory staff and that the reviews be conducted and recommendations made in an impartial manner. Further, the legislature intends that the department of licensing provide sufficient staffing to conduct the reviews. [1987 c 514 § 3.]

18.118.010 Purpose—Intent. (1) The purpose of this chapter is to establish guidelines for the regulation of the real estate profession and other business professions which may seek legislation to substantially increase their scope of practice or the level of regulation of the profession, and for the regulation of business professions not licensed or regulated on July 26, 1987: PROVIDED, That the provisions of this chapter are not intended and shall not be construed to: (a) Apply to any regulatory entity created prior to July 26, 1987, except as provided in this chapter; (b) affect the powers and responsibilities of the superintendent of public instruction or state board of education under RCW 28A.305.130 and 28A.410.010; (c) apply to or interfere in any way with the practice of religion or to any kind of treatment by prayer; (d) apply to any remedial or technical amendments to any statutes which licensed or regulated activity before July 26, 1987; and (e) apply to proposals relating solely to continuing education. The legislature believes that all individuals should be permitted to enter into a business profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession. Where such a need is identified, the regulation adopted by the state should be set at the least restrictive level consistent with the public interest to be protected.

(2) It is the intent of this chapter that no regulation shall be imposed upon any business profession except for the exclusive purpose of protecting the public interest. All bills

introduced in the legislature to regulate a business profession for the first time should be reviewed according to the following criteria. A business profession should be regulated by the state only when:

(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(c) The public cannot be effectively protected by other means in a more cost-beneficial manner.

(3) After evaluating the criteria in subsection (2) of this section and considering governmental and societal costs and benefits, if the legislature finds that it is necessary to regulate a business profession not previously regulated by law, the least restrictive alternative method of regulation should be implemented, consistent with the public interest and this section:

(a) Where existing common law and statutory civil actions and criminal prohibitions are not sufficient to eradicate existing harm, the regulation should provide for stricter civil actions and criminal prosecutions;

(b) Where a service is being performed for individuals involving a hazard to the public health, safety, or welfare, the regulation should impose inspection requirements and enable an appropriate state agency to enforce violations by injunctive relief in court, including, but not limited to, regulation of the business activity providing the service rather than the employees of the business;

(c) Where the threat to the public health, safety, or economic well-being is relatively small as a result of the operation of the business profession, the regulation should implement a system of registration;

(d) Where the consumer may have a substantial basis for relying on the services of a practitioner, the regulation should implement a system of certification; or

(e) Where apparent that adequate regulation cannot be achieved by means other than licensing, the regulation should implement a system of licensing. [1990 c 33 § 553; 1987 c 514 § 4.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

18.118.020 Definitions. The definitions contained in this section shall apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant group" includes any business professional group or organization, any individual, or any other interested party which proposes that any business professional group not presently regulated be regulated or which proposes legislation to substantially increase the scope of practice or the level of regulation of the profession.

(2) "Business professions" means those business occupations or professions which are not health professions under chapter 18.120 RCW and includes, in addition to real estate brokers and salespersons under chapter 18.85 RCW, the following professions and occupations: Accountancy under chapter 18.04 RCW; architects under chapter 18.08 RCW; auctioneering under chapter 18.11 RCW; cosmetologists, barbers, and manicurists under chapter 18.16 RCW;

contractors under chapter 18.27 RCW; debt adjusting under chapter 18.28 RCW; engineers and surveyors under chapter 18.43 RCW; escrow agents under chapter 18.44 RCW; landscape architects under chapter 18.96 RCW; water well construction under chapter 18.104 RCW; plumbers under chapter 18.106 RCW; and art dealers under chapter 18.110 RCW.

(3) "Certificate" and "certification" mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who (a) has met certain prerequisite qualifications specified by that regulatory entity, and (b) may assume or use "certified" in the title or designation to perform prescribed professional tasks.

(4) "Grandfather clause" means a provision in a regulatory statute applicable to practitioners actively engaged in the regulated profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

(5) "Inspection" means the periodic examination of practitioners by a state agency in order to ascertain whether the practitioners' occupation is being carried out in a fashion consistent with the public health, safety, and welfare.

(6) "Legislative committees of reference" means the standing legislative committees designated by the respective rules committees of the senate and house of representatives to consider proposed legislation to regulate business professions not previously regulated.

(7) "License", "licensing", and "licensure" mean permission to engage in a business profession which would otherwise be unlawful in the state in the absence of the permission. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed professional tasks and for the use of a particular title.

(8) "Professional license" means an individual, nontransferable authorization to carry on an activity based on qualifications which include: (a) Graduation from an accredited or approved program, and (b) acceptable performance on a qualifying examination or series of examinations.

(9) "Practitioner" means an individual who (a) has achieved knowledge and skill by practice, and (b) is actively engaged in a specified business profession.

(10) "Public member" means an individual who is not, and never was, a member of the business profession being regulated or the spouse of a member, or an individual who does not have and never has had a material financial interest in either the rendering of the business professional service being regulated or an activity directly related to the profession being regulated.

(11) "Registration" means the formal notification which, prior to rendering services, a practitioner shall submit to a state agency setting forth the name and address of the practitioner; the location, nature and operation of the business activity to be practiced; and, if required by the regulatory entity, a description of the service to be provided.

(12) "Regulatory entity" means any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

(13) "State agency" includes every state office, department, board, commission, regulatory entity, and agency of

the state, and, where provided by law, programs and activities involving less than the full responsibility of a state agency. [1987 c 514 § 5.]

18.118.030 Applicants for regulation—Information.

After July 26, 1987, if appropriate, applicant groups shall explain each of the following factors to the extent requested by the legislative committees of reference:

(1) A definition of the problem and why regulation is necessary:

(a) The nature of the potential harm to the public if the business profession is not regulated, and the extent to which there is a threat to public health and safety;

(b) The extent to which consumers need and will benefit from a method of regulation identifying competent practitioners, indicating typical employers, if any, of practitioners in the profession; and

(c) The extent of autonomy a practitioner has, as indicated by:

(i) The extent to which the profession calls for independent judgment and the extent of skill or experience required in making the independent judgment; and

(ii) The extent to which practitioners are supervised;

(2) The efforts made to address the problem:

(a) Voluntary efforts, if any, by members of the profession to:

(i) Establish a code of ethics; or

(ii) Help resolve disputes between practitioners and consumers; and

(b) Recourse to and the extent of use of applicable law and whether it could be strengthened to control the problem;

(3) The alternatives considered:

(a) Regulation of business employers or practitioners rather than employee practitioners;

(b) Regulation of the program or service rather than the individual practitioners;

(c) Registration of all practitioners;

(d) Certification of all practitioners;

(e) Other alternatives;

(f) Why the use of the alternatives specified in this subsection would not be adequate to protect the public interest; and

(g) Why licensing would serve to protect the public interest;

(4) The benefit to the public if regulation is granted:

(a) The extent to which the incidence of specific problems present in the unregulated profession can reasonably be expected to be reduced by regulation;

(b) Whether the public can identify qualified practitioners;

(c) The extent to which the public can be confident that qualified practitioners are competent:

(i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members, or a state agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification, or licensure, including the composition of the board and the number of public members, if any; the powers and duties of the board or state agency regarding examinations and for cause revocation, suspension, and nonrenewal of registrations, certificates, or licenses; the

promulgation of rules and canons of ethics; the conduct of inspections; the receipt of complaints and disciplinary action taken against practitioners; and how fees would be levied and collected to cover the expenses of administering and operating the regulatory system;

(ii) If there is a grandfather clause, whether such practitioners will be required to meet the prerequisite qualifications established by the regulatory entity at a later date;

(iii) The nature of the standards proposed for registration, certification, or licensure as compared with the standards of other jurisdictions;

(iv) Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions; and

(v) The nature and duration of any training including, but not limited to, whether the training includes a substantial amount of supervised field experience; whether training programs exist in this state; if there will be an experience requirement; whether the experience must be acquired under a registered, certificated, or licensed practitioner; whether there are alternative routes of entry or methods of meeting the prerequisite qualifications; whether all applicants will be required to pass an examination; and, if an examination is required, by whom it will be developed and how the costs of development will be met;

(d) Assurance of the public that practitioners have maintained their competence:

(i) Whether the registration, certification, or licensure will carry an expiration date; and

(ii) Whether renewal will be based only upon payment of a fee, or whether renewal will involve reexamination, peer review, or other enforcement;

(5) The extent to which regulation might harm the public:

(a) The extent to which regulation will restrict entry into the profession:

(i) Whether the proposed standards are more restrictive than necessary to insure safe and effective performance; and

(ii) Whether the proposed legislation requires registered, certificated, or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification, and licensure when the other jurisdiction has substantially equivalent requirements for registration, certification, or licensure as those in this state; and

(b) Whether there are similar professions to that of the applicant group which should be included in, or portions of the applicant group which should be excluded from, the proposed legislation;

(6) The maintenance of standards:

(a) Whether effective quality assurance standards exist in the profession, such as legal requirements associated with specific programs that define or enforce standards, or a code of ethics; and

(b) How the proposed legislation will assure quality:

(i) The extent to which a code of ethics, if any, will be adopted; and

(ii) The grounds for suspension or revocation of registration, certification, or licensure;

(7) A description of the group proposed for regulation, including a list of associations, organizations, and other

groups representing the practitioners in this state, an estimate of the number of practitioners in each group, and whether the groups represent different levels of practice; and

(8) The expected costs of regulation:

(a) The impact registration, certification, or licensure will have on the costs of the services to the public; and

(b) The cost to the state and to the general public of implementing the proposed legislation. [1987 c 514 § 6.]

18.118.040 Applicants for regulation—Written report—Recommendation of department of licensing. Applicant groups shall submit a written report explaining the factors enumerated in RCW 18.118.030 to the legislative committees of reference. Applicant groups, other than state agencies created prior to July 26, 1987, shall submit copies of their written report to the department of licensing for review and comment. The department of licensing shall make recommendations based on the report to the extent requested by the legislative committees. [1987 c 514 § 7.]

18.118.900 Severability—1987 c 514. 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 514 § 10.]

Chapter 18.120

REGULATION OF HEALTH PROFESSIONS— CRITERIA

Sections

18.120.010 Purpose—Criteria.

18.120.020 Definitions.

18.120.030 Applicants for regulation—Information.

18.120.040 Applicants for regulation—Written reports—
Recommendations by state board of health and department of health.

18.120.050 Continuing education requirements—Legislative proposals—
Evidence of effectiveness.

18.120.900 Short title.

18.120.910 Severability—1983 c 168.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Secretary of health or secretary's designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.120.010 Purpose—Criteria. (1) The purpose of this chapter is to establish guidelines for the regulation of health professions not licensed or regulated prior to July 24, 1983, and those licensed or regulated health professions which seek to substantially increase their scope of practice: PROVIDED, That the provisions of this chapter are not intended and shall not be construed to: (a) Apply to any regulatory entity created prior to July 24, 1983, except as provided in this chapter; (b) affect the powers and responsibilities of the superintendent of public instruction or state board of education under RCW 28A.305.130 and 28A.410.010; (c) apply to or interfere in any way with the practice of religion or to any kind of treatment by prayer; and (d) apply to any remedial or technical amendments to any statutes which licensed or regulated activity before July 24, 1983. The legislature believes that all individuals should

be permitted to enter into a health profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession. Where such a need is identified, the regulation adopted by the state should be set at the least restrictive level consistent with the public interest to be protected.

(2) It is the intent of this chapter that no regulation shall, after July 24, 1983, be imposed upon any health profession except for the exclusive purpose of protecting the public interest. All bills introduced in the legislature to regulate a health profession for the first time should be reviewed according to the following criteria. A health profession should be regulated by the state only when:

(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(c) The public cannot be effectively protected by other means in a more cost-beneficial manner.

(3) After evaluating the criteria in subsection (2) of this section and considering governmental and societal costs and benefits, if the legislature finds that it is necessary to regulate a health profession not previously regulated by law, the least restrictive alternative method of regulation should be implemented, consistent with the public interest and this section:

(a) Where existing common law and statutory civil actions and criminal prohibitions are not sufficient to eradicate existing harm, the regulation should provide for stricter civil actions and criminal prosecutions;

(b) Where a service is being performed for individuals involving a hazard to the public health, safety, or welfare, the regulation should impose inspection requirements and enable an appropriate state agency to enforce violations by injunctive relief in court, including, but not limited to, regulation of the business activity providing the service rather than the employees of the business;

(c) Where the threat to the public health, safety, or economic well-being is relatively small as a result of the operation of the health profession, the regulation should implement a system of registration;

(d) Where the consumer may have a substantial basis for relying on the services of a practitioner, the regulation should implement a system of certification; or

(e) Where apparent that adequate regulation cannot be achieved by means other than licensing, the regulation should implement a system of licensing. [1990 c 33 § 554; 1983 c 168 § 1.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

18.120.020 Definitions. The definitions contained in this section shall apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant group" includes any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not presently regulated be regulated or which proposes to substantially increase the scope of practice of the profession.

(2) "Certificate" and "certification" mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who (a) has met certain prerequisite qualifications specified by that regulatory entity, and (b) may assume or use "certified" in the title or designation to perform prescribed health professional tasks.

(3) "Grandfather clause" means a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

(4) "Health professions" means and includes the following health and health-related licensed or regulated professions and occupations: *Podiatry under chapter 18.22 RCW; chiropractic under chapters 18.25 and 18.26 RCW; dental hygiene under chapter 18.29 RCW; dentistry under chapter 18.32 RCW; dispensing opticians under chapter 18.34 RCW; hearing aids under chapter 18.35 RCW; naturopaths under chapter 18.36A RCW; embalming and funeral directing under chapter 18.39 RCW; midwifery under chapter 18.50 RCW; nursing home administration under chapter 18.52 RCW; optometry under chapters 18.53 and 18.54 RCW; ophthalmologists under chapter 18.55 RCW; osteopathy and osteopathic medicine and surgery under chapters 18.57 and 18.57A RCW; pharmacy under chapters 18.64 and 18.64A RCW; medicine under chapters 18.71, 18.71A, and 18.72 RCW; emergency medicine under chapter 18.73 RCW; physical therapy under chapter 18.74 RCW; practical nurses under chapter 18.78 RCW; psychologists under chapter 18.83 RCW; registered nurses under chapter 18.88 RCW; occupational therapists licensed pursuant to chapter 18.59 RCW; respiratory care practitioners certified under chapter 18.89 RCW; veterinarians and animal technicians under chapter 18.92 RCW; health care assistants under chapter 18.135 RCW; massage practitioners under chapter 18.108 RCW; acupuncturists certified under chapter 18.06 RCW; persons registered or certified under chapter 18.19 RCW; dietitians and nutritionists certified by chapter 18.138 RCW; radiologic technicians under chapter 18.84 RCW; and nursing assistants registered or certified under chapter 18.88A RCW.

(5) "Inspection" means the periodic examination of practitioners by a state agency in order to ascertain whether the practitioners' occupation is being carried out in a fashion consistent with the public health, safety, and welfare.

(6) "Legislative committees of reference" means the standing legislative committees designated by the respective rules committees of the senate and house of representatives to consider proposed legislation to regulate health professions not previously regulated.

(7) "License," "licensing," and "licensure" mean permission to engage in a health profession which would otherwise be unlawful in the state in the absence of the permission. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed health professional tasks and for the use of a particular title.

(8) "Professional license" means an individual, nontransferable authorization to carry on a health activity based on qualifications which include: (a) Graduation from an accredited or approved program, and (b) acceptable performance on a qualifying examination or series of examinations.

(9) "Practitioner" means an individual who (a) has achieved knowledge and skill by practice, and (b) is actively engaged in a specified health profession.

(10) "Public member" means an individual who is not, and never was, a member of the health profession being regulated or the spouse of a member, or an individual who does not have and never has had a material financial interest in either the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.

(11) "Registration" means the formal notification which, prior to rendering services, a practitioner shall submit to a state agency setting forth the name and address of the practitioner; the location, nature and operation of the health activity to be practiced; and, if required by the regulatory entity, a description of the service to be provided.

(12) "Regulatory entity" means any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

(13) "State agency" includes every state office, department, board, commission, regulatory entity, and agency of the state, and, where provided by law, programs and activities involving less than the full responsibility of a state agency. [1989 c 300 § 14. Prior: 1988 c 277 § 12; 1988 c 267 § 21; prior: 1987 c 512 § 21; 1987 c 447 § 17; 1987 c 415 § 16; 1987 c 412 § 14; prior: 1985 c 326 § 28; 1985 c 117 § 3; prior: 1984 c 279 § 57; 1984 c 9 § 18; 1983 c 168 § 2.]

*Reviser's note: The term "podiatry" was changed to "podiatric medicine and surgery" by 1990 c 147.

Severability—1987 c 512: See RCW 18.19.901.

Severability—1987 c 447: See RCW 18.36A.901.

Severability—1987 c 415: See RCW 18.89.901.

Effective date—Severability—1987 c 412: See RCW 18.84.901 and 18.84.902.

Severability—1984 c 279: See RCW 18.130.901.

Severability—1984 c 9: See RCW 18.59.905.

18.120.030 Applicants for regulation—Information.

After July 24, 1983, if appropriate, applicant groups shall explain each of the following factors to the extent requested by the legislative committees of reference:

(1) A definition of the problem and why regulation is necessary:

(a) The nature of the potential harm to the public if the health profession is not regulated, and the extent to which there is a threat to public health and safety;

(b) The extent to which consumers need and will benefit from a method of regulation identifying competent practitioners, indicating typical employers, if any, of practitioners in the health profession; and

(c) The extent of autonomy a practitioner has, as indicated by:

(i) The extent to which the health profession calls for independent judgment and the extent of skill or experience required in making the independent judgment; and

(ii) The extent to which practitioners are supervised;

(2) The efforts made to address the problem:

(a) Voluntary efforts, if any, by members of the health profession to:

- (i) Establish a code of ethics; or
- (ii) Help resolve disputes between health practitioners and consumers; and
- (b) Recourse to and the extent of use of applicable law and whether it could be strengthened to control the problem;
- (3) The alternatives considered:
 - (a) Regulation of business employers or practitioners rather than employee practitioners;
 - (b) Regulation of the program or service rather than the individual practitioners;
 - (c) Registration of all practitioners;
 - (d) Certification of all practitioners;
 - (e) Other alternatives;
 - (f) Why the use of the alternatives specified in this subsection would not be adequate to protect the public interest; and
 - (g) Why licensing would serve to protect the public interest;
- (4) The benefit to the public if regulation is granted:
 - (a) The extent to which the incidence of specific problems present in the unregulated health profession can reasonably be expected to be reduced by regulation;
 - (b) Whether the public can identify qualified practitioners;
 - (c) The extent to which the public can be confident that qualified practitioners are competent:
 - (i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members, or a state agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification, or licensure, including the composition of the board and the number of public members, if any; the powers and duties of the board or state agency regarding examinations and for cause revocation, suspension, and nonrenewal of registrations, certificates, or licenses; the promulgation of rules and canons of ethics; the conduct of inspections; the receipt of complaints and disciplinary action taken against practitioners; and how fees would be levied and collected to cover the expenses of administering and operating the regulatory system;
 - (ii) If there is a grandfather clause, whether such practitioners will be required to meet the prerequisite qualifications established by the regulatory entity at a later date;
 - (iii) The nature of the standards proposed for registration, certification, or licensure as compared with the standards of other jurisdictions;
 - (iv) Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions;
 - (v) The nature and duration of any training including, but not limited to, whether the training includes a substantial amount of supervised field experience; whether training programs exist in this state; if there will be an experience requirement; whether the experience must be acquired under a registered, certificated, or licensed practitioner; whether there are alternative routes of entry or methods of meeting the prerequisite qualifications; whether all applicants will be required to pass an examination; and, if an examination is required, by whom it will be developed and how the costs of development will be met; and
 - (vi) What additional training programs are anticipated to be necessary to assure training accessible state-wide; the

anticipated time required to establish the additional training programs; the types of institutions capable of providing the training; a description of how training programs will meet the needs of the expected work force, including reentry workers, minorities, placebound students, and others;

- (d) Assurance of the public that practitioners have maintained their competence:
 - (i) Whether the registration, certification, or licensure will carry an expiration date; and
 - (ii) Whether renewal will be based only upon payment of a fee, or whether renewal will involve reexamination, peer review, or other enforcement;
- (5) The extent to which regulation might harm the public:
 - (a) The extent to which regulation will restrict entry into the health profession:
 - (i) Whether the proposed standards are more restrictive than necessary to insure safe and effective performance; and
 - (ii) Whether the proposed legislation requires registered, certificated, or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification, and licensure when the other jurisdiction has substantially equivalent requirements for registration, certification, or licensure as those in this state; and
 - (b) Whether there are similar professions to that of the applicant group which should be included in, or portions of the applicant group which should be excluded from, the proposed legislation;
 - (6) The maintenance of standards:
 - (a) Whether effective quality assurance standards exist in the health profession, such as legal requirements associated with specific programs that define or enforce standards, or a code of ethics; and
 - (b) How the proposed legislation will assure quality:
 - (i) The extent to which a code of ethics, if any, will be adopted; and
 - (ii) The grounds for suspension or revocation of registration, certification, or licensure;
 - (7) A description of the group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in this state, an estimate of the number of practitioners in each group, and whether the groups represent different levels of practice; and
 - (8) The expected costs of regulation:
 - (a) The impact registration, certification, or licensure will have on the costs of the services to the public;
 - (b) The cost to the state and to the general public of implementing the proposed legislation; and
 - (c) The cost to the state and the members of the group proposed for regulation for the required education, including projected tuition and expenses and expected increases in training programs, staffing, and enrollments at state training institutions. [1991 c 332 § 6; 1983 c 168 § 3.]

Application to scope of practice—Captions not law—1991 c 332:
See notes following RCW 18.130.010.

18.120.040 Applicants for regulation—Written reports—Recommendations by state board of health and department of health. Applicant groups shall submit a written report explaining the factors enumerated in RCW 18.120.030 to the legislative committees of reference, copies

of which shall be sent to the state board of health and the department of health for review and comment. The state board of health and the department of health shall make recommendations based on the report submitted by applicant groups to the extent requested by the legislative committees. [1989 1st ex.s. c 9 § 305; 1984 c 279 § 59.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1984 c 279: See RCW 18.130.901.

18.120.050 Continuing education requirements—Legislative proposals—Evidence of effectiveness. Requirements for licensees to engage in continuing education as a condition of continued licensure has not been proven to be an effective method of guaranteeing or improving the competence of licensees or the quality of care received by the consumer. The legislature has serious reservations concerning the appropriateness of mandated continuing education. Any legislative proposal which contains a continuing education requirement should be accompanied by evidence that such a requirement has been proven effective for the profession addressed in the legislation. [1984 c 279 § 58.]

Severability—1984 c 279: See RCW 18.130.901.

18.120.900 Short title. This chapter may be known and cited as the Washington regulation of health professions act. [1983 c 168 § 4.]

18.120.910 Severability—1983 c 168. 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. [1983 c 168 § 17.]

Chapter 18.122

REGULATION OF HEALTH PROFESSIONS— UNIFORM ADMINISTRATIVE PROVISIONS

Sections

18.122.010	Legislative intent.
18.122.020	Definitions.
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18.122.040	Exemptions.
18.122.050	Powers of secretary.
18.122.060	Record of proceedings.
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18.122.080	Credentialing requirements.
18.122.090	Approval of educational programs.
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18.122.120	Waiver of examination for initial applications.
18.122.130	Endorsement.
18.122.140	Renewals.
18.122.150	Application of uniform disciplinary act.
18.122.160	Application of chapter.
18.122.900	Section captions.
18.122.901	Severability—1987 c 150.

18.122.010 Legislative intent. The legislature takes note of the burgeoning number of bills proposed to regulate new health and health-related professions and occupations. The legislature further recognizes the number of allied health

professions seeking independent practice. Potentially at least one hundred forty-five discrete health professions and occupations are recognized nationally, with at least two hundred fifty secondary job classifications. A uniform and streamlined credentialing process needs to be established to permit the department of health to administer the health professional regulatory programs in the most cost-effective, accountable, and uniform manner. The public interest will be served by establishing uniform administrative provisions for the regulated professions under the jurisdiction of the department of health regulated after July 26, 1987. [1989 1st ex.s. c 9 § 306; 1987 c 150 § 61.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

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

(1) To "credential" means to license, certify, or register an applicant.

(2) "Department" means the department of health.

(3) "Secretary" means the secretary of health or the secretary's designee.

(4) "Health profession" means a profession providing health services regulated under the laws of this state and under which laws this statute is specifically referenced.

(5) "Credential" means the license, certificate, or registration issued to a person. [1989 1st ex.s. c 9 § 307; 1987 c 150 § 62.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.122.030 Registration, certification, and licensure.

(1) The three levels of professional credentialing as defined in chapter 18.120 RCW are:

(a) Registration, which is the least restrictive, and requires formal notification of the department of health identifying the practitioner, and does not require qualifying examinations;

(b) Certification, which is a voluntary process recognizing an individual who qualifies by examination and meets established educational prerequisites, and which protects the title of practice; and

(c) Licensure, which is the most restrictive and requires qualification by examination and educational prerequisites of a practitioner whose title is protected and whose scope of practice is restricted to only those licensed.

(2) No person may practice or represent oneself as a practitioner of a health profession by use of any title or description of services without being registered to practice by the department of health, unless otherwise exempted by this chapter.

(3) No person may represent oneself as certified or use any title or description of services without applying for certification, meeting the required qualifications, and being certified by the department of health, unless otherwise exempted by this chapter.

(4) No person may represent oneself as licensed, use any title or description of services, or engage in any practice without applying for licensure, meeting the required qualifications, and being licensed by the department of health,

unless otherwise exempted by this chapter. [1989 1st ex.s. c 9 § 308; 1987 c 150 § 63.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.122.040 Exemptions. Nothing in this chapter shall be construed to prohibit or restrict:

(1) The practice by an individual licensed, certified, or registered under the laws of this state and performing services within the authorized scope of practice;

(2) The practice by an individual employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States;

(3) The practice by a person who is a regular student in an educational program approved by the secretary, and whose performance of services is pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor. [1991 c 3 § 260; 1987 c 150 § 64.]

18.122.050 Powers of secretary. In addition to any other authority provided by law, the secretary has the authority to:

(1) Adopt rules under chapter 34.05 RCW necessary to implement this chapter;

(2) Establish all credentialing, examination, and renewal fees in accordance with RCW 43.70.250;

(3) Establish forms and procedures necessary to administer this chapter;

(4) Register any applicants, and to issue certificates or licenses to applicants who have met the education, training, and examination requirements for licensure or certification and to deny a credential to applicants who do not meet the minimum qualifications, except that proceedings concerning the denial of credentials based upon unprofessional conduct or impairment shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(5) Hire clerical, administrative, investigative, and other staff as needed to implement this chapter, and hire individuals credentialed under this chapter to serve as examiners for any practical examinations;

(6) Determine minimum education requirements and evaluate and designate those educational programs from which graduation will be accepted as proof of eligibility to take a qualifying examination for applicants for certification or licensure;

(7) Prepare, grade, and administer, or determine the nature of, and supervise the grading and administration of, examinations for applicants for certification or licensure;

(8) Determine whether alternative methods of training are equivalent to formal education, and establish forms, procedures, and criteria for evaluation of an applicant's alternative training to determine the applicant's eligibility to take any qualifying examination;

(9) Determine which states have credentialing requirements equivalent to those of this state, and issue credentials to individuals credentialed in those states without examinations;

(10) Define and approve any experience requirement for credentialing;

(11) Implement and administer a program for consumer education;

(12) Adopt rules implementing a continuing competency program;

(13) Maintain the official department record of all applicants and licensees; and

(14) Establish by rule the procedures for an appeal of an examination failure. [1989 1st ex.s. c 9 § 309; 1987 c 150 § 65.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.122.060 Record of proceedings. The secretary shall keep an official record of all proceedings. A part of the record shall consist of a register of all applicants for credentialing under this chapter and the results of each application. [1991 c 3 § 261; 1987 c 150 § 66.]

18.122.070 Advisory committees. (1) The secretary has the authority to appoint advisory committees to further the purposes of this chapter. Each such committee shall be composed of five members, one member initially appointed for a term of one year, two for a term of two years, and two for a term of three years. Subsequent appointments shall be for terms of three years. No person may serve as a member of the committee for more than two consecutive terms. Members of an advisory committee shall be residents of this state. Each committee shall be composed of three individuals registered, certified, or licensed in the category designated, and two members who represent the public at large and are unaffiliated directly or indirectly with the profession being credentialed.

(2) The secretary may remove any member of the advisory committees for cause as specified by rule. In the case of a vacancy, the secretary shall appoint a person to serve for the remainder of the unexpired term.

(3) The advisory committees shall each meet at the times and places designated by the secretary and shall hold meetings during the year as necessary to provide advice to the director. The committee may elect a chair and a vice chair. A majority of the members currently serving shall constitute a quorum.

(4) Each member of an advisory committee shall be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060. In addition, members of the committees shall be compensated in accordance with RCW 43.03.240 when engaged in the authorized business of their committees.

(5) The secretary, members of advisory committees, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any credentialing or disciplinary proceedings or other official acts performed in the course of their duties. [1991 c 3 § 262; 1987 c 150 § 67.]

18.122.080 Credentialing requirements. (1) The secretary shall issue a license or certificate, as appropriate, to any applicant who demonstrates to the secretary's satisfaction that the following requirements have been met:

(a) Graduation from an educational program approved by the secretary or successful completion of alternate training meeting established criteria;

(b) Successful completion of an approved examination; and

(c) Successful completion of any experience requirement established by the secretary.

(2) The secretary shall establish by rule what constitutes adequate proof of meeting the criteria.

(3) In addition, applicants shall be subject to the grounds for denial of a license or certificate or issuance of a conditional license or certificate under chapter 18.130 RCW.

(4) The secretary shall issue a registration to any applicant who completes an application which identifies the name and address of the applicant, the registration being requested, and information required by the secretary necessary to establish whether there are grounds for denial of a registration or issuance of a conditional registration under chapter 18.130 RCW. [1991 c 3 § 263; 1987 c 150 § 68.]

18.122.090 Approval of educational programs. The secretary shall establish by rule the standards and procedures for approval of educational programs and alternative training. The secretary may utilize or contract with individuals or organizations having expertise in the profession or in education to assist in the evaluations. The secretary shall establish by rule the standards and procedures for revocation of approval of education programs. The standards and procedures set shall apply equally to educational programs and training in the United States and in foreign jurisdictions. The secretary may establish a fee for educational program evaluations. [1991 c 3 § 264; 1987 c 150 § 69.]

18.122.100 Examinations. (1) The date and location of examinations shall be established by the secretary. Applicants who have been found by the secretary to meet the other requirements for licensure or certification shall be scheduled for the next examination following the filing of the application. The secretary shall establish by rule the examination application deadline.

(2) The secretary or the secretary's designees shall examine each applicant, by means determined most effective, on subjects appropriate to the scope of practice, as applicable. Such examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) The examination papers, all grading of the papers, and the grading of any practical work shall be preserved for a period of not less than one year after the secretary has made and published the decisions. All examinations shall be conducted under fair and wholly impartial methods.

(4) Any applicant failing to make the required grade in the first examination may take up to three subsequent examinations as the applicant desires upon prepaying a fee determined by the secretary under RCW 43.70.250 for each subsequent examination. Upon failing four examinations, the secretary may invalidate the original application and require such remedial education before the person may take future examinations.

(5) The secretary may approve an examination prepared or administered by a private testing agency or association of licensing agencies for use by an applicant in meeting the credentialing requirements. [1989 1st ex.s. c 9 § 310; 1987 c 150 § 70.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.122.110 Applications. Applications for credentialing shall be submitted on forms provided by the secretary. The secretary may require any information and documentation which reasonably relates to the need to determine whether the applicant meets the criteria for credentialing provided for in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary under RCW 43.70.250. The fee shall accompany the application. [1989 1st ex.s. c 9 § 311; 1987 c 150 § 71.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.122.120 Waiver of examination for initial applications. The secretary shall waive the examination and credential a person authorized to practice within the state of Washington if the secretary determines that the person meets commonly accepted standards of education and experience for the profession. This section applies only to those individuals who file an application for waiver within one year of the establishment of the authorized practice. [1991 c 3 § 265; 1987 c 150 § 72.]

18.122.130 Endorsement. An applicant holding a credential in another state may be credentialed to practice in this state without examination if the secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1991 c 3 § 266; 1987 c 150 § 73.]

18.122.140 Renewals. The secretary shall establish by rule the procedural requirements and fees for renewal of a credential. Failure to renew shall invalidate the credential and all privileges granted by the credential. If a license or certificate has lapsed for a period longer than three years, the person shall demonstrate competence to the satisfaction of the secretary by taking continuing education courses, or meeting other standards determined by the secretary. [1991 c 3 § 267; 1987 c 150 § 74.]

18.122.150 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, shall govern the issuance and denial of credentials, unauthorized practice, and the discipline of persons credentialed under this chapter. The secretary shall be the disciplining authority under this chapter. [1991 c 3 § 268; 1987 c 150 § 75.]

18.122.160 Application of chapter. This chapter only applies to a business or profession regulated under the laws of this state if this chapter is specifically referenced in the laws regulating that business or profession. [1987 c 150 § 76.]

18.122.900 Section captions. Section captions as used in this chapter do not constitute any part of the law. [1987 c 150 § 77.]

18.122.901 Severability—1987 c 150. 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 150 § 80.]

Chapter 18.130

REGULATION OF HEALTH PROFESSIONS— UNIFORM DISCIPLINARY ACT

Sections

- 18.130.010 Intent.
- 18.130.020 Definitions.
- 18.130.040 Application of chapter to certain professions—Authority of secretary—Authority to grant or deny licenses.
- 18.130.050 Authority of disciplining authority.
- 18.130.060 Additional authority of secretary.
- 18.130.070 Disciplining authority may adopt rules requiring reports—Court orders—Immunity from liability—Licensees required to report.
- 18.130.075 Temporary practice permits—Penalties.
- 18.130.080 Unprofessional conduct by license holder or applicant—Complaint—Investigation—Immunity of complainant.
- 18.130.090 Statement of charge—Request for hearing—Notice.
- 18.130.100 Hearings—Adjudicative proceedings under chapter 34.05 RCW.
- 18.130.110 Findings of fact—Order—Report.
- 18.130.120 License denied, revoked, or suspended—Issuance prohibited—Exception.
- 18.130.130 Orders—When effective—Stay.
- 18.130.140 Appeal.
- 18.130.150 Reinstatement.
- 18.130.160 Finding of unprofessional conduct—Orders—Sanctions—Stay—Costs.
- 18.130.165 Enforcement of fine.
- 18.130.170 Capacity of license holder to practice—Hearing—Mental or physical examination—Implied consent.
- 18.130.175 Voluntary substance abuse monitoring programs.
- 18.130.180 Unprofessional conduct.
- 18.130.185 Injunctive relief for violations of RCW 18.130.170 or 18.130.180.
- 18.130.186 Voluntary substance abuse monitoring program—Content—License surcharge.
- 18.130.190 Practice without license—Investigation of complaints—Temporary cease and desist orders—Injunctions—Penalty.
- 18.130.195 Violation of injunction—Penalty.
- 18.130.200 Fraud or misrepresentation in obtaining a license—Penalty.
- 18.130.210 Commission of crime by license holder—Notice to attorney general or county prosecuting attorney.
- 18.130.250 Retired active license status.
- 18.130.270 Continuing competency pilot projects.
- 18.130.300 Persons immune from liability.
- 18.130.310 Biennial reports—Format.
- 18.130.900 Short title—Applicability.
- 18.130.901 Severability—1984 c 279.

AIDS education and training: Chapter 70.24 RCW.

18.130.010 Intent. It is the intent of the legislature to strengthen and consolidate disciplinary and licensure procedures for the licensed health and health-related professions and businesses by providing a uniform disciplinary act with standardized procedures for the licensure of health care professionals and the enforcement of laws the purpose of

which is to assure the public of the adequacy of professional competence and conduct in the healing arts.

It is also the intent of the legislature that all health and health-related professions newly credentialed by the state come under the uniform disciplinary act.

Further, the legislature declares that the addition of public members on all health care boards can give both the state and the public, which it has a statutory responsibility to protect, assurances of accountability and confidence in the various practices of health care. [1991 c 332 § 1; 1986 c 259 § 1; 1984 c 279 § 1.]

Application to scope of practice—1991 c 332: "Nothing in sections 1 through 39 of this act is intended to change the scope of practice of any health care profession referred to in sections 1 through 39 of this act." [1991 c 332 § 46.]

Captions not law—1991 c 332: "Section captions and part headings as used in this act constitute no part of the law." [1991 c 332 § 43.]

Severability—1986 c 259: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 259 § 152.]

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

(1) "Disciplining authority" means (a) the board of medical examiners, the board of dental examiners, and the board of chiropractic examiners with respect to applicants for a license for the respective professions, (b) the medical disciplinary board, the dental disciplinary board, and the chiropractic disciplinary board with respect to holders of licenses for the respective professions, or (c) the agency or board having the authority to take disciplinary action against a holder of, or applicant for, a professional or business license upon a finding of a violation of this chapter or a chapter specified under RCW 18.130.040.

(2) "Department" means the department of health.

(3) "Secretary" means the secretary of health or the secretary's designee.

(4) "Board" means any of those boards specified in RCW 18.130.040.

(5) "Unlicensed practice" means:

(a) Practicing a profession or operating a business identified in RCW 18.130.040 without holding a valid, unexpired, unrevoked, and unsuspended license to do so; or

(b) Representing to a consumer, through offerings, advertisements, or use of a professional title or designation, that the individual is qualified to practice a profession or operate a business identified in RCW 18.130.040, without holding a valid, unexpired, unrevoked, and unsuspended license to do so.

(6) "Disciplinary action" means sanctions identified in RCW 18.130.160.

(7) "Practice review" means an investigative audit of records related to the complaint, without prior identification of specific patient or consumer names, to determine whether unprofessional conduct may have been committed.

(8) "Health agency" means city and county health departments and the department of health.

(9) "License," "licensing," and "licensure" shall be deemed equivalent to the terms "license," "licensing," "licensure," "certificate," "certification," and "registration" as

those terms are defined in RCW 18.120.020. [1989 1st ex.s. c 9 § 312; 1986 c 259 § 2; 1984 c 279 § 2.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.040 Application of chapter to certain professions—Authority of secretary—Authority to grant or deny licenses. (1) This chapter applies only to the secretary and the boards having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

- (i) Dispensing opticians licensed under chapter 18.34 RCW;
- (ii) Naturopaths licensed under chapter 18.36A RCW;
- (iii) Midwives licensed under chapter 18.50 RCW;
- (iv) Ocularists licensed under chapter 18.55 RCW;
- (v) Massage operators and businesses licensed under chapter 18.108 RCW;
- (vi) Dental hygienists licensed under chapter 18.29 RCW;
- (vii) Acupuncturists certified under chapter 18.06 RCW;
- (viii) Radiologic technologists certified under chapter 18.84 RCW;
- (ix) Respiratory care practitioners certified under chapter 18.89 RCW;
- (x) Persons registered or certified under chapter 18.19 RCW;
- (xi) Persons registered as nursing pool operators;
- (xii) Nursing assistants registered or certified under *chapter 18.52B RCW;
- (xiii) Dietitians and nutritionists certified under chapter 18.138 RCW;
- (xiv) Sex offender treatment providers certified under chapter 18.155 RCW; and
- (xv) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205.

(b) The boards having authority under this chapter are as follows:

- (i) The podiatric medical board as established in chapter 18.22 RCW;
- (ii) The chiropractic disciplinary board as established in chapter 18.26 RCW governing licenses issued under chapter 18.25 RCW;
- (iii) The dental disciplinary board as established in chapter 18.32 RCW;
- (iv) The council on hearing aids as established in chapter 18.35 RCW;
- (v) The board of funeral directors and embalmers as established in chapter 18.39 RCW;
- (vi) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;
- (vii) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(viii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(ix) The medical disciplinary board as established in chapter 18.72 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The board of practical nursing as established in chapter 18.78 RCW;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW;

(xiv) The board of nursing as established in chapter 18.88 RCW; and

(xv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. However, the board of chiropractic examiners has authority over issuance and denial of licenses provided for in chapter 18.25 RCW, the board of dental examiners has authority over issuance and denial of licenses provided for in RCW 18.32.040, and the board of medical examiners has authority over issuance and denial of licenses and registrations provided for in chapters 18.71 and 18.71A RCW. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority. [1992 c 128 § 6; 1990 c 3 § 810. Prior: 1988 c 277 § 13; 1988 c 267 § 22; 1988 c 243 § 7; prior: 1987 c 512 § 22; 1987 c 447 § 18; 1987 c 415 § 17; 1987 c 412 § 15; 1987 c 150 § 1; prior: 1986 c 259 § 3; 1985 c 326 § 29; 1984 c 279 § 4.]

*Reviser's note: Chapter 18.52B RCW was repealed by 1991 c 16 § 16.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability—1987 c 512: See RCW 18.19.901.

Severability—1987 c 447: See RCW 18.36A.901.

Severability—1987 c 415: See RCW 18.89.901.

Effective date—Severability—1987 c 412: See RCW 18.84.901 and 18.84.902.

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.050 Authority of disciplining authority. The disciplining authority has the following authority:

(1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this chapter;

(2) To investigate all complaints or reports of unprofessional conduct as defined in this chapter and to hold hearings as provided in this chapter;

(3) To issue subpoenas and administer oaths in connection with any investigation, hearing, or proceeding held under this chapter;

(4) To take or cause depositions to be taken and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;

(5) To compel attendance of witnesses at hearings;

(6) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews;

(7) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the disciplining authority;

(8) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the disciplining authority shall make the final decision regarding disposition of the license;

(9) To use individual members of the boards to direct investigations. However, the member of the board shall not subsequently participate in the hearing of the case;

(10) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(11) To contract with licensees or other persons or organizations to provide services necessary for the monitoring and supervision of licensees who are placed on probation, whose professional activities are restricted, or who are for any authorized purpose subject to monitoring by the disciplining authority;

(12) To adopt standards of professional conduct or practice;

(13) To grant or deny license applications, and in the event of a finding of unprofessional conduct by an applicant or license holder, to impose any sanction against a license applicant or license holder provided by this chapter;

(14) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;

(15) To designate individuals authorized to sign subpoenas and statements of charges. [1987 c 150 § 2; 1984 c 279 § 5.]

Severability—1987 c 150: See RCW 18.122.901.

18.130.060 Additional authority of secretary. In addition to the authority specified in RCW 18.130.050, the secretary has the following additional authority:

(1) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter;

(2) Upon the request of a board, to appoint not more than three pro tem members for the purpose of participating as members of one or more committees of the board in connection with proceedings specifically identified in the request. Individuals so appointed must meet the same minimum qualifications as regular members of the board. While serving as board members pro tem, persons so appointed have all the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular

members of the board. The chairperson of a committee shall be a regular member of the board appointed by the board chairperson. Committees have authority to act as directed by the board with respect to all matters concerning the review, investigation, and adjudication of all complaints, allegations, charges, and matters subject to the jurisdiction of the board. The authority to act through committees does not restrict the authority of the board to act as a single body at any phase of proceedings within the board's jurisdiction. Board committees may make interim orders and issue final decisions with respect to matters and cases delegated to the committee by the board. Final decisions may be appealed as provided in chapter 34.05 RCW, the Administrative Procedure Act;

(3) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation and to establish fees to witnesses in any agency adjudicative proceeding as authorized by RCW 34.05.446;

(4) To conduct investigations and practice reviews at the direction of the disciplining authority and to issue subpoenas, administer oaths, and take depositions in the course of conducting those investigations and practice reviews at the direction of the disciplining authority. [1991 c 3 § 269; 1989 c 175 § 68; 1987 c 150 § 3; 1984 c 279 § 6.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1987 c 150: See RCW 18.122.901.

18.130.070 Disciplining authority may adopt rules requiring reports—Court orders—Immunity from liability—Licensees required to report. (1) The disciplining authority may adopt rules requiring any person, including, but not limited to, licensees, corporations, organizations, health care facilities, and state or local governmental agencies, to report to the disciplining authority any conviction, determination, or finding that a license holder has committed an act which constitutes unprofessional conduct, or to report information which indicates that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition. To facilitate meeting the intent of this section, the cooperation of agencies of the federal government is requested by reporting any conviction, determination, or finding that a federal employee or contractor regulated by the disciplinary authorities enumerated in this chapter has committed an act which constituted unprofessional conduct and reporting any information which indicates that a federal employee or contractor regulated by the disciplinary authorities enumerated in this chapter may not be able to practice his or her profession with reasonable skill and safety as a result of a mental or physical condition.

(2) If a person fails to furnish a required report, the disciplining authority may petition the superior court of the county in which the person resides or is found, and the court shall issue to the person an order to furnish the required report. A failure to obey the order is a contempt of court as provided in chapter 7.21 RCW.

(3) A person is immune from civil liability, whether direct or derivative, for providing information to the disciplining authority pursuant to the rules adopted under subsection (1) of this section.

(4) The holder of a license subject to the jurisdiction of this chapter shall report to the disciplining authority any

conviction, determination, or finding that the licensee has committed unprofessional conduct or is unable to practice with reasonable skill or safety. Failure to report within thirty days of notice of the conviction, determination, or finding constitutes grounds for disciplinary action. [1989 c 373 § 19; 1986 c 259 § 4; 1984 c 279 § 7.]

Severability—1989 c 373: See RCW 7.21.900.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.075 Temporary practice permits—Penalties.

If an individual licensed in another state, that has licensing standards substantially equivalent to Washington, applies for a license, the disciplining authority shall issue a temporary practice permit authorizing the applicant to practice the profession pending completion of documentation that the applicant meets the requirements for a license and is also not subject to denial of a license or issuance of a conditional license under this chapter. The temporary permit may reflect statutory limitations on the scope of practice. The permit shall be issued only upon the disciplining authority receiving verification from the states in which the applicant is licensed that the applicant is currently licensed and is not subject to charges or disciplinary action for unprofessional conduct or impairment. Notwithstanding RCW 34.05.422(3), the disciplining authority shall establish, by rule, the duration of the temporary practice permits. Failure to surrender the permit is a misdemeanor under RCW 9A.20.010 and shall be unprofessional conduct under this chapter. The issuance of temporary permits is subject to the provisions of this chapter, including summary suspensions. [1991 c 332 § 2.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

18.130.080 Unprofessional conduct by license holder or applicant—Complaint—Investigation—Immunity of complainant. A person, including but not limited to consumers, licensees, corporations, organizations, health care facilities, and state and local governmental agencies, may submit a written complaint to the disciplining authority charging a license holder or applicant with unprofessional conduct and specifying the grounds therefor. If the disciplining authority determines that the complaint merits investigation, or if the disciplining authority has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the disciplining authority shall investigate to determine whether there has been unprofessional conduct. A person who files a complaint under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint. [1986 c 259 § 5; 1984 c 279 § 8.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.090 Statement of charge—Request for hearing—Notice. (1) If the disciplining authority determines, upon investigation, that there is reason to believe a violation of RCW 18.130.180 has occurred, a statement of charge or charges shall be prepared and served upon the license holder or applicant at the earliest practical time. The statement of charge or charges shall be accompanied by a notice that the license holder or applicant may request a hearing to contest the charge or charges. The license holder

or applicant must file a request for hearing with the disciplining authority within twenty days after being served the statement of charges. The failure to request a hearing constitutes a default, whereupon the disciplining authority may enter a decision on the basis of the facts available to it.

(2) If a hearing is requested, the time of the hearing shall be fixed by the disciplining authority as soon as convenient, but the hearing shall not be held earlier than thirty days after service of the charges upon the license holder or applicant. A notice of hearing shall be issued at least twenty days prior to the hearing, specifying the time, date, and place of the hearing. The notice shall also notify the license holder or applicant that a record of the proceeding will be kept, that he or she will have the opportunity to appear personally and to have counsel present, with the right to produce witnesses, who will be subject to cross-examination, and evidence in his or her own behalf, to cross-examine witnesses testifying against him or her, to examine such documentary evidence as may be produced against him or her, to conduct depositions, and to have subpoenas issued by the disciplining authority. [1986 c 259 § 6; 1984 c 279 § 9.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.100 Hearings—Adjudicative proceedings under chapter 34.05 RCW. The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the Administrative Procedure Act, govern all hearings before the disciplining authority. The disciplining authority has, in addition to the powers and duties set forth in this chapter, all of the powers and duties under chapter 34.05 RCW, which include, without limitation, all powers relating to the administration of oaths, the receipt of evidence, the issuance and enforcing of subpoenas, and the taking of depositions. [1989 c 175 § 69; 1984 c 279 § 10.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.130.110 Findings of fact—Order—Report. (1) In the event of a finding of unprofessional conduct, the disciplining authority shall prepare and serve findings of fact and an order as provided in chapter 34.05 RCW, the Administrative Procedure Act. If the license holder or applicant is found to have not committed unprofessional conduct, the disciplining authority shall forthwith prepare and serve findings of fact and an order of dismissal of the charges, including public exoneration of the licensee or applicant. The findings of fact and order shall be retained by the disciplining authority as a permanent record.

(2) The disciplining authority shall report the issuance of statements of charges and final orders in cases processed by the disciplining authority to:

(a) The person or agency who brought to the disciplining authority's attention information which resulted in the initiation of the case;

(b) Appropriate organizations, public or private, which serve the professions;

(c) The public. Notification of the public shall include press releases to appropriate local news media and the major news wire services; and

(d) Counterpart licensing boards in other states, or associations of state licensing boards.

(3) This section shall not be construed to require the reporting of any information which is exempt from public disclosure under chapter 42.17 RCW. [1989 c 175 § 70; 1984 c 279 § 11.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.130.120 License denied, revoked, or suspended—Issuance prohibited—Exception. The department shall not issue any license to any person whose license has been denied, revoked, or suspended by the disciplining authority except in conformity with the terms and conditions of the certificate or order of denial, revocation, or suspension, or in conformity with any order of reinstatement issued by the disciplining authority, or in accordance with the final judgment in any proceeding for review instituted under this chapter. [1984 c 279 § 12.]

18.130.130 Orders—When effective—Stay. An order pursuant to proceedings authorized by this chapter, after due notice and findings in accordance with this chapter and chapter 34.05 RCW, or an order of summary suspension entered under this chapter, shall take effect immediately upon its being served. The order, if appealed to the court, shall not be stayed pending the appeal unless the disciplining authority or court to which the appeal is taken enters an order staying the order of the disciplining authority, which stay shall provide for terms necessary to protect the public. [1986 c 259 § 7; 1984 c 279 § 13.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.140 Appeal. An individual who has been disciplined or whose license has been denied by a disciplining authority may appeal the decision as provided in chapter 34.05 RCW. [1984 c 279 § 14.]

18.130.150 Reinstatement. A person whose license has been suspended or revoked under this chapter may petition the disciplining authority for reinstatement after an interval as determined by the disciplining authority in the order. The disciplining authority shall hold hearings on the petition and may deny the petition or may order reinstatement and impose terms and conditions as provided in RCW 18.130.160 and issue an order of reinstatement. The disciplining authority may require successful completion of an examination as a condition of reinstatement. [1984 c 279 § 15.]

18.130.160 Finding of unprofessional conduct—Orders—Sanctions—Stay—Costs. Upon a finding that a license holder or applicant has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the disciplining authority may issue an order providing for one or any combination of the following:

- (1) Revocation of the license;
- (2) Suspension of the license for a fixed or indefinite term;
- (3) Restriction or limitation of the practice;
- (4) Requiring the satisfactory completion of a specific program of remedial education or treatment;

(5) The monitoring of the practice by a supervisor approved by the disciplining authority;

(6) Censure or reprimand;

(7) Compliance with conditions of probation for a designated period of time;

(8) Payment of a fine for each violation of this chapter, not to exceed one thousand dollars per violation. Funds received shall be placed in the health professions account;

(9) Denial of the license request;

(10) Corrective action;

(11) Refund of fees billed to and collected from the consumer.

Any of the actions under this section may be totally or partly stayed by the disciplining authority. In determining what action is appropriate, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider and include in the order requirements designed to rehabilitate the license holder or applicant. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant. [1986 c 259 § 8; 1984 c 279 § 16.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.165 Enforcement of fine. Where an order for payment of a fine is made as a result of a hearing under RCW 18.130.100 and timely payment is not made as directed in the final order, the disciplining authority may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement shall be in addition to any other rights the disciplining authority may have as to any licensee ordered to pay a fine but shall not be construed to limit a licensee's ability to seek judicial review under RCW 18.130.140.

In any action for enforcement of an order of payment of a fine, the disciplining authority's order is conclusive proof of the validity of the order of payment of a fine and the terms of payment. [1987 c 150 § 4.]

Severability—1987 c 150: See RCW 18.122.901.

18.130.170 Capacity of license holder to practice—Hearing—Mental or physical examination—Implied consent. (1) If the disciplining authority believes a license holder or applicant may be unable to practice with reasonable skill and safety to consumers by reason of any mental or physical condition, a statement of charges in the name of the disciplining authority shall be served on the license holder or applicant and notice shall also be issued providing an opportunity for a hearing. The hearing shall be limited to the sole issue of the capacity of the license holder or applicant to practice with reasonable skill and safety. If the disciplining authority determines that the license holder or applicant is unable to practice with reasonable skill and safety for one of the reasons stated in this subsection, the disciplining authority shall impose such sanctions under RCW 18.130.160 as is deemed necessary to protect the public.

(2) In investigating or adjudicating a complaint or report that a license holder or applicant may be unable to practice with reasonable skill or safety by reason of any mental or

physical condition, the disciplining authority may require a license holder or applicant to submit to a mental or physical examination by one or more licensed or certified health professionals designated by the disciplining authority. The cost of the examinations ordered by the disciplining authority shall be paid out of the health professions account. In addition to any examinations ordered by the disciplining authority, the licensee may submit physical or mental examination reports from licensed or certified health professionals of the license holder's or applicant's choosing and expense. Failure of a license holder or applicant to submit to examination when directed constitutes grounds for immediate suspension or denial of the license, consequent upon which a default and final order may be entered without the taking of testimony or presentations of evidence, unless the failure was due to circumstances beyond the person's control. A determination by a court of competent jurisdiction that a license holder or applicant is mentally incompetent or mentally ill is presumptive evidence of the license holder's or applicant's inability to practice with reasonable skill and safety. An individual affected under this section shall at reasonable intervals be afforded an opportunity to demonstrate that the individual can resume competent practice with reasonable skill and safety to the consumer.

(3) For the purpose of subsection (2) of this section, an applicant or license holder governed by this chapter, by making application, practicing, or filing a license renewal, is deemed to have given consent to submit to a mental, physical, or psychological examination when directed in writing by the disciplining authority and further to have waived all objections to the admissibility or use of the examining health professional's testimony or examination reports by the disciplining authority on the ground that the testimony or reports constitute privileged communications. [1987 c 150 § 6; 1986 c 259 § 9; 1984 c 279 § 17.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.175 Voluntary substance abuse monitoring programs. (1) In lieu of disciplinary action under RCW 18.130.160 and if the disciplining authority determines that the unprofessional conduct may be the result of substance abuse, the disciplining authority may refer the license holder to a voluntary substance abuse monitoring program approved by the disciplining authority.

The cost of the treatment shall be the responsibility of the license holder, but the responsibility does not preclude payment by an employer, existing insurance coverage, or other sources. Primary alcoholism or drug treatment shall be provided by *approved treatment facilities under RCW 70.96A.020(2): PROVIDED, That nothing shall prohibit the disciplining authority from approving additional services and programs as an adjunct to primary alcoholism or drug treatment. The disciplining authority may also approve the use of out-of-state programs. Referral of the license holder to the program shall be done only with the consent of the license holder. Referral to the program may also include probationary conditions for a designated period of time. If the license holder does not consent to be referred to the program or does not successfully complete the program, the

disciplining authority may take appropriate action under RCW 18.130.160.

(2) In addition to approving substance abuse monitoring programs that may receive referrals from the disciplining authority, the disciplining authority may establish by rule requirements for participation of license holders who are not being investigated or monitored by the disciplining authority for substance abuse. License holders voluntarily participating in the approved programs without being referred by the disciplining authority shall not be subject to disciplinary action under RCW 18.130.160 for their substance abuse, and shall not have their participation made known to the disciplining authority, if they meet the requirements of this section and the program in which they are participating.

(3) The license holder shall sign a waiver allowing the program to release information to the disciplining authority if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety. The substance abuse program shall report to the disciplining authority any license holder who fails to comply with the requirements of this section or the program or who, in the opinion of the program, is unable to practice with reasonable skill or safety. License holders shall report to the disciplining authority if they fail to comply with this section or do not complete the program's requirements. License holders may, upon the agreement of the program and disciplining authority, reenter the program if they have previously failed to comply with this section.

(4) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplining authority for cause as defined in subsection (3) of this section. Monitoring records relating to license holders referred to the program by the disciplining authority or relating to license holders reported to the disciplining authority by the program for cause, shall be released to the disciplining authority at the request of the disciplining authority. Records held by the disciplining authority under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena except by the license holder.

(5) "Substance abuse," as used in this section, means the impairment, as determined by the disciplining authority, of a license holder's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(6) This section does not affect an employer's right or ability to make employment-related decisions regarding a license holder. This section does not restrict the authority of the disciplining authority to take disciplinary action for any other unprofessional conduct.

(7) A person who, in good faith, reports information or takes action in connection with this section is immune from civil liability for reporting information or taking the action.

(a) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this section and the persons entitled to immunity shall include:

- (i) An approved monitoring treatment program;
- (ii) The professional association operating the program;

(iii) Members, employees, or agents of the program or association;

(iv) Persons reporting a license holder as being impaired or providing information about the license holder's impairment; and

(v) Professionals supervising or monitoring the course of the impaired license holder's treatment or rehabilitation.

(b) The immunity provided in this section is in addition to any other immunity provided by law.

(8) In addition to health care professionals governed by this chapter, this section also applies to pharmacists under chapter 18.64 RCW and pharmacy assistants under chapter 18.64A RCW. For that purpose, the board of pharmacy shall be deemed to be the disciplining authority and the substance abuse monitoring program shall be in lieu of disciplinary action under RCW 18.64.160 or 18.64A.050. The board of pharmacy shall adjust license fees to offset the costs of this program. [1991 c 3 § 270; 1988 c 247 § 2.]

***Reviser's note:** The term "approved treatment facility" was changed to "approved treatment program" by 1989 c 270 § 3, and is defined in RCW 70.96A.020(3).

Legislative intent—1988 c 247: "Existing law does not provide for a program for rehabilitation of health professionals whose competency may be impaired due to the abuse of alcohol and other drugs.

It is the intent of the legislature that the disciplining authorities seek ways to identify and support the rehabilitation of health professionals whose practice or competency may be impaired due to the abuse of drugs or alcohol. The legislature intends that such health professionals be treated so that they can return to or continue to practice their profession in a way which safeguards the public. The legislature specifically intends that the disciplining authorities establish an alternative program to the traditional administrative proceedings against such health professionals." [1988 c 247 § 1.]

18.130.180 Unprofessional conduct. The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;

(3) All advertising which is false, fraudulent, or misleading;

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

(5) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(6) The possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

(8) Failure to cooperate with the disciplining authority by:

(a) Not furnishing any papers or documents;

(b) Not furnishing in writing a full and complete explanation covering the matter contained in the complaint filed with the disciplining authority; or

(c) Not responding to subpoenas issued by the disciplining authority, whether or not the recipient of the subpoena is the accused in the proceeding;

(9) Failure to comply with an order issued by the disciplining authority or an assurance of discontinuance entered into with the disciplining authority;

(10) Aiding or abetting an unlicensed person to practice when a license is required;

(11) Violations of rules established by any health agency;

(12) Practice beyond the scope of practice as defined by law or rule;

(13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(14) Failure to adequately supervise auxiliary staff to the extent that the consumer's health or safety is at risk;

(15) Engaging in a profession involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public health;

(16) Promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure, or service;

(17) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(18) The procuring, or aiding or abetting in procuring, a criminal abortion;

(19) The offering, undertaking, or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the disciplining authority;

(20) The willful betrayal of a practitioner-patient privilege as recognized by law;

(21) Violation of chapter 19.68 RCW;

(22) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the

disciplining authority or its authorized representative, or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(23) Current misuse of:

(a) Alcohol;

(b) Controlled substances; or

(c) Legend drugs;

(24) Abuse of a client or patient or sexual contact with a client or patient;

(25) Acceptance of more than a nominal gratuity, hospitality, or subsidy offered by a representative or vendor of medical or health-related products or services intended for patients, in contemplation of a sale or for use in research publishable in professional journals, where a conflict of interest is presented, as defined by rules of the disciplining authority, in consultation with the department, based on recognized professional ethical standards. [1991 c 332 § 34; 1991 c 215 § 3; 1989 c 270 § 33; 1986 c 259 § 10; 1984 c 279 § 18.]

Reviser's note: This section was amended by 1991 c 215 § 3 and by 1991 c 332 § 34, 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).

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.185 Injunctive relief for violations of RCW 18.130.170 or 18.130.180. If a person or business regulated by this chapter violates RCW 18.130.170 or 18.130.180, the attorney general, any prosecuting attorney, the director, the board, or any other person may maintain an action in the name of the state of Washington to enjoin the person from committing the violations. The injunction shall not relieve the offender from criminal prosecution, but the remedy by injunction shall be in addition to the liability of the offender to criminal prosecution and disciplinary action. [1987 c 150 § 8; 1986 c 259 § 15.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.186 Voluntary substance abuse monitoring program—Content—License surcharge. (1) To implement a substance abuse monitoring program for license holders specified under RCW 18.130.040, who are impaired by substance abuse, the disciplinary authority may enter into a contract with a voluntary substance abuse program under RCW 18.130.175. The program may include any or all of the following:

(a) Contracting with providers of treatment programs;

(b) Receiving and evaluating reports of suspected impairment from any source;

(c) Intervening in cases of verified impairment;

(d) Referring impaired license holders to treatment programs;

(e) Monitoring the treatment and rehabilitation of impaired license holders including those ordered by the disciplinary authority;

(f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired license holders; and

(g) Performing other activities as agreed upon by the disciplinary authority.

(2) A contract entered into under subsection (1) of this section may be financed by a surcharge on each license issuance or renewal to be collected by the department of licensing from the license holders of the same regulated health profession. These moneys shall be placed in the health professions account to be used solely for the implementation of the program. [1989 c 125 § 3.]

18.130.190 Practice without license—Investigation of complaints—Temporary cease and desist orders—Injunctions—Penalty. (1) The secretary shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the secretary shall have the same authority as provided the secretary under RCW 18.130.050. The secretary shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The cease and desist order shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(2) The attorney general, a county prosecuting attorney, the secretary, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(3) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW 18.130.040, unless otherwise exempted by law, constitutes a gross misdemeanor. All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account. [1991 c 3 § 271. Prior: 1989 c 373 § 20; 1989 c 175 § 71; 1987 c 150 § 7; 1986 c 259 § 11; 1984 c 279 § 19.]

Severability—1989 c 373: See RCW 7.21.900.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.195 Violation of injunction—Penalty. A person or business that violates an injunction issued under

this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be placed in the health professions account. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1987 c 150 § 5.]

Severability—1987 c 150: See RCW 18.122.901.

18.130.200 Fraud or misrepresentation in obtaining a license—Penalty. A person who attempts to obtain or obtains a license by wilful misrepresentation or fraudulent representation is guilty of a misdemeanor. [1986 c 259 § 12; 1984 c 279 § 20.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.210 Commission of crime by license holder—Notice to attorney general or county prosecuting attorney. If the disciplining authority determines or has cause to believe that a license holder has committed a crime, the disciplining authority, immediately subsequent to issuing findings of fact and a final order, shall notify the attorney general or the county prosecuting attorney in the county in which the act took place of the facts known to the disciplining authority. [1986 c 259 § 13; 1984 c 279 § 22.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.250 Retired active license status. The disciplining authority may adopt rules pursuant to this section authorizing a retired active license status. An individual credentialed by a disciplining authority regulated in the state under RCW 18.130.040, who is practicing only in emergent or intermittent circumstances as defined by rule established by the disciplining authority, may hold a retired active license at a reduced renewal fee established by the secretary under RCW 43.70.250. Such a license shall meet the continuing education or continued competency requirements, if any, established by the disciplining authority for renewals, and is subject to the provisions of this chapter. Individuals who have entered into retired status agreements with the disciplinary authority in any jurisdiction shall not qualify for a retired active license under this section. [1991 c 229 § 1.]

18.130.270 Continuing competency pilot projects. The disciplinary authorities are authorized to develop and require licensees' participation in continuing competency pilot projects for the purpose of developing flexible, cost-efficient, effective, and geographically accessible competency assurance methods. The secretary shall establish criteria for development of pilot projects and shall select the disciplinary authorities that will participate from among the professions requesting participation. The department shall administer the projects in mutual cooperation with the disciplinary authority and shall allot and administer the budget for each pilot project. The department shall report to the legislature in January of each odd-numbered year concerning the progress and findings of the projects and shall make recommendations on the expansion of continued competency requirements to other licensed health professions.

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Each disciplinary authority shall establish its pilot project in rule and may support the projects from a surcharge on each of the affected profession's license renewal in an amount established by the secretary. [1991 c 332 § 3.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

18.130.300 Persons immune from liability. The director, members of the boards, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any disciplinary proceedings or other official acts performed in the course of their duties. [1984 c 279 § 21.]

18.130.310 Biennial reports—Format. Subject to RCW 40.07.040, the disciplinary authority shall submit a biennial report to the legislature on its proceedings during the biennium, detailing the number of complaints made, investigated, and adjudicated and manner of disposition. The report may include recommendations for improving the disciplinary process, including proposed legislation. The department shall develop a uniform report format. [1989 1st ex.s. c 9 § 313; 1987 c 505 § 5; 1984 c 279 § 23.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.130.900 Short title—Applicability. (1) This chapter shall be known and cited as the uniform disciplinary act.

(2) This chapter applies to any conduct, acts, or conditions occurring on or after June 11, 1986.

(3) This chapter does not apply to or govern the construction of and disciplinary action for any conduct, acts, or conditions occurring prior to June 11, 1986. Such conduct, acts, or conditions must be construed and disciplinary action taken according to the provisions of law existing at the time of the occurrence in the same manner as if this chapter had not been enacted. [1986 c 259 § 14; 1984 c 279 § 24.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.901 Severability—1984 c 279. 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 279 § 95.]

Chapter 18.135

HEALTH CARE ASSISTANTS

Sections

- 18.135.010 Practices authorized.
- 18.135.020 Definitions.
- 18.135.025 Rules—Legislative intent.
- 18.135.030 Requirements for certification—Rules.
- 18.135.040 Certification of health care assistants.
- 18.135.050 Health care facility or health care practitioner may certify—Roster—Recertification.
- 18.135.055 Registering an initial or continuing certification—Fee.
- 18.135.060 Conditions under which authorized functions may be performed—Renal dialysis (as amended by 1986 c 115).

- 18.135.060 Conditions under which authorized functions may be performed (as amended by 1986 c 216).
- 18.135.065 Delegation—Duties of delegator and delegatee.
- 18.135.070 Complaints—Violations—Investigations—Disciplinary action.
- 18.135.080 Violations—Decertification.
- 18.135.090 Practices under chapter not unlicensed practice as health care practitioner.

18.135.010 Practices authorized. It is in the public interest that limited authority to administer skin tests and subcutaneous, intradermal, intramuscular, and intravenous injections and to perform minor invasive procedures to withdraw blood in this state be granted to health care assistants who are not so authorized under existing licensing statutes, subject to such regulations as will assure the protection of the health and safety of the patient. [1984 c 281 § 1.]

18.135.020 Definitions. As used in this chapter:

- (1) "Secretary" means the secretary of health.
- (2) "Health care assistant" means an unlicensed person who assists a licensed health care practitioner in providing health care to patients pursuant to this chapter.
- (3) "Health care practitioner" means:
 - (a) A physician licensed under chapter 18.71 RCW;
 - (b) An osteopathic physician or surgeon licensed under chapter 18.57 RCW; or
 - (c) Acting within the scope of their respective licensures, a *podiatrist licensed under chapter 18.22 RCW or a registered nurse licensed under chapter 18.88 RCW.
- (4) "Supervision" means supervision of procedures permitted pursuant to this chapter by a health care practitioner who is physically present and is immediately available in the facility during the administration of injections, as defined in this chapter, but need not be present during procedures to withdraw blood.
- (5) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, renal dialysis center or facility federally approved under 42 C.F.R. 405.2100, blood bank federally licensed under 21 C.F.R. 607, or clinical laboratory certified under 20 C.F.R. 405.1301-16.
- (6) "Delegation" means direct authorization granted by a licensed health care practitioner to a health care assistant to perform the functions authorized in this chapter which fall within the scope of practice of the delegator and which are not within the scope of practice of the delegatee. [1991 c 3 § 272; 1986 c 115 § 2; 1984 c 281 § 2.]

*Reviser's note: The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

18.135.025 Rules—Legislative intent. The legislature declares that the citizenry of the state of Washington has a right to expect that health care assistants are sufficiently educated and trained to provide the services authorized under this chapter. It is the intent of the legislature that the regulations implementing this chapter and governing the education and occupational qualifications, work experience, instruction and training of health care assistants ensure that

the public health and welfare are protected. [1986 c 216 § 1.]

18.135.030 Requirements for certification—Rules.

The secretary, or the secretary's designee, with the advice of designees of the board of medical examiners, the board of osteopathic medicine and surgery, the podiatry board, and the board of nursing, shall adopt rules necessary to administer, implement, and enforce this chapter and establish the minimum requirements necessary for a health care facility or health care practitioner to certify a health care assistant capable of performing the functions authorized in this chapter. The rules shall establish minimum requirements for each and every category of health care assistant. Said rules shall be adopted after fair consideration of input from representatives of each category. These requirements shall ensure that the public health and welfare are protected and shall include, but not be limited to, the following factors:

- (1) The education and occupational qualifications for the health care assistant category;
- (2) The work experience for the health care assistant category;
- (3) The instruction and training provided for the health care assistant category; and
- (4) The types of drugs or diagnostic agents which may be administered by injection by health care assistants working in a hospital or nursing home. The rules established pursuant to this subsection shall not prohibit health care assistants working in a health care facility other than a nursing home or hospital from performing the functions authorized under this chapter. [1991 c 3 § 273; 1986 c 216 § 2; 1984 c 281 § 4.]

18.135.040 Certification of health care assistants.

A certification issued to a health care assistant pursuant to this chapter shall be authority to perform only the functions authorized in RCW 18.135.010 subject to proper delegation and supervision in the health care facility making the certification or under the supervision of the certifying health care practitioner in other health care facilities or in his or her office. No certification made by one health care facility or health care practitioner is transferrable to another health care facility or health care practitioner. [1984 c 281 § 3.]

18.135.050 Health care facility or health care practitioner may certify—Roster—Recertification. (1)

Any health care facility may certify a health care assistant to perform the functions authorized in this chapter in that health care facility; and any health care practitioner may certify a health care assistant capable of performing such services in any health care facility, or in his or her office, under a health care practitioner's supervision. Before certifying the health care assistant, the health care facility or health care practitioner shall verify that the health care assistant has met the minimum requirements established by the secretary under this chapter. These requirements shall not prevent the certifying entity from imposing such additional standards as the certifying entity considers appropriate. The health care facility or health care practitioner shall provide the licensing authority with a certified roster of health care assistants who are certified.

(2) Certification of a health care assistant shall be effective for a period of two years. Recertification is required at the end of this period. Requirements for recertification shall be established by rule. [1991 c 3 § 274; 1984 c 281 § 5.]

18.135.055 Registering an initial or continuing certification—Fee. The health care facility or health care practitioner registering an initial or continuing certification pursuant to the provisions of this chapter shall pay a fee determined by the secretary as provided in RCW 43.70.250.

All fees collected under this section shall be credited to the health professions account as required in RCW 43.70.320. [1991 c 3 § 275; 1985 c 117 § 1.]

18.135.060 Conditions under which authorized functions may be performed—Renal dialysis (as amended by 1986 c 115). Any health care assistant certified pursuant to this chapter shall perform the functions authorized in this chapter only by delegation of authority from the health care practitioner and under the supervision of a health care practitioner acting within the scope of his or her license. In the case of subcutaneous, intradermal and intramuscular and intravenous injections, a health care assistant may perform such functions only under the supervision of a health care practitioner having authority, within the scope of his or her license, to order such procedures: PROVIDED, That a health care assistant trained by a federally approved end-stage renal disease facility may perform venipuncture for blood withdrawal, administration of oxygen as necessary by cannula or mask, venipuncture for placement of fistula needles, intravenous administration of heparin and sodium chloride solutions as an integral part of dialysis treatment, and intradermal, subcutaneous, or topical administration of local anesthetics in conjunction with placement of fistula needles, and intraperitoneal administration of sterile electrolyte solutions and heparin for peritoneal dialysis, in the center or health care facility or in the patient's home if a registered nurse licensed under chapter 18.88 RCW is physically present and immediately available in such health care facility for patients dialyzing in the health care facility or center or for patients dialyzing at home if a physician and a registered nurse are available for consultation during the dialysis. [1986 c 115 § 1; 1984 c 281 § 6.]

18.135.060 Conditions under which authorized functions may be performed (as amended by 1986 c 216). Any health care assistant certified pursuant to this chapter shall perform the functions authorized in this chapter only by delegation of authority from the health care practitioner and under the supervision of a health care practitioner acting within the scope of his or her license. In the case of subcutaneous, intradermal and intramuscular and intravenous injections, a health care assistant may perform such functions only under the supervision of a health care practitioner having authority, within the scope of his or her license, to order such procedures. The health care practitioner who ordered the procedure or a health care practitioner who could order the procedure under his or her license shall be physically present in the immediate area of a hospital or nursing home where the injection is administered. Sensitivity agents being administered intradermally or by the scratch method are excluded from this requirement. [1986 c 216 § 3; 1984 c 281 § 6.]

Reviser's note: RCW 18.135.060 was amended twice during the 1986 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.

18.135.065 Delegation—Duties of delegator and delegatee. (1) Each delegator, as defined under RCW 18.135.020(6) shall maintain a list of specific medications, diagnostic agents, and the route of administration of each that he or she has authorized for injection. Both the delegator and delegatee shall sign the above list, indicating the date of each signature. The signed list shall be forwarded to the secretary of the department of health and shall be available for review.

(2) Delegates are prohibited from administering any controlled substance as defined in RCW 69.50.101(d), any experimental drug, and any cancer chemotherapy agent unless a delegator is physically present in the immediate area where the drug is administered. [1991 c 3 § 276; 1986 c 216 § 4.]

18.135.070 Complaints—Violations—Investigations—Disciplinary action. The licensing authority of health care facilities or the disciplinary board of the delegating or supervising health care practitioner shall investigate all complaints or allegations of violations of proper certification of a health care assistant or violations of delegation of authority or supervision. A substantiated violation shall constitute sufficient cause for disciplinary action by the licensing authority of a health care facility or the disciplinary board of the health care practitioner. [1984 c 281 § 7.]

18.135.080 Violations—Decertification. The secretary or the secretary's designee shall decertify a health care assistant based on a finding that the assistant has obtained certification through misrepresentation or concealment of a material fact or has engaged in unsafe or negligent practices. [1991 c 3 § 277; 1984 c 281 § 8.]

18.135.090 Practices under chapter not unlicensed practice as health care practitioner. The performance of the functions authorized in this chapter by a health care assistant pursuant to this chapter does not constitute unlicensed practice as a health care practitioner. [1984 c 281 § 9.]

Chapter 18.138

DIETITIANS AND NUTRITIONISTS

Sections

- 18.138.010 Definitions.
- 18.138.020 Certification required.
- 18.138.030 Qualifications for certification.
- 18.138.040 Certification—Application fee.
- 18.138.050 Certification without examination.
- 18.138.060 Renewal of certification—Fee.
- 18.138.070 Authority of secretary.
- 18.138.080 Advisory committee.
- 18.138.090 Application of uniform disciplinary act.
- 18.138.100 Insurance coverage.
- 18.138.110 Chapter not applicable to health food stores.

18.138.010 Definitions. (1) "Dietetics" is the integration and application of scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences in counseling people to achieve and maintain health. Unique functions of dietetics include, but are not limited to:

(a) Assessing individual and community food practices and nutritional status using anthropometric, biochemical, clinical, dietary, and demographic data for clinical, research, and program planning purposes;

(b) Establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints;

(c) Providing nutrition counseling and education as components of preventive, curative, and restorative health care;

(d) Developing, implementing, managing, and evaluating nutrition care systems; and

(e) Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition care services.

(2) "General nutrition services" means the counseling and/or educating of groups or individuals in the selection of food to meet normal nutritional needs for health maintenance, which includes, but is not restricted to:

(a) Assessing the nutritional needs of individuals and groups by planning, organizing, coordinating, and evaluating the nutrition components of community health care services;

(b) Supervising, administering, or teaching normal nutrition in colleges, universities, clinics, group care homes, nursing homes, hospitals, private industry, and group meetings.

(3) "Certified dietitian" means any person certified to practice dietetics under this chapter.

(4) "Certified nutritionist" means any person certified to provide general nutrition services under this chapter.

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

(6) "Secretary" means the secretary of health or the secretary's designee. [1991 c 3 § 278; 1988 c 277 § 1.]

18.138.020 Certification required. (1) No persons shall represent themselves as certified dietitians or certified nutritionists unless certified as provided for in this chapter.

(2) Persons represent themselves as certified dietitians or certified nutritionists when any title or any description of services is used which incorporates one or more of the following items or designations: "Certified dietitian," "certified dietician," "certified nutritionist," "D.," "C.D.," or "C.N."

(3) The secretary may by rule proscribe or regulate advertising and other forms of patient solicitation which are likely to mislead or deceive the public as to whether someone is certified under this chapter. [1991 c 3 § 279; 1988 c 277 § 2.]

18.138.030 Qualifications for certification. (1) An applicant applying for certification as a certified dietitian or certified nutritionist shall file a written application on a form or forms provided by the secretary setting forth under affidavit such information as the secretary may require, and proof that the candidate has met qualifications set forth below in subsection (2) or (3) of this section.

(2) Any person seeking certification as a "certified dietitian" shall meet the following qualifications:

(a) Be eighteen years of age or older;

(b) Has satisfactorily completed a major course of study in human nutrition, foods and nutrition, dietetics, or food systems management, and has received a baccalaureate or higher degree from a college or university accredited by the Western association of schools and colleges or a similar accreditation agency or colleges and universities approved by the secretary in rule;

(c) Demonstrates evidence of having successfully completed a planned continuous preprofessional experience

in dietetic practice of not less than nine hundred hours under the supervision of a certified dietitian or a registered dietitian or demonstrates completion of a coordinated undergraduate program in dietetics, both of which meet the training criteria established by the secretary;

(d) Has satisfactorily completed an examination for dietitians administered by a public or private agency or institution recognized by the secretary as qualified to administer the examination; and

(e) Has satisfactorily completed courses of continuing education as currently established by the secretary.

(3) An individual may be certified as a certified dietitian if he or she provides evidence of meeting criteria for registration on June 9, 1988, by the commission on dietetic registration.

(4) Any person seeking certification as a "certified nutritionist" shall meet the following qualifications:

(a) Possess the qualifications required to be a certified dietitian; or

(b) Has received a master's degree or doctorate degree in one of the following subject areas: Human nutrition, nutrition education, foods and nutrition, or public health nutrition from a college or university accredited by the Western association of schools and colleges or a similar accrediting agency or colleges and universities approved by the secretary in rule. [1991 c 3 § 280; 1988 c 277 § 3.]

18.138.040 Certification—Application fee. (1) If the applicant meets the qualifications as outlined in RCW 18.138.030(2), the secretary shall confer on such candidates the title certified dietitian.

(2) If the applicant meets the qualifications as outlined in RCW 18.138.030(4), the secretary shall confer on such candidates the title certified nutritionist.

(3) The application fee in an amount determined by the secretary shall accompany the application for certification as a certified dietitian or certified nutritionist. [1991 c 3 § 281; 1988 c 277 § 4.]

18.138.050 Certification without examination. The secretary may certify a person applying for the title "certified dietitian" without examination if such person is licensed or certified as a dietitian in another jurisdiction and if, in the secretary's judgment, the requirements of that jurisdiction are equivalent to or greater than those of Washington state. [1991 c 3 § 282; 1988 c 277 § 6.]

18.138.060 Renewal of certification—Fee. (1) Every person certified as a certified dietitian or certified nutritionist shall pay a renewal registration fee determined by the secretary as provided in RCW 43.70.250. The certificate of the person shall be renewed for a period of one year or longer at the discretion of the secretary.

(2) Any failure to register and pay the annual renewal registration fee shall render the certificate invalid. The certificate shall be reinstated upon: (a) Written application to the secretary; (b) payment to the state of a penalty fee determined by the secretary; and (c) payment to the state of all delinquent annual certificate renewal fees.

(3) Any person who fails to renew his or her certification for a period of three years shall not be entitled to renew

such certification under this section. Such person, in order to obtain a certification as a certified dietitian or certified nutritionist in this state, shall file a new application under this chapter, along with the required fee, and shall meet all requirements as the secretary provides.

(4) All fees collected under this section shall be credited to the health professions account as required. [1991 c 3 § 283; 1988 c 277 § 7.]

18.138.070 Authority of secretary. In addition to any other authority provided by law, the secretary may:

(1) Adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;

(2) Establish forms necessary to administer this chapter;

(3) Issue a certificate to an applicant who has met the requirements for certification and deny a certificate to an applicant who does not meet the minimum qualifications;

(4) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter and hire individuals, including those certified under this chapter, to serve as consultants as necessary to implement and administer this chapter;

(5) Maintain the official departmental record of all applicants and certificate holders;

(6) Conduct a hearing, pursuant to chapter 34.05 RCW, on an appeal of a denial of certification based on the applicant's failure to meet the minimum qualifications for certification;

(7) Investigate alleged violations of this chapter and consumer complaints involving the practice of persons representing themselves as certified dietitians or certified nutritionists;

(8) Issue subpoenas, statements of charges, statements of intent to deny certifications, and orders and delegate in writing to a designee the authority to issue subpoenas, statements of charges, and statements on intent to deny certifications;

(9) Conduct disciplinary proceedings, impose sanctions, and assess fines for violations of this chapter or any rules adopted under it in accordance with chapter 34.05 RCW;

(10) Set all certification, renewal, and late renewal fees in accordance with RCW 43.70.250; and

(11) Set certification expiration dates and renewal periods for all certifications under this chapter. [1991 c 3 § 284; 1988 c 277 § 10.]

18.138.080 Advisory committee. (1) There is created a state advisory committee consisting of five members appointed by the secretary who shall advise the secretary concerning the administration of this chapter. Two members of the committee shall be certified dietitians who have been engaged in the practice of dietetics for at least five years immediately preceding their appointments. Two members of the committee shall be certified nutritionists who have been engaged in the provision of general nutrition services for at least five years preceding their appointments. These committee members shall at all times be certified under this chapter, except for the initial members of the committee, who shall fulfill the requirements for certification under this chapter. The remaining member of the committee shall be a member of the public with an interest in the rights of

consumers of health services, but who does not have any financial interest in the rendering of health services.

(2) The term of office for committee members is four years. The terms of the first committee members however, shall be staggered to ensure an orderly succession of new committee members thereafter. Terms of office shall expire on December 31. Any committee member may be removed for just cause. The secretary may appoint a new member to fill any vacancy on the committee for the remainder of the unexpired term. No committee member may serve more than two consecutive terms whether full or partial.

(3) Committee members shall be entitled to be compensated in accordance with RCW 43.03.240 and to be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(4) The committee shall have the authority to annually elect a chairperson and vice-chairperson to direct the meetings of the committee. The committee shall meet at least once each year, and may hold additional meetings as called by the secretary or the chairperson. Three members of the committee shall constitute a quorum of the committee. [1991 c 3 § 285; 1988 c 277 § 8.]

18.138.090 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of certificates, unauthorized practices, and the disciplining of certificate holders under this chapter. The secretary shall be the disciplining authority under this chapter. [1991 c 3 § 286; 1988 c 277 § 5.]

18.138.100 Insurance coverage. This chapter does not require or prohibit individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization to provide benefits or coverage for services and supplies provided by a person certified under this chapter. [1988 c 277 § 9.]

18.138.110 Chapter not applicable to health food stores. Nothing in this chapter shall be construed to apply to owners, operators or employees of health food stores provided the owners, operators or employees do not represent themselves to be certified dietitians or certified nutritionists. [1988 c 277 § 11.]

Chapter 18.140

CERTIFIED REAL ESTATE APPRAISER ACT

Sections

18.140.005	Intent.
18.140.010	Definitions.
18.140.020	Use of title by noncertified person.
18.140.030	Powers and duties of director.
18.140.040	Immunity.
18.140.050	Fees and collection procedures.
18.140.060	Applications—Original and renewal certification.
18.140.070	Categories of state-certified real estate appraisers.
18.140.080	Education requirements—Waiver.
18.140.090	Experience requirements.
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18.140.110	Nonresident applicants—Consent for service of process.
18.140.120	Reciprocity.
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- 18.140.140 Certificates—Required use of certificate number.
- 18.140.150 Use of term prohibited—Group certificates prohibited.
- 18.140.160 Denial, suspension, or revocation of certification—Grounds.
- 18.140.170 Violations—Investigations by director—Charges.
- 18.140.180 Hearings—Orders—Judicial review.
- 18.140.190 Duties of attorney general.
- 18.140.900 Short title.
- 18.140.910 Severability—1989 c 414.
- 18.140.911 Effective dates—1989 c 414.

18.140.005 Intent. It is the intent of the legislature that only individuals who meet and maintain minimum standards of competence and conduct may provide certified appraisal services to the public. [1989 c 414 § 1.]

18.140.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Appraisal" or "real estate appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate, for or in expectation of compensation. An appraisal may be classified by subject matter into either a valuation or an analysis. A "valuation" is an estimate of the value of real estate or real property. An "analysis" is a study of real estate or real property other than estimating value.

(2) "Appraisal report" means any communication, written or oral, of an appraisal.

(3) "Appraisal assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. The term "appraisal assignment" may apply to valuation work and analysis work.

(4) "Board" means the certified real estate appraiser certification board.

(5) "Certified appraisal" means an appraisal prepared or signed by a state-certified real estate appraiser. A certified appraisal represents to the public that it meets the appraisal standards defined in this chapter.

(6) "Department" means the department of licensing.

(7) "Director" means the director of the department of licensing.

(8) "Real estate" means an identified parcel or tract of land, including improvements, if any.

(9) "Real property" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

(10) "Specialized appraisal services" means all appraisal services which do not fall within the definition of appraisal assignment. The term "specialized appraisal service" may apply to valuation work and to analysis work. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion, the work is classified as an appraisal assignment and not a specialized appraisal service.

(11) "State-certified real estate appraiser" means a person who develops and communicates real estate appraisals and who holds a valid certificate issued to him or her for either general or residential real estate under this chapter. A

state-certificated real estate appraiser may designate or identify an appraisal rendered by him or her as a "certified appraisal" and indicate which type of certification is held. [1989 c 414 § 3.]

18.140.020 Use of title by noncertified person. (1) No person, other than [than] a state-certified real estate appraiser, may assume or use that title or any title, designation, or abbreviation likely to create the impression of certification as a real estate appraiser by this state. A person who is not certified under this chapter shall not describe or refer to any appraisal or real estate located in this state by the term "certified."

(2) This section does not preclude a person who is not certified as a state-certified real estate appraiser from appraising real estate in this state for compensation. [1989 c 414 § 4.]

18.140.030 Powers and duties of director. The director shall have the following powers and duties:

(1) To adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;

(2) To receive and approve applications for certification as a state-certified real estate appraiser under this chapter; to establish appropriate administrative procedures for the processing of such applications; to issue certificates to qualified applicants pursuant to the provisions of this chapter; and to maintain a register of the names and addresses of individuals who are currently certified under this chapter;

(3) To provide administrative assistance to the real estate appraiser certification board to enable the board to carry out its responsibilities under this chapter;

(4) To solicit bids and enter into contracts with educational testing services or organizations for the preparation of questions and answers for certification examinations;

(5) To administer or contract for administration of certification examinations at locations and times as may be required to carry out the responsibilities under this chapter;

(6) To consider recommendations by the real estate appraiser certification board relating to the experience, education, and examination requirements for each classification of state-certified appraiser;

(7) To impose continuing education requirements as a prerequisite to renewal of certification;

(8) To consider recommendations by the real estate appraiser certification board relating to standards of professional appraisal practice in the enforcement of this chapter;

(9) To issue an annual statement describing the receipts and expenditures in the administration of this chapter during each fiscal year;

(10) To establish appropriate administrative procedures for disciplinary proceedings conducted pursuant to the provisions of this chapter;

(11) To compel the attendance of witnesses and production of books, documents, records, and other papers; to administer oaths; and to take testimony and receive evidence concerning all matters within their jurisdiction. These powers may be exercised directly by the director or the director's authorized representatives acting by authority of law;

(12) To employ such professional, clerical, and technical assistance as may be necessary to properly administer the work of the director;

(13) To establish forms necessary to administer this chapter; and

(14) To do all other things necessary to carry out the provisions of this chapter and minimally meet the requirements of federal guidelines regarding state certification of appraisers that the director determines are appropriate for state-certified appraisers in this state. [1989 c 414 § 7.]

18.140.040 Immunity. The director, members of the board, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any acts performed in the course of their duties except for their intentional or willful misconduct. [1989 c 414 § 8.]

18.140.050 Fees and collection procedures. The director shall establish fees by rule, under RCW 43.24.086 and chapter 34.05 RCW and establish collection procedures for the fees. [1989 c 414 § 9.]

18.140.060 Applications—Original and renewal certification. (1) Applications for examinations, original certification, and renewal certification shall be made in writing to the department on forms approved by the director. Applications for original and renewal certification shall include a statement confirming that the applicant shall comply with applicable rules and regulations and that the applicant understands the penalties for misconduct.

(2) The appropriate fees shall accompany all applications for examination, reexamination, original certification, and renewal certification. [1989 c 414 § 10.]

18.140.070 Categories of state-certified real estate appraisers. There shall be two categories of state-certified real estate appraisers:

(1) The state-certified residential real estate appraiser classification shall consist of those persons meeting the requirements for appraisal of residential real property of one to four units.

(2) The state-certified general real estate appraiser classification shall consist of those persons meeting the requirements for certification relating to the appraisal of all types of real property. [1989 c 414 § 11.]

18.140.080 Education requirements—Waiver. (1) As a prerequisite to taking the examination for certification as a state-certified general real estate appraiser, an applicant shall present evidence satisfactory to the director that he or she has successfully completed the education requirements adopted by the director.

(2) As a prerequisite to taking the examination for certification as a state-certified residential real estate appraiser, an applicant shall present evidence satisfactory to the director that he or she has successfully completed the education requirements adopted by the director.

(3) The education requirements of subsections (1) and (2) of this section may be waived by the director if the applicant presents evidence to the satisfaction of the director

that the applicant was practicing as a real estate appraiser in the state of Washington on July 1, 1990. [1989 c 414 § 12.]

18.140.090 Experience requirements. As a prerequisite to taking the examination for certification as a state-certified real estate appraiser, an applicant must meet the experience requirements adopted by the director. [1989 c 414 § 13.]

18.140.100 Examination requirements. An original certification as a state-certified real estate appraiser shall be issued to persons who have satisfactorily passed a written examination as adopted by the director. [1989 c 414 § 14.]

18.140.110 Nonresident applicants—Consent for service of process. Every applicant for certification who is not a resident of this state shall submit, with the application for certification, an irrevocable consent that service of process upon him or her may be made by service on the director if, in an action against the applicant in a court of this state arising out of the applicant's activities as a state-certified real estate appraiser, the plaintiff cannot, in the exercise of due diligence, obtain personal service upon the applicant. [1989 c 414 § 15.]

18.140.120 Reciprocity. An applicant for certification who is currently certified and in good standing under the laws of another state may obtain a certificate as a Washington state-certified real estate appraiser without being required to satisfy the examination requirements of this chapter if: The director determines that the certification requirements are substantially similar to those found in Washington state; and that the other state has a written reciprocal agreement to provide similar treatment to holders of Washington state certificates. [1989 c 414 § 16.]

18.140.130 Two-year certification—Renewal—Failure to renew in timely manner. (1) Each original and renewal certificate shall be for a period of two years.

(2) To be renewed as a state-certified real estate appraiser, the holder of a valid certificate shall apply and pay the prescribed fee to the director no earlier than one hundred twenty days prior to the expiration date of the certificate and shall demonstrate satisfaction of any continuing education requirements.

(3) If a person fails to renew a certificate prior to its expiration, the person may obtain a renewal certificate by satisfying all of the requirements for renewal and paying late renewal fees. [1989 c 414 § 17.]

18.140.140 Certificates—Required use of certificate number. (1) A certificate issued under this chapter shall bear the signature or facsimile signature of the director and a certificate number assigned by the director.

(2) Each state-certified real estate appraiser shall place his or her certificate number adjacent to or immediately below the title "state-certified residential real estate appraiser" or "state-certified general real estate appraiser" when used in an appraisal report or in a contract or other instru-

ment used by the certificate holder in conducting real property appraisal activities. [1989 c 414 § 18.]

18.140.150 Use of term prohibited—Group certificates prohibited. (1) The term "state-certified real estate appraiser" may only be used to refer to individuals who hold the certificate and may not be used following or immediately in connection with the name or signature of a firm, partnership, corporation, or group, or in such manner that it might be interpreted as referring to a firm, partnership, corporation, group, or anyone other than an individual holder of the certificate.

(2) No certificate may be issued under this chapter to a corporation, partnership, firm, or group. This shall not be construed to prevent a state-certified appraiser from signing an appraisal report on behalf of a corporation, partnership, firm, or group practice. [1989 c 414 § 19.]

18.140.160 Denial, suspension, or revocation of certification—Grounds. An application for certification or recertification may be denied, and the certification of any state-certified real estate appraiser may be revoked, suspended, or otherwise disciplined in accordance with the provisions of this chapter, for any of the following acts or omissions:

(1) Failing to meet the minimum qualifications for state certification established by or pursuant to this chapter;

(2) Procuring or attempting to procure state certification under this chapter by knowingly making a false statement, knowingly submitting false information, or knowingly making a material misrepresentation on any application filed with the director;

(3) Paying money other than the fees provided for by this chapter to any employee of the director or the board to procure state certification under this chapter;

(4) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(5) Negligence or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(6) Continuing to act as a certified real estate appraiser when his or her certificate is on an expired status;

(7) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book, or record in his or her possession for inspection of the director or the director's authorized representatives acting by authority of law; and

(8) Violating any provision of this chapter or any lawful rule or regulation made by the director pursuant thereto. [1989 c 414 § 20.]

18.140.170 Violations—Investigations by director—Charges. The director may investigate the actions of a state-certified real estate appraiser or an applicant for certification or recertification. Upon receipt of information indicating that a state-certified real estate appraiser under this chapter may have violated this chapter, the director shall cause one or more of the staff investigators to make an investigation of the facts to determine whether or not there is admissible evidence of any such violation. If technical

assistance is required, a staff investigator may consult with not more than one of the appraiser members of the board. If an appraiser member of the board is consulted and renders assistance in an investigation, the appraiser member is excused from service on the board in connection with any administrative hearing that may result from such investigation.

In any investigation made by the director's investigative staff, the director shall have the power to compel the attendance of witnesses and the production of books, documents, records, and other papers, to administer oaths, and to take testimony and receive evidence concerning all matters within the director's jurisdiction.

If the director determines, upon investigation, that a state-certified real estate appraiser under this chapter has violated this chapter, a statement of charges shall be prepared and served upon the state-certified real estate appraiser. This statement of charges shall require the accused party to file an answer to the statement of charges within twenty days of the date of service.

In responding to a statement of charges, the accused party may admit to the allegations, deny the allegations, or otherwise plea. Failure to make a timely response shall be deemed an admission of the allegations contained in the statement of charges. [1989 c 414 § 21.]

18.140.180 Hearings—Orders—Judicial review.

The administrative hearing on the allegations in the statement of charges may be heard by the board or an administrative law judge appointed under chapter 34.12 RCW at the time and place prescribed by the director and in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. If the board or the administrative law judge determines that a state-certified real estate appraiser is guilty of a violation of any of the provisions of this chapter, a formal decision shall be prepared that contains findings of fact and recommendations to the director concerning the appropriate disciplinary action to be taken.

In such event the director shall enter an order to that effect and shall file the same in his or her office and immediately mail a copy thereof to the affected party at the addresses of record with the department. Such order shall not be operative for a period of ten days from the date thereof. Any licensee or applicant aggrieved by a final decision by the director in an adjudicative proceeding whether such decision is affirmative or negative in form, is entitled to a judicial review in the superior court under the provisions of the administrative procedure act, chapter 34.05 RCW. [1989 c 414 § 22.]

18.140.190 Duties of attorney general. The attorney general shall render to the director and board opinions upon all questions of law relating to the construction or interpretation of this chapter, or arising in the administration thereof that may be submitted by the director or board, and shall act as attorney for the director and board in all actions and proceedings brought by or against the director and board under or pursuant to any provisions of this chapter. [1989 c 414 § 23.]

18.140.900 Short title. This chapter may be known and cited as the certified real estate appraiser act. [1989 c 414 § 2.]

18.140.910 Severability—1989 c 414. 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 414 § 26.]

18.140.911 Effective dates—1989 c 414. (1) Sections 2, 3, 5 through 8, and 26 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, 4, and 9 through 22 of this act shall take effect July 1, 1990. [1989 c 414 § 27.]

Reviser's note: For codification of the sections of this act, see Codification Tables, Volume 0.

Chapter 18.145

SHORTHAND REPORTING PRACTICE ACT

Sections

18.145.005	Findings.
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18.145.030	Definitions.
18.145.040	Exemptions.
18.145.050	Powers of director.
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18.145.080	Certification requirements—Temporary certificates.
18.145.090	Certification applications—Fee.
18.145.100	Renewals—Late fees—Reinstatement.
18.145.110	Persons with shorthand reporting experience as of September 1, 1989.
18.145.120	Suspension, revocation, or sanctions of certificate—Director's powers—Costs.
18.145.130	Unprofessional conduct.
18.145.900	Short title.
18.145.910	Effective date—Implementation—1989 c 382.
18.145.911	Severability—1989 c 382.

18.145.005 Findings. The legislature finds it necessary to regulate the practice of shorthand reporting or court reporting at the level of certification to protect the public safety and well-being. The legislature intends that only individuals who meet and maintain minimum standards of competence may represent themselves as shorthand or court reporters. [1989 c 382 § 1.]

18.145.010 Certificate required. (1) No person may represent himself or herself as a shorthand reporter or a court reporter without first obtaining a certificate as required by this chapter.

(2) A person represents himself or herself to be a shorthand reporter or court reporter when the person adopts or uses any title or description of services that incorporates one or more of the following terms: "Shorthand reporter," "court reporter," "certified shorthand reporter," or "certified court reporter." [1989 c 382 § 2.]

18.145.020 Practice of shorthand or court reporting defined. The "practice of shorthand reporting or court reporting" means the making by means of written symbols or abbreviations in shorthand or machine writing of a verbatim record of any oral court proceeding, deposition, or proceeding before a jury, referee, court commissioner, special master, governmental entity, or administrative agency and the producing of a transcript from the proceeding. [1989 c 382 § 3.]

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

(1) "Department" means the department of licensing.

(2) "Director" means the director of licensing.

(3) "Shorthand reporter" and "court reporter" mean an individual certified under this chapter.

(4) "Board" means the Washington state shorthand reporter advisory board. [1989 c 382 § 4.]

18.145.040 Exemptions. Nothing in this chapter prohibits or restricts:

(1) The practice of a profession by individuals who are licensed, certified, or registered under other laws of this state and who are performing services within their authorized scope of practice;

(2) The practice of shorthand reporting by an individual employed by the government of the United States while the individual is performing duties prescribed by the laws and regulations of the United States; or

(3) The practice of court reporting or use of the title certified court reporter by stenographers who are practicing as of September 1, 1989.

Nothing in this chapter shall be construed to prohibit the introduction of alternate technology. [1989 c 382 § 5.]

18.145.050 Powers of director. In addition to any other authority provided by law, the director may:

(1) Adopt rules in accordance with chapter 34.05 RCW that are necessary to implement this chapter;

(2) Set all certification examination, renewal, late renewal, duplicate, and verification fees in accordance with RCW 43.24.086;

(3) Establish the forms and procedures necessary to administer this chapter;

(4) Issue a certificate to any applicant who has met the requirements for certification;

(5) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter;

(6) Investigate complaints or reports of unprofessional conduct as defined in this chapter and hold hearings pursuant to chapter 34.05 RCW;

(7) Issue subpoenas for records and attendance of witnesses, statements of charges, statements of intent to deny certificates, and orders; administer oaths; take or cause depositions to be taken; and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;

(8) Maintain the official departmental record of all applicants and certificate holders;

(9) Delegate, in writing to a designee, the authority to issue subpoenas, statements of charges, and statements of intent to deny certification;

(10) Prepare and administer or approve the preparation and administration of examinations for certification;

(11) Establish by rule the procedures for an appeal of a failure of an examination;

(12) Conduct a hearing under chapter 34.05 RCW on an appeal of a denial of a certificate based on the applicant's failure to meet minimum qualifications for certification. [1989 c 382 § 6.]

18.145.060 Advisory board—Participation in disciplinary investigations. (1) The state shorthand reporters advisory board is established to advise the director concerning the administration of this chapter. The board shall consist of five members appointed by the director. Three members of the board shall be certified shorthand reporters, except for the initial members of the board, two of whom shall be freelance shorthand reporters and one a court-employed shorthand reporter, each engaged in the continuous practice of shorthand reporting for at least five years preceding appointment. Two members of the board shall be unaffiliated with the profession. One shall be a current member of the state bar association or state judiciary, the other shall be a public member. The term of office for board members is four years, except the terms of the first board members shall be staggered to ensure an orderly succession of new board members. The director may remove a board member for misconduct, incompetency, or neglect of duty as specified by rule. Upon the death, resignation, or removal of a member, the director shall appoint a new member to fill a vacancy on the board for the remainder of the unexpired term. No board member may serve more than two consecutive terms, whether full or partial.

(2) Board members shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(3) The board shall annually elect a chairperson and vice-chairperson to direct the meetings of the board. The board shall meet at least once each year, at times and locations determined by the director. A simple majority of the board members currently serving constitutes a quorum of the board.

(4) Upon receipt of complaints against shorthand reporters, the director shall investigate and evaluate the complaint to determine if disciplinary action is appropriate. At the discretion of the director, individual board members may participate in or conduct investigations or evaluations of investigation reports and make recommendations regarding further action. The director shall hold disciplinary hearings pursuant to chapter 34.05 RCW. [1989 c 382 § 7.]

18.145.070 Liability of director and board members. The director, members of the board, and individuals acting on their behalf shall not be civilly liable for any act performed in good faith in the course of their duties. [1989 c 382 § 8.]

18.145.080 Certification requirements—Temporary certificates. (1) The department shall issue a certificate to any applicant who, as determined by the director upon advice of the board, has:

(a) Successfully completed an examination approved by the director;

(b) Good moral character;

(c) Not engaged in unprofessional conduct; and

(d) Not been determined to be unable to practice with reasonable skill and safety as a result of a physical or mental impairment.

(2) A one-year temporary certificate may be issued, at the discretion of the director, to a person holding one of the following: National shorthand reporters association certificate of proficiency, registered professional reporter certificate, or certificate of merit; a current court or shorthand reporter certification, registration, or license of another state; or a certificate of graduation of a court reporting school. To continue to be certified under this chapter, a person receiving a temporary certificate shall successfully complete the examination under subsection (1)(a) of this section within one year of receiving the temporary certificate, except that the director may renew the temporary certificate if extraordinary circumstances are shown.

(3) The examination required by subsection (1)(a) of this section shall be no more difficult than the examination provided by the court reporter examining committee as authorized by RCW 2.32.180. [1989 c 382 § 9.]

18.145.090 Certification applications—Fee. Applications for certification shall be submitted on forms provided by the department. The department may require information and documentation to determine whether the applicant meets the criteria for certification as provided in this chapter. Each applicant shall pay a fee determined by the director as provided in RCW 43.24.086 which shall accompany the application. [1989 c 382 § 10.]

18.145.100 Renewals—Late fees—Reinstatement. The director shall establish by rule the requirements and the renewal and late renewal fees for certification. Failure to renew the certificate on or before the expiration date cancels all privileges granted by the certificate. If an individual desires to reinstate a certificate which had not been renewed for three years or more, the individual shall satisfactorily demonstrate continued competence in conformance with standards determined by the director. [1989 c 382 § 11.]

18.145.110 Persons with shorthand reporting experience as of September 1, 1989. Persons with two or more years' experience in shorthand reporting in Washington state as of September 1, 1989, shall be granted a shorthand reporters certificate without examination, if application is made within one year of September 1, 1989. Shorthand reporters with less than two years' experience in shorthand reporting in this state as of September 1, 1989, shall be granted a temporary certificate for one year. To continue to be certified under this chapter, a person receiving a temporary certificate shall successfully complete the examination under RCW 18.145.080 within one year of receiving the temporary certificate, except that the director may renew the

temporary certificate if extraordinary circumstances are shown. [1989 c 382 § 12.]

18.145.120 Suspension, revocation, or sanctions of certificate—Director's powers—Costs. After a hearing conducted under chapter 34.05 RCW and upon a finding that a certificate holder or applicant has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the director may issue an order providing for one or any combination of the following:

- (1) Revocation of the certification;
- (2) Suspension of the certificate for a fixed or indefinite term;
- (3) Restriction or limitation of the practice;
- (4) Requiring the satisfactory completion of a specific program or remedial education;
- (5) The monitoring of the practice by a supervisor approved by the director;
- (6) Censure or reprimand;
- (7) Compliance with conditions or probation for a designated period of time;
- (8) Denial of the certification request;
- (9) Corrective action;
- (10) Refund of fees billed to or collected from the consumer.

Any of the actions under this section may be totally or partly stayed by the director. In determining what action is appropriate, the director shall consider sanctions necessary to protect the public, after which the director may consider and include in the order requirements designed to rehabilitate the certificate holder or applicant. All costs associated with compliance to orders issued under this section are the obligation of the certificate holder or applicant. [1989 c 382 § 13.]

18.145.130 Unprofessional conduct. The following conduct, acts, or conditions constitute unprofessional conduct for any certificate holder or applicant under the jurisdiction of this chapter:

- (1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of shorthand reporting, whether or not the act constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action;
- (2) Misrepresentation or concealment of a material fact in obtaining or in seeking reinstatement of a certificate;
- (3) Advertising in a false, fraudulent, or misleading manner;
- (4) Incompetence or negligence;
- (5) Suspension, revocation, or restriction of the individual's certificate, registration, or license to practice shorthand reporting by a regulatory authority in any state, federal, or foreign jurisdiction;
- (6) Violation of any state or federal statute or administrative rule regulating the profession;
- (7) Failure to cooperate in an inquiry, investigation, or disciplinary action by:
 - (a) Not furnishing papers or documents;

(b) Not furnishing in writing a full and complete explanation of the matter contained in the complaint filed with the director;

(c) Not responding to subpoenas issued by the director, regardless of whether the recipient of the subpoena is the accused in the proceeding;

(8) Failure to comply with an order issued by the director or an assurance of discontinuance entered into with the director;

(9) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(10) Conviction of any gross misdemeanor or felony relating to the practice of the profession. For the purpose of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW. [1989 c 382 § 14.]

18.145.900 Short title. This chapter may be known and cited as the shorthand reporting practice act. [1989 c 382 § 15.]

18.145.910 Effective date—Implementation—1989 c 382. This act shall take effect September 1, 1989, except that the director may immediately take such steps as are necessary to ensure that this act is implemented on its effective date. [1989 c 382 § 16.]

18.145.911 Severability—1989 c 382. 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 382 § 17.]

Chapter 18.155

SEX OFFENDER TREATMENT PROVIDERS

Sections

- 18.155.010 Findings—Construction.
- 18.155.020 Definitions.
- 18.155.030 Certificate required.
- 18.155.040 Secretary—Authority.
- 18.155.050 Sexual offender treatment providers advisory committee.
- 18.155.060 Immunity.
- 18.155.070 Certificate—Requirements.
- 18.155.080 Rules required.
- 18.155.090 Application of uniform disciplinary act.
- 18.155.900 Index, part headings not law—1990 c 3.
- 18.155.901 Severability—1990 c 3.
- 18.155.902 Effective dates—Application—1990 c 3.

18.155.010 Findings—Construction. The legislature finds that sex offender therapists who examine and treat sex offenders pursuant to the special sexual offender sentencing alternative under RCW 9.94A.120(7)(a) and who may treat juvenile sex offenders pursuant to RCW 13.40.160, play a vital role in protecting the public from sex offenders who remain in the community following conviction. The legislature finds that the qualifications, practices, techniques, and effectiveness of sex offender treatment providers vary widely and that the court's ability to effectively determine the

appropriateness of granting the sentencing alternative and monitoring the offender to ensure continued protection of the community is undermined by a lack of regulated practices. The legislature recognizes the right of sex offender therapists to practice, consistent with the paramount requirements of public safety. Public safety is best served by regulating sex offender therapists whose clients are being evaluated and being treated pursuant to RCW 9.94A.120(7)(a) and 13.40.160. This chapter shall be construed to require only those sex offender therapists who examine and treat sex offenders pursuant to RCW 9.94A.120(7)(a) and 13.40.160 to obtain a sexual offender treatment certification as provided in this chapter. [1990 c 3 § 801.]

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

(1) "Certified sex offender treatment provider" means a licensed, certified, or registered health professional who is certified to examine and treat sex offenders pursuant to RCW 9.94A.120(7)(a) and 13.40.160.

(2) "Department" means the department of health.

(3) "Secretary" means the secretary of health.

(4) "Sex offender treatment provider" means a person who counsels or treats sex offenders accused of or convicted of a sex offense as defined by RCW 9.94A.030. [1990 c 3 § 802.]

18.155.030 Certificate required. (1) No person shall represent himself or herself as a certified sex offender treatment provider without first applying for and receiving a certificate pursuant to this chapter.

(2) Only a certified sex offender treatment provider may perform or provide the following services:

(a) Evaluations conducted for the purposes of and pursuant to RCW 9.94A.120(7)(a) and 13.40.160;

(b) Treatment of convicted sex offenders who are sentenced and ordered into treatment pursuant to RCW 9.94A.120(7)(a) and adjudicated juvenile sex offenders who are ordered into treatment pursuant to RCW 13.40.160. [1990 c 3 § 803.]

18.155.040 Secretary—Authority. In addition to any other authority provided by law, the secretary shall have the following authority:

(1) To set all fees required in this chapter in accordance with RCW 43.70.250;

(2) To establish forms necessary to administer this chapter;

(3) To issue a certificate to any applicant who has met the education, training, and examination requirements for certification and deny a certificate to applicants who do not meet the minimum qualifications for certification. Proceedings concerning the denial of certificates based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(4) To hire clerical, administrative, and investigative staff as needed to implement and administer this chapter and to hire individuals including those certified under this chapter to serve as examiners or consultants as necessary to implement and administer this chapter;

(5) To maintain the official department record of all applicants and certifications;

(6) To conduct a hearing on an appeal of a denial of a certificate on the applicant's failure to meet the minimum qualifications for certification. The hearing shall be conducted pursuant to chapter 34.05 RCW;

(7) To issue subpoenas, statements of charges, statements of intent to deny certificates, and orders and to delegate in writing to a designee the authority to issue subpoenas, statements of charges, and statements of intent to deny certificates;

(8) To determine the minimum education, work experience, and training requirements for certification, including but not limited to approval of educational programs;

(9) To prepare and administer or approve the preparation and administration of examinations for certification;

(10) To establish by rule the procedure for appeal of an examination failure;

(11) To adopt rules implementing a continuing competency program;

(12) To adopt rules in accordance with chapter 34.05 RCW as necessary to implement this chapter. [1990 c 3 § 804.]

18.155.050 Sexual offender treatment providers advisory committee. (1) The sexual offender treatment providers advisory committee is established to advise the secretary concerning the administration of this chapter.

(2) The secretary shall appoint the members of the advisory committee who shall consist of the following persons:

(a) One superior court judge;

(b) Three sexual offender treatment providers;

(c) One mental health practitioner who specializes in treating victims of sexual assault;

(d) One defense attorney with experience in representing persons charged with sexual offenses;

(e) One representative from the Washington association of prosecuting attorneys;

(f) The secretary of the department of social and health services or his or her designee;

(g) The secretary of the department of corrections or his or her designee.

The secretary shall develop and implement the certification procedures with the advice of the committee by July 1, 1991. Following implementation of these procedures by the secretary, the committee shall be a permanent body. The members shall serve staggered six-year terms, to be set by the secretary. No person other than the members representing the departments of social and health services and corrections may serve more than two consecutive terms.

The secretary may remove any member of the advisory committee for cause as specified by rule. In a case of a vacancy, the secretary shall appoint a person to serve for the remainder of the unexpired term.

(3) Committee members shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(4) The committee shall elect officers as deemed necessary to administer its duties. A simple majority of the committee members currently serving shall constitute a quorum of the committee.

(5) Members of the advisory committee shall be residents of this state. The members who are sex offender treatment providers must have a minimum of five years of extensive work experience in treating sex offenders to qualify for appointment to the initial committee, which shall develop and implement the certification program. After July 1, 1991, the sex offender treatment providers on the committee must be certified pursuant to this chapter.

(6) The committee shall meet at times as necessary to conduct committee business. [1990 c 3 § 805.]

18.155.060 Immunity. The secretary, members of the committee, and individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any acts performed in the course of their duties. [1990 c 3 § 806.]

18.155.070 Certificate—Requirements. The department shall issue a certificate to any applicant who meets the following requirements:

(1) Successful completion of an educational program approved by the secretary or successful completion of alternate training which meets the criteria of the secretary;

(2) Successful completion of any experience requirement established by the secretary;

(3) Successful completion of an examination administered or approved by the secretary;

(4) Not having engaged in unprofessional conduct or being unable to practice with reasonable skill and safety as a result of a physical or mental impairment;

(5) Other requirements as may be established by the secretary that impact the competence of the sex offender treatment provider. [1990 c 3 § 807.]

18.155.080 Rules required. The secretary shall establish by rule standards and procedures for approval of the following:

(1) Educational programs and alternate training;

(2) Examination procedures;

(3) Certifying applicants who have a comparable certification in another jurisdiction;

(4) Application method and forms;

(5) Requirements for renewals of certificates;

(6) Requirements of certified sex offender treatment providers who seek inactive status;

(7) Other rules as appropriate to carry out the purposes of this chapter. [1990 c 3 § 808.]

18.155.090 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unauthorized practice, the issuance and denial of certificates, and the discipline of certified sex offender treatment providers under this chapter. [1990 c 3 § 809.]

18.155.900 Index, part headings not law—1990 c 3. The index and part headings used in *this act do not constitute any part of the law. [1990 c 3 § 1404.]

*Reviser's note: For codification of "this act" [1990 c 3], see Codification Tables, Volume 0.

18.155.901 Severability—1990 c 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 3 § 1405.]

18.155.902 Effective dates—Application—1990 c 3. (1) Sections 101 through 131, 401 through 409, 501 through 504, 606, 707 and 708, 801 through 810, 1101 through 1104, 1201 through 1210, and 1401 through 1403 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 [February 28, 1990].

(2) Sections 201 through 203, 301 through 305, 701 through 706, and 901 through 904 shall take effect July 1, 1990, and shall apply to crimes committed on or after July 1, 1990.

(3) Sections 1001 through 1012 shall take effect July 1, 1990.

(4) Section 1301 shall take effect July 1, 1991.

(5) Sections 601 through 605, for purposes of sentencing adult or juvenile offenders shall take effect July 1, 1990, and shall apply to crimes or offenses committed on or after July 1, 1990. For purposes of defining a "sexually violent offense" pursuant to section 1002(4) of this act, sections 601 through 605 of this act shall take effect July 1, 1990, and shall apply to crimes committed on, before, or after July 1, 1990. [1990 c 3 § 1406.]

Reviser's note: For codification of 1990 c 3, see Codification Tables, Volume 0.

Chapter 18.160

FIRE SPRINKLER SYSTEM CONTRACTORS

Sections

18.160.010 Definitions.

18.160.020 Local government license and permit requirements—Exemptions from chapter.

18.160.030 State director of fire protection—Duties.

18.160.040 Certificate of competency—Contractor license.

18.160.050 Renewal—Certificate of competency—Contractor license—Fire protection license fund created.

18.160.070 Local government regulation—Application to state and government contractors.

18.160.080 Refusal, suspension, or revocation of certificates or licenses—Grounds—Appeal.

18.160.090 Surety bond—Security deposit—Venue and time limit for actions upon bonds—Limit of liability of surety—Payment of claims.

18.160.100 Unlicensed operations—Penalty.

18.160.110 Enforcement—Civil proceedings.

18.160.900 Prospective application.

18.160.901 Effective date—1990 c 177.

18.160.902 Severability—1990 c 177.

Criminal penalties: RCW 9.45.260.

18.160.010 Definitions. The following words or terms shall have the meanings indicated unless the context clearly indicates otherwise.

(1) "Certificate of competency holder" means an individual who has satisfactorily met the qualifications and has received a certificate of competency from the state

director of fire protection under the provisions of this chapter.

(2) "Fire protection sprinkler system contractor" means a person or organization that offers to undertake the execution of contracts for the installation, inspection, maintenance, or servicing of a fire protection sprinkler system or any part of such a system.

(3) "Fire protection sprinkler system" means an assembly of underground and/or overhead piping or conduit beginning at the connection to the primary water supply, whether public or private, that conveys water with or without other agents to dispersal openings or devices to extinguish, control, or contain fire and to provide protection from exposure to fire or other products of combustion.

(4) "Fire protection sprinkler system contractor's license" means the license issued by the state director of fire protection to a fire protection sprinkler system contractor upon an application being approved, the fee being paid, and the satisfactory completion of the requirements of this chapter. The license shall be issued in the name of the fire protection sprinkler system contractor with the name or names of the certificate of competency holder noted thereon.

(5) "NFPA 13-D" means whatever standard that is used by the national fire protection association for the installation of fire protection sprinkler systems in one or two-family residential dwellings or mobile homes.

(6) "NFPA 13-R" means whatever standard that is used by the national fire protection association for the installation of fire protection sprinkler systems in residential dwellings up to four stories in height.

(7) "Inspection" means a visual examination of a fire protection sprinkler system or portion of the system to verify that the system appears to be in operating condition and is free from physical damage and complies with the applicable statutes and regulations adopted by the state director of fire protection.

(8) "Installation" means the initial placement of fire protection sprinkler system equipment or the extension, modification, or alteration of equipment after the initial placement. Installation shall include the work from a street or main water access throughout the entire building.

(9) "Maintenance" means to maintain in the condition of repair that provides performance as originally planned.

(10) "Organization" means a corporation, partnership, firm, or other business association, governmental entity, or any other legal or commercial entity.

(11) "Person" means a natural person, including an owner, manager, partner, officer, employee, or occupant.

(12) "Service" means to repair or test. [1990 c 177 § 2.]

18.160.020 Local government license and permit requirements—Exemptions from chapter. (1) A municipality or county may not enact an order, ordinance, rule, or regulation requiring a fire protection sprinkler system contractor to obtain a fire sprinkler contractor license from the municipality or county. However, a municipality or county may require a fire protection sprinkler system contractor to obtain a permit and pay a fee for the installation of a fire protection sprinkler system and require the installation of such systems to conform with the building

code or other construction requirements of the municipality or county, but may not impose financial responsibility requirements other than proof of a valid license.

(2) This chapter does not apply to:

(a) United States, state, and local government employees, building officials, fire marshals, fire inspectors, or insurance inspectors when acting in their official capacities;

(b) A person or organization acting under court order;

(c) A person or organization that sells or supplies products or materials to a licensed fire protection sprinkler system contractor;

(d) A registered professional engineer acting solely in a professional capacity;

(e) An employee of a licensed fire protection sprinkler system contractor performing duties for the registered fire protection sprinkler system contractor; and

(f) An owner/occupier of a single-family residence performing his or her own installation in that residence. [1990 c 177 § 3.]

18.160.030 State director of fire protection—Duties.

(1) This chapter shall be administered by the state director of fire protection.

(2) The state director of fire protection shall have the authority, and it shall be his or her duty to:

(a) Issue such administrative regulations as necessary for the administration of this chapter;

(b)(i) Set reasonable fees for licenses, certificates, testing, and other aspects of the administration of this chapter. However, the license fee for fire protection sprinkler system contractors engaged solely in the installation, inspection, maintenance, or servicing of NFPA 13-D fire protection sprinkler systems shall not exceed one hundred dollars, and the license fee for fire protection sprinkler system contractors engaged solely in the installation, inspection, maintenance, or servicing of NFPA 13-R fire protection sprinkler systems shall not exceed three hundred dollars;

(ii) Adopt rules establishing a special category restricted to contractors registered under chapter 18.27 RCW who install underground systems that service fire protection sprinkler systems. The rules shall be adopted within ninety days of March 31, 1992;

(c) Enforce the provisions of this chapter;

(d) Conduct investigations of complaints to determine if any infractions of this chapter or the regulations developed under this chapter have occurred;

(e) Work with the *fire sprinkler advisory committee consisting of fire protection sprinkler system contractors and other related officials;

(f) Assign a certificate number to each certificate of competency holder; and

(g) Adopt rules necessary to implement and administer a program which requires the affixation of a seal any time a fire protection sprinkler system is installed, which seal shall include the certificate number of any certificate of competency holder who installs, in whole or in part, the fire protection sprinkler system. [1992 c 116 § 2; 1990 c 177 § 4.]

*Reviser's note: The section creating the fire sprinkler advisory committee, 1990 c 177 § 9, was vetoed by the governor.

18.160.040 Certificate of competency—Contractor license. (1) To become a certificate of competency holder under this chapter, an applicant must have satisfactorily passed an examination administered by the state director of fire protection. A certificate of competency holder can satisfy this examination requirement by presenting a copy of a current certificate of competency from the national institute for certification in engineering technologies showing that the applicant has achieved the classification of engineering technician level 3 or senior engineering technician level 4 in the field of fire protection, automatic sprinkler system layout. The state director of fire protection may accept equivalent proof of qualification in lieu of examination, as recommended by the *fire sprinkler advisory committee. This examination requirement is mandatory except as otherwise provided in this chapter.

(2) Every applicant for a certificate of competency shall fulfill the requirements established by the state director of fire protection and the *fire protection sprinkler system technical advisory committee under chapter 34.05 RCW.

(3) Every applicant for a certificate of competency shall make application to the state director of fire protection and pay the fees required.

(4) Provided the application for the certificate of competency is made prior to ninety days after May 1, 1991, the state director of fire protection, in lieu of the examination requirements of the applicant for a certificate of competency, may accept as satisfactory evidence of competency and qualification, affidavits attesting that the applicant has had a minimum of three years' experience.

(5) The state director of fire protection may, after consultation with the *fire sprinkler advisory committee, issue a temporary certificate of competency to an applicant who, in his or her judgment, will satisfactorily perform as a certificate of competency holder under the provisions of this chapter. The temporary certificate of competency shall remain in effect for a period of up to three years. The temporary certificate of competency holder shall, within the three-year period, complete the examination requirements specified in subsection (1) of this section. There shall be no examination exemption for an individual issued a temporary certificate of competency. Prior to the expiration of the three-year period, the temporary certificate of competency holder shall make application for a regular certificate of competency. The procedures and qualifications for issuance of a regular certificate of competency shall be applicable to the temporary certificate of competency holder. When a temporary certificate of competency expires, the holder shall cease all activities associated with the holding of a temporary certificate of competency, subject to the penalties contained in this chapter.

(6) To become a licensed fire protection sprinkler system contractor under this chapter, a person or firm must comply with the following:

(a) Must be or have in his or her full-time employ a holder of a valid certificate of competency;

(b) Comply with the minimum insurance requirements of this chapter; and

(c) Make application to the state director of fire protection for a license and pay the fees required.

(7) Each license and certificate of competency issued under this chapter must be posted in a conspicuous place in

the fire protection sprinkler system contractor's place of business.

(8) All bids, advertisements, proposals, offers, and installation drawings for fire protection sprinkler systems must prominently display the fire protection sprinkler system contractor's license number.

(9) A certificate of competency or license issued under this chapter is not transferable.

(10) In no case shall a certificate of competency holder be employed full time by more than one fire protection sprinkler system contractor at the same time. If the certificate of competency holder should leave the employment of the fire protection sprinkler system contractor, he or she must notify the state director of fire protection within thirty days. If the certificate of competency holder should leave the employment of the fire protection sprinkler system contractor, the contractor shall have six months or until the expiration of the current license, whichever occurs last, to submit a new application identifying another certificate of competency holder who is at the time of application an owner of the fire protection sprinkler system business or a full-time employee of the fire protection sprinkler system contractor, in order to be issued a new license. If such application is not received and a new license issued within the allotted time, the state director of fire protection shall revoke the license of the fire protection sprinkler system contractor. [1990 c 177 § 5.]

***Reviser's note:** The section creating the fire sprinkler advisory committee, 1990 c 177 § 9, was vetoed by the governor.

18.160.050 Renewal—Certificate of competency—Contractor license—Fire protection license fund created.

(1)(a) All certificate of competency holders that desire to continue in the fire protection sprinkler business shall annually, prior to January 1, secure from the state director of fire protection a renewal certificate of competency upon payment of the fee as prescribed by the state director of fire protection. Application for renewal shall be upon a form prescribed by the state director of fire protection and the certificate holder shall furnish the information required by the director.

(b) Failure of any certificate of competency holder to secure his or her renewal certificate of competency within sixty days after the due date shall constitute sufficient cause for the state director of fire protection to suspend the certificate of competency.

(c) The state director of fire protection may, upon the receipt of payment of all delinquent fees including a late charge, restore a certificate of competency that has been suspended for failure to pay the renewal fee.

(d) A certificate of competency holder may voluntarily surrender his or her certificate of competency to the state director of fire protection and be relieved of the annual renewal fee. After surrendering the certificate of competency, he or she shall not be known as a certificate of competency holder and shall desist from the practice thereof. Within two years from the time of surrender of the certificate of competency, he or she may again qualify for a certificate of competency, without examination, by the payment of the required fee. If two or more years have elapsed, he or she shall return to the status of a new applicant.

(2)(a) All licensed fire protection sprinkler system contractors desiring to continue to be licensed shall annually, prior to January 1, secure from the state director of fire protection a renewal license upon payment of the fee as prescribed by the state director of fire protection. Application for renewal shall be upon a form prescribed by the state director of fire protection and the license holder shall furnish the information required by the director.

(b) Failure of any license holder to secure his or her renewal license within sixty days after the due date shall constitute sufficient cause for the state director of fire protection to suspend the license.

(c) The state director of fire protection may, upon the receipt of payment of all delinquent fees including a late charge, restore a license that has been suspended for failure to pay the renewal fee.

(3) The initial certificate of competency or license fee shall be prorated based upon the portion of the year such certificate of competency or license is in effect, prior to renewal on January 1.

(4) The fire protection contractor license fund is created in the custody of the state treasurer. All receipts from license and certificate fees and charges or from the money generated by the rules and regulations promulgated under this chapter shall be deposited into the fund. Expenditures from the fund may be used only for purposes authorized under this chapter. Only the state director of fire protection or the director's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [1990 c 177 § 6.]

18.160.070 Local government regulation—Application to state and government contractors. (1) Nothing in this chapter limits the power of a municipality, county, or the state to regulate the quality and character of work performed by contractors, through a system of permits, fees, and inspections which are designed to assure compliance with and aid in the implementation of state and local building laws or to enforce other local laws for the protection of the public health and safety. Nothing in this chapter limits the power of the municipality, county, or the state to adopt any system of permits requiring submission to and approval by the municipality, county, or the state, of technical drawings and specifications for work to be performed by contractors before commencement of the work. The official authorized to issue building or other related permits shall ascertain that the fire protection sprinkler system contractor is duly licensed by requiring evidence of a valid fire protection sprinkler system contractor's license.

(2) This chapter applies to any fire protection sprinkler system contractor performing work for any municipality, county, or the state. Officials of any municipality, county, or the state are required to determine compliance with this chapter before awarding any contracts for the installation, repair, service, alteration, fabrication, addition, or inspection of a fire protection sprinkler system. [1990 c 177 § 8.]

18.160.080 Refusal, suspension, or revocation of certificates or licenses—Grounds—Appeal. (1) The state director of fire protection may refuse to issue or renew or

may suspend or revoke the privilege of a licensed fire protection sprinkler system contractor or the certificate of a certificate of competency holder to engage in the fire protection sprinkler system business or in lieu thereof, establish penalties as prescribed by Washington state law, for any of the following reasons:

(a) Gross incompetency or gross negligence in the preparation of technical drawings, installation, repair, alteration, maintenance, inspection, service, or addition to fire protection sprinkler systems;

(b) Conviction of a felony;

(c) Fraudulent or dishonest practices while engaging in the fire protection sprinkler systems business;

(d) Use of false evidence or misrepresentation in an application for a license or certificate of competency;

(e) Permitting his or her license to be used in connection with the preparation of any technical drawings which have not been prepared by him or her personally or under his or her immediate supervision, or in violation of this chapter; or

(f) Knowingly violating any provisions of this chapter or the regulations issued thereunder.

(2) The state director of fire protection shall revoke the license of a licensed fire protection sprinkler system contractor or the certificate of a certificate of competency holder who engages in the fire protection sprinkler system business while the license or certificate of competency is suspended.

(3) Any licensee or certificate of competency holder who is aggrieved by an order of the state director of fire protection suspending or revoking a license may, within thirty days after notice of such suspension or revocation, appeal under chapter 34.05 RCW. [1990 c 177 § 10.]

18.160.090 Surety bond—Security deposit—Venue and time limit for actions upon bonds—Limit of liability of surety—Payment of claims. (1) Before granting a license under this chapter, the director of fire protection shall require that the applicant file with the state director of fire protection a surety bond issued by a surety insurer who meets the requirements of chapter 48.28 RCW in a form acceptable to the director of fire protection running to the state of Washington in the penal sum of ten thousand dollars. However, the surety bond for a fire protection sprinkler system contractor whose business is restricted solely to NFPA 13-D or NFPA 13-R systems shall be in the penal sum of six thousand dollars. The bond shall be conditioned that the applicant will pay all purchasers of fire protection sprinkler systems with whom the applicant has a contract for the applicant to install, inspect, maintain, or service a fire protection sprinkler system, and who have obtained a judgment against the applicant for the breach of such a contract. The term "purchaser" means an owner of property who has entered into a contract for the installation of a fire protection sprinkler system on that property, or a contractor who contracts to install, inspect, maintain, or service such a system with an owner of property and subcontracts the work to the applicant. No other person, including, but not limited to, persons who supply labor, materials, or rental equipment to the applicant, shall have any rights against the bond.

(2) In lieu of the surety bond required by this section the applicant may file with the director of fire protection a

deposit consisting of cash or other security acceptable to the director of fire protection in an amount equal to the penal sum of the required bond. The director of fire protection may adopt rules necessary for the proper administration of the security.

(3) Before granting renewal of a fire protection sprinkler system contractor's license to any applicant, the director of fire protection shall require that the applicant file with the director satisfactory evidence that the surety bond or cash deposit is in full force.

(4) Any purchaser of a fire protection sprinkler system having a claim against the licensee for the breach of a contract for the licensee to install, inspect, maintain, or service a fire protection sprinkler system may bring suit upon such bond in superior court of the county in which the work was done or of any county in which jurisdiction of the licensee may be had. Any such action must be brought not later than one year after the expiration of the licensee's license or renewal license then in effect at the time of the alleged breach of contract.

(5) The bond shall be considered one continuous obligation, and the surety upon the bond shall not be liable in aggregate or cumulative amount exceeding ten thousand dollars, or six thousand dollars if the bond was issued to a licensee whose business is restricted solely to NFPA 13-D or NFPA 13-R systems, regardless of the number of years the bond is in effect, or whether it is reinstated, renewed, reissued, or otherwise continued, and regardless of the year in which any claim accrued. The bond shall not be liable for any liability of the licensee for tortious acts, whether or not such liability is imposed by statute or common law, or is imposed by contract. The bond shall not be a substitute or supplemental to any liability or other insurance required by law or by the contract.

(6) If the surety desires to make payment without awaiting court action against it, the amount of the bond shall be reduced to the extent of any payment made by the surety in good faith under the bond. Any payment shall be based on final judgments received by the surety.

(7) Claims against the bond shall be satisfied from the bond in the following order:

(a) Claims by a purchaser of a fire protection sprinkler system for the breach of a contract for the licensee to install, inspect, maintain, or service a fire protection sprinkler system;

(b) Any court costs, interest, and attorneys' fees the plaintiff may be entitled to recover by contract, statute, or court rule.

A condition precedent to the surety being liable to any claimant is a final judgment against the licensee, unless the surety desires to make payment without awaiting court action. In the event of a dispute regarding the apportionment of the bond proceeds among claimants, the surety may bring an action for interpleader against all claimants upon the bond.

(8) Any purchaser of a fire protection sprinkler system having an unsatisfied final judgment against the licensee for the breach of a contract for the licensee to install, inspect, maintain, or service a fire protection sprinkler system may execute upon the security held by the director of fire protection by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the director

within one year of the date of entry of such judgment. Upon the receipt of service of such certified copy the director shall pay or order paid from the deposit, through the registry of the court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the director shall be the order of receipt by the director, but the director shall have no liability for payment in excess of the amount of the deposit. [1991 sp.s. c 6 § 1.]

18.160.100 Unlicensed operations—Penalty. Any fire protection sprinkler system contractor who constructs, installs, or maintains a fire protection sprinkler system in any occupancy, except an owner-occupied single-family dwelling, without first obtaining a fire sprinkler contractor's license from the state of Washington, is guilty of a gross misdemeanor. This section may not be construed to create any criminal liability for a prime contractor or an owner of an occupancy unless it is proved that the prime contractor or owner had actual knowledge of an illegal construction, installation, or maintenance of a fire protection sprinkler system by a fire protection sprinkler system contractor. [1992 c 116 § 3.]

Wrongful acts by contractor, criminal penalty: RCW 9.45.260.

18.160.110 Enforcement—Civil proceedings. Civil proceedings to enforce this chapter may be brought by the attorney general or the prosecuting attorney of any county where a violation occurs on his or her own motion or at the request of the state director of fire protection. [1992 c 116 § 4.]

18.160.900 Prospective application. This chapter applies prospectively only and not retroactively. A municipal or county order, ordinance, rule, or regulation that is in effect as of May 1, 1991, is not invalid because of the provisions of this chapter. This chapter does not prohibit municipalities or counties from adopting stricter guidelines that will assure the proper installation of fire sprinkler systems within their jurisdictions. [1990 c 177 § 12.]

18.160.901 Effective date—1990 c 177. RCW 18.160.010 through 18.160.080 shall take effect May 1, 1991. [1990 c 177 § 13.]

18.160.902 Severability—1990 c 177. 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 177 § 14.]

Chapter 18.165 PRIVATE DETECTIVES

Sections

- 18.165.010 Definitions.
- 18.165.020 Exemptions.
- 18.165.030 Private detective license—Requirements.
- 18.165.040 Armed private detective license—Requirements.
- 18.165.050 Private detective agency license—Requirements—Assignment or transfer.

- 18.165.060 Armed private detective license authority—Registration of firearms.
- 18.165.070 License applications—Investigations—Information to be provided to applicant's employer and local law enforcement officer.
- 18.165.080 Private detective license cards, armed private detective license cards, and private detective agency license certificates—Issuance and requirements.
- 18.165.090 Preassignment training and testing requirements—Exemption.
- 18.165.100 Private detective agency license—Surety bond or certificate of insurance required.
- 18.165.110 Regulatory provisions exclusive—Authority of the state and political subdivisions.
- 18.165.120 Out-of-state private detectives operating across state lines.
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- 18.165.180 Complaints—Investigation—Immunity.
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- 18.165.210 Inability to practice by reason of a mental or physical condition—Statement of charges—Hearing—Sanctions—Mental or physical examinations—Presumed consent for examination.
- 18.165.220 Unprofessional conduct or inability to practice—Penalties.
- 18.165.230 Enforcement of orders for payment of fines.
- 18.165.240 Unlicensed practice—Complaints—Director's authority—Injunctions—Penalty.
- 18.165.250 Violation of injunction—Penalty.
- 18.165.260 Immunity.
- 18.165.270 Application of administrative procedure act to acts of the director.
- 18.165.900 Severability—1991 c 328.

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

(1) "Armed private detective" means a private detective who has a current firearms certificate issued by the commission and is licensed as an armed private detective under this chapter.

(2) "Chief law enforcement officer" means the elected or appointed police administrator of a municipal, county, or state police or sheriff's department that has full law enforcement powers in its jurisdiction.

(3) "Commission" means the criminal justice training commission established in chapter 43.101 RCW.

(4) "Department" means the department of licensing.

(5) "Director" means the director of the department of licensing.

(6) "Employer" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent of any of the foregoing that employs or seeks to enter into an arrangement to employ any person as a private detective.

(7) "Firearms certificate" means a certificate issued by the commission.

(8) "Forensic scientist" or "accident reconstructionist" means a person engaged exclusively in collecting and analyzing physical evidence and data relating to an accident or other matter and compiling such evidence or data to

render an opinion of likely cause, fault, or circumstance of the accident or matter.

(9) "Person" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent or employee of any of the foregoing.

(10) "Principal" of a private detective agency means the owner or manager appointed by a corporation.

(11) "Private detective" means a person who is licensed under this chapter and is employed by a private detective agency for the purpose of investigation, escort or body guard services, or property loss prevention activities.

(12) "Private detective agency" means a person or entity licensed under this chapter and engaged in the business of detecting, discovering, or revealing one or more of the following:

(a) Crime, criminals, or related information;

(b) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person or thing;

(c) The location, disposition, or recovery of lost or stolen property;

(d) The cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or to property;

(e) Evidence to be used before a court, board, officer, or investigative committee;

(f) Detecting the presence of electronic eavesdropping devices; or

(g) The truth or falsity of a statement or representation.

(13) "Qualifying agent" means an officer or manager of a corporation who meets the requirements set forth in this chapter for obtaining a private detective agency license.

(14) "Sworn peace officer" means a person who is an employee of the federal government, the state, or a political subdivision, agency, or department branch of a municipality or other unit of local government, and has law enforcement powers. [1991 c 328 § 1.]

18.165.020 Exemptions. The requirements of this chapter do not apply to:

(1) A person who is employed exclusively or regularly by one employer and performs investigations solely in connection with the affairs of that employer, if the employer is not a private detective agency;

(2) An officer or employee of the United States or of this state or a political subdivision thereof, while engaged in the performance of the officer's official duties;

(3) A person engaged exclusively in the business of obtaining and furnishing information about the financial rating of persons;

(4) An attorney at law while performing the attorney's duties as an attorney;

(5) A licensed collection agency or its employee, while acting within the scope of that person's employment and making an investigation incidental to the business of the agency;

(6) Insurers, agents, and insurance brokers licensed by the state, while performing duties in connection with insurance transacted by them;

(7) A bank subject to the jurisdiction of the Washington state banking commission or the comptroller of currency of the United States, or a savings and loan association subject to the jurisdiction of this state or the federal home loan bank board;

(8) A licensed insurance adjuster performing the adjuster's duties within the scope of the adjuster's license;

(9) A secured creditor engaged in the repossession of the creditor's collateral, or a lessor engaged in the repossession of leased property in which it claims an interest;

(10) A person who is a forensic scientist, accident reconstructionist, or other person who performs similar functions and does not hold himself or herself out to be an investigator in any other capacity; or

(11) A person solely engaged in the business of securing information about persons or property from public records. [1991 c 328 § 2.]

18.165.030 Private detective license—Requirements.

An applicant must meet the following minimum requirements to obtain a private detective license:

(1) Be at least eighteen years of age;

(2) Be a citizen or resident alien of the United States;

(3) Not have been convicted of a crime in any jurisdiction, if the director determines that the applicant's particular crime directly relates to his or her capacity to perform the duties of a private detective and the director determines that the license should be withheld to protect the citizens of Washington state. The director shall make her or his determination to withhold a license because of previous convictions consistent with the restoration of employment rights act, chapter 9.96A RCW;

(4) Be employed by or have an employment offer from a private detective agency or be licensed as a private detective agency;

(5) Submit a set of fingerprints; and

(6) Pay the required fee. [1991 c 328 § 3.]

18.165.040 Armed private detective license—Requirements. (1) An applicant must meet the following minimum requirements to obtain an armed private detective license:

(a) Be licensed as a private detective;

(b) Be at least twenty-one years of age;

(c) Have a current firearms certificate issued by the commission; and

(d) Pay the fee established by the director.

(2) The armed private detective license may take the form of an endorsement to the private detective license if deemed appropriate by the director. [1991 c 328 § 4.]

18.165.050 Private detective agency license—Requirements—Assignment or transfer. (1) In addition to meeting the minimum requirements to obtain a license as a private detective, an applicant, or, in the case of a partnership or limited partnership, each partner, or, in the case of a corporation, the qualifying agent must meet the following additional requirements to obtain a private detective agency license:

(a) Pass an examination determined by the director to measure the person's knowledge and competence in the private detective agency business; or

(b) Have had at least three years' experience in investigative work or its equivalent as determined by the director. A year's experience means not less than two thousand hours of actual compensated work performed before the filing of an application. An applicant shall substantiate the experience by written certifications from previous employers. If the applicant is unable to supply written certifications from previous employers, applicants may offer written certifications from persons other than employers who, based on personal knowledge, can substantiate the employment.

(2) An agency license issued pursuant to this section may not be assigned or transferred without prior written approval of the director. [1991 c 328 § 5.]

18.165.060 Armed private detective license authority—Registration of firearms. (1) An armed private detective license grants authority to the holder, while in the performance of his or her duties, to carry a firearm with which the holder has met the proficiency requirements established by the commission.

(2) All firearms carried by armed private detectives in the performance of their duties must be owned by the employer and, if required by law, must be registered with the proper government agency. [1991 c 328 § 6.]

18.165.070 License applications—Investigations—Information to be provided to applicant's employer and local law enforcement officer. (1) Applications for licenses required under this chapter shall be filed with the director on a form provided by the director. The director may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria.

(2) After receipt of an application for a license, the director shall conduct an investigation to determine whether the facts set forth in the application are true and shall request that the Washington state patrol compare the fingerprints submitted with the application to fingerprint records available to the Washington state patrol.

(3) A summary of the information acquired under this section, to the extent that it is public information, shall be forwarded by the department to the applicant's employer and to the chief law enforcement officer of the county and city or town in which the applicant's employer is located, for the purpose of comment prior to the issuance of a permanent private detective license. [1991 c 328 § 7.]

18.165.080 Private detective license cards, armed private detective license cards, and private detective agency license certificates—Issuance and requirements. (1) The director shall issue a private detective license card to each licensed private detective and an armed private detective license card to each armed private detective.

(a) The license card may not be used as security clearance or as identification.

(b) A private detective shall carry the license card whenever he or she is performing the duties of a private detective and shall exhibit the card upon request.

(c) An armed private detective shall carry the license card whenever he or she is performing the duties of an armed private detective and shall exhibit the card upon request.

(2) The director shall issue a license certificate to each licensed private detective agency.

(a) Within seventy-two hours after receipt of the license certificate, the licensee shall post and display the certificate in a conspicuous place in the principal office of the licensee within the state.

(b) It is unlawful for any person holding a license certificate to knowingly and willfully post the license certificate upon premises other than those described in the license certificate or to materially alter a license certificate.

(c) Every advertisement by a licensee that solicits or advertises business shall contain the name of the licensee, the address of record, and the license number as they appear in the records of the director.

(d) The licensee shall notify the director within thirty days of any change in the licensee's officers or directors or any material change in the information furnished or required to be furnished to the director. [1991 c 328 § 8.]

18.165.090 Preassignment training and testing requirements—Exemption. (1) The director shall adopt rules establishing preassignment training and testing requirements, which shall include a minimum of four hours of classes. The director may establish, by rule, continuing education requirements for private detectives.

(2) The director shall consult with the private detective industry and law enforcement before adopting or amending the preassignment training or continuing education requirements of this section.

(3) A private detective need not fulfill the preassignment training requirements of this chapter if he or she, within sixty days of July 28, 1991, provides proof to the director that he or she previously has met the training requirements of this chapter or has been employed as a private detective or armed private detective for at least eighteen consecutive months immediately prior to the date of application. [1991 c 328 § 9.]

18.165.100 Private detective agency license—Surety bond or certificate of insurance required. (1) No private detective agency license may be issued under the provisions of this chapter unless the applicant files with the director a surety bond, executed by a surety company authorized to do business in this state, in the sum of ten thousand dollars conditioned to recover against the principal and its servants, officers, agents, and employees by reason of its wrongful or illegal acts in conducting business licensed under this chapter. The bond shall be made payable to the state of Washington, and anyone so injured by the principal or its servants, officers, agents, or employees shall have the right and shall be permitted to sue directly upon this obligation in his or her own name. This obligation shall be subject to successive suits for recovery until the face amount is completely exhausted.

(2) Every licensee must at all times maintain on file with the director the surety bond required by this section in full force and effect. Upon failure by a licensee to do so,

the director shall suspend the licensee's license and shall not reinstate the license until this requirement is met.

(3) In lieu of posting bond, a licensed private detective agency may file with the director a certificate of insurance as evidence that it has comprehensive general liability coverage of at least twenty-five thousand dollars for bodily or personal injury and twenty-five thousand dollars for property damage. [1991 c 328 § 10.]

18.165.110 Regulatory provisions exclusive—Authority of the state and political subdivisions. (1) The provisions of this chapter relating to the licensing for regulatory purposes of private detectives, armed private detectives, and private detective agencies are exclusive. No governmental subdivision of this state may enact any laws or rules licensing for regulatory purposes such persons, except as provided in subsections (2) and (3) of this section.

(2) This section shall not be construed to prevent a political subdivision of this state from levying a business fee, business and occupation tax, or other tax upon private detective agencies if such fees or taxes are levied by the state on other types of businesses within its boundaries.

(3) This section shall not be construed to prevent this state or a political subdivision of this state from licensing for regulatory purposes private detective agencies with respect to activities that are not regulated under this chapter. [1991 c 328 § 11.]

18.165.120 Out-of-state private detectives operating across state lines. Private detectives or armed private detectives whose duties require them to operate across state lines may operate in this state for up to thirty days per year, if they are properly registered and certified in another state with training and certification requirements that the director finds are at least equal to the requirements of this state. [1991 c 328 § 12.]

18.165.130 Private detective agencies required to provide information on private detectives and armed private detectives. (1) A private detective agency shall notify the director within thirty days after the death or termination of employment of any employee who is a licensed private detective or armed private detective.

(2) A private detective agency shall notify the director within seventy-two hours and the chief law enforcement officer of the county, city, or town in which the agency is located immediately upon receipt of information affecting a licensed private detective's or armed private detective's continuing eligibility to hold a license under the provisions of this chapter. [1991 c 328 § 13.]

18.165.140 Out-of-state private detectives—Application—Fee—Temporary assignment. (1) Any person from another state that the director determines has selection, training, and other requirements at least equal to those required by this chapter, and who holds a valid license, registration, identification, or similar card issued by the other state, may apply for a private detective license card or armed private detective license card on a form prescribed by the director. Upon receipt of a processing fee to be determined by the director, the director shall issue the individual a

private detective license card or armed private detective license card.

(2) A valid license, registration, identification, or similar card issued by any other state of the United States is valid in this state for a period of ninety days, but only if the licensee is on temporary assignment for the same employer that employs the licensee in the state in which he or she is a permanent resident. [1991 c 328 § 14.]

18.165.150 Licenses required—Use of public law enforcement insignia prohibited—Penalties—Enforcement. (1) After June 30, 1992, any person who performs the functions and duties of a private detective in this state without being licensed in accordance with the provisions of this chapter, or any person presenting or attempting to use as his or her own the license of another, or any person who gives false or forged evidence of any kind to the director in obtaining a license, or any person who falsely impersonates any other licensee, or any person who attempts to use an expired or revoked license, or any person who violates any of the provisions of this chapter is guilty of a gross misdemeanor.

(2) After January 1, 1992, a person is guilty of a gross misdemeanor if he or she owns or operates a private detective agency in this state without first obtaining a private detective agency license.

(3) After June 30, 1992, the owner or qualifying agent of a private detective agency is guilty of a gross misdemeanor if he or she employs any person to perform the duties of a private detective without the employee having in his or her possession a permanent private detective license issued by the department. This shall not preclude a private detective agency from requiring applicants to attend preassignment training classes or from paying wages for attending the required preassignment training classes.

(4) After June 30, 1992, a person is guilty of a gross misdemeanor if he or she performs the functions and duties of an armed private detective in this state unless the person holds a valid armed private detective license issued by the department.

(5) After June 30, 1992, it is a gross misdemeanor for a private detective agency to hire, contract with, or otherwise engage the services of an unlicensed armed private detective knowing that the private detective does not have a valid armed private detective license issued by the director.

(6) It is a gross misdemeanor for a person to possess or use any vehicle or equipment displaying the word "police" or "law enforcement officer" or having any sign, shield, marking, accessory, or insignia that indicates that the equipment or vehicle belongs to a public law enforcement agency.

(7) It is the duty of all officers of the state and political subdivisions thereof to enforce the provisions of this chapter. The attorney general shall act as legal adviser of the director, and render such legal assistance as may be necessary in carrying out the provisions of this chapter. [1991 c 328 § 15.]

18.165.160 Grounds for disciplinary action or denial, suspension, or revocation of license. The following acts are prohibited and constitute grounds for disciplinary

action or denial, suspension, or revocation of any license under this chapter, as deemed appropriate by the director:

(1) Knowingly violating any of the provisions of this chapter or the rules adopted under this chapter;

(2) Knowingly making a material misstatement or omission in the application for or renewal of a license or firearms certificate;

(3) Not meeting the qualifications set forth in RCW 18.165.030, 18.165.040, or 18.165.050;

(4) Failing to return immediately on demand a firearm issued by an employer;

(5) Carrying a firearm in the performance of his or her duties if not the holder of a valid armed private detective license, or carrying a firearm not meeting the provisions of this chapter while in the performance of his or her duties;

(6) Failing to return immediately on demand company identification, badges, or other items issued to the private detective by an employer;

(7) Making any statement that would reasonably cause another person to believe that the private detective is a sworn peace officer;

(8) Divulging confidential information obtained in the course of any investigation to which he or she was assigned;

(9) Acceptance of employment that is adverse to a client or former client and relates to a matter about which a licensee has obtained confidential information by reason of or in the course of the licensee's employment by the client;

(10) Conviction of a gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(11) Advertising that is false, fraudulent, or misleading;

(12) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(13) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(14) Failure to cooperate with the director by:

(a) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation for disciplinary action, denial, suspension, or revocation of a license under this chapter;

(b) Not furnishing in writing a full and complete explanation covering the matter contained in a complaint filed with the department; or

(c) Not responding to subpoenas issued by the director, whether or not the recipient of the subpoena is the accused in the proceeding;

(15) Failure to comply with an order issued by the director or an assurance of discontinuance entered into with the director;

(16) Aiding or abetting an unlicensed person to practice if a license is required;

(17) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(18) Failure to adequately supervise employees to the extent that the public health or safety is at risk;

(19) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's authorized representative, or by the use of threats or harassment against any client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action; or

(20) Assigning or transferring any license issued pursuant to the provisions of this chapter, except as provided in RCW 18.165.050. [1991 c 328 § 16.]

18.165.170 Authority of director. The director has the following authority in administering this chapter:

(1) To adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

(2) To issue subpoenas and administer oaths in connection with an investigation, hearing, or proceeding held under this chapter;

(3) To take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;

(4) To compel attendance of witnesses at hearings;

(5) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews;

(6) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the director;

(7) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the director or the director's designee shall make the final decision in the hearing;

(8) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(9) To adopt standards of professional conduct or practice;

(10) In the event of a finding of unprofessional conduct by an applicant or license holder, to impose sanctions against a license applicant or license holder as provided by this chapter;

(11) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;

(12) To designate individuals authorized to sign subpoenas and statements of charges;

(13) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter; and

(14) To compel attendance of witnesses at hearings. [1991 c 328 § 17.]

18.165.180 Complaints—Investigation—Immunity.

A person, including but not limited to consumers, licensees, corporations, organizations, and state and local governmental agencies, may submit a written complaint to the department charging a license holder or applicant with unprofessional conduct and specifying the grounds for the charge. If the director determines that the complaint merits investigation, or if the director has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the director shall investigate to determine if there has been unprofessional conduct. A person who files a complaint under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint. [1991 c 328 § 18.]

18.165.190 Violations—Statement of charges—Hearings.

(1) If the director determines, upon investigation, that there is reason to believe a violation of this chapter has occurred, a statement of charges shall be prepared and served upon the license holder or applicant and notice of this action given to the owner or qualifying agent of the employing private detective agency. The statement of charges shall be accompanied by a notice that the license holder or applicant may request a hearing to contest the charges. The license holder or applicant must file a request for hearing with the department within twenty days after being served the statement of charges. The failure to request a hearing constitutes a default, whereupon the director may enter an order pursuant to RCW 34.05.440.

(2) If a hearing is requested, the time of the hearing shall be scheduled but the hearing shall not be held earlier than thirty days after service of the charges upon the license holder or applicant. A notice of hearing shall be issued at least twenty days prior to the hearing, specifying the time, date, and place of the hearing. [1991 c 328 § 19.]

18.165.200 Application of administrative procedure act to hearings. The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, govern all hearings before the director. [1991 c 328 § 20.]

18.165.210 Inability to practice by reason of a mental or physical condition—Statement of charges—Hearing—Sanctions—Mental or physical examinations—Presumed consent for examination.

(1) If the director believes a license holder or applicant may be unable to practice with reasonable skill and safety to the public by reason of any mental or physical condition, a statement of charges shall be served on the license holder or applicant and notice shall also be issued providing an opportunity for a hearing. The hearing shall be limited to the sole issue of the capacity of the license holder or applicant to practice with reasonable skill or safety. If the director determines that the license holder or applicant is unable to practice with

reasonable skill and safety for one of the reasons stated in this subsection, the director shall impose such sanctions as are deemed necessary to protect the public.

(2) In investigating or adjudicating a complaint or report that a license holder or applicant may be unable to practice with reasonable skill or safety by reason of a mental or physical condition, the department may require a license holder or applicant to submit to a mental or physical examination by one or more licensed or certified health professionals designated by the director. The cost of the examinations ordered by the department shall be paid by the department. In addition to any examinations ordered by the department, the licensee may submit physical or mental examination reports from licensed or certified health professionals of the license holder's or applicant's choosing and expense. Failure of the license holder or applicant to submit to examination when directed constitutes grounds for immediate suspension or withholding of the license, consequent upon which a default and final order may be entered without the taking of testimony or presentations of evidence, unless the failure was due to circumstances beyond the person's control. A determination by a court of competent jurisdiction that a license holder or applicant is mentally incompetent or mentally ill is presumptive evidence of the license holder's or applicant's inability to practice with reasonable skill and safety. An individual affected under this section shall at reasonable intervals be afforded an opportunity to demonstrate that the individual can resume competent practice with reasonable skill and safety to the public.

(3) For the purpose of subsection (2) of this section, an applicant or license holder governed by this chapter, by making application, practicing, or filing a license renewal, is deemed to have given consent to submit to a mental, physical, or psychological examination if directed in writing by the department and further to have waived all objections to the admissibility or use of the examining health professional's testimony or examination reports by the director on the ground that the testimony or reports constitute hearsay or privileged communications. [1991 c 328 § 21.]

18.165.220 Unprofessional conduct or inability to practice—Penalties. Upon a finding that a license holder or applicant has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the director may issue an order providing for one or any combination of the following:

- (1) Revocation of the license;
- (2) Suspension of the license for a fixed or indefinite term;
- (3) Restriction or limitation of the practice;
- (4) Requiring the satisfactory completion of a specific program of remedial education or treatment;
- (5) Monitoring of the practice by a supervisor approved by the director;
- (6) Censure or reprimand;
- (7) Compliance with conditions of probation for a designated period of time;
- (8) Withholding a license request;
- (9) Other corrective action; or

(10) Refund of fees billed to and collected from the consumer.

Any of the actions under this section may be totally or partly stayed by the director. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant. [1991 c 328 § 22.]

18.165.230 Enforcement of orders for payment of fines. If an order for payment of a fine is made as a result of a hearing and timely payment is not made as directed in the final order, the director may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement shall be in addition to any other rights the director may have as to a licensee ordered to pay a fine but shall not be construed to limit a licensee's ability to seek judicial review.

In an action for enforcement of an order of payment of a fine, the director's order is conclusive proof of the validity of the order of payment of a fine and the terms of payment. [1991 c 328 § 23.]

18.165.240 Unlicensed practice—Complaints—Director's authority—Injunctions—Penalty. (1) The director shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by this chapter. In the investigation of the complaints, the director shall have the same authority as provided the director under RCW 18.165.190. The director shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. The cease and desist order shall not relieve the person practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders.

(2) The attorney general, a county prosecuting attorney, the director, or any person may, in accordance with the law of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by this chapter without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(3) Unlicensed practice of a profession or operating a business for which a license is required by this chapter, unless otherwise exempted by law, constitutes a gross misdemeanor. All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this

section shall be remitted to the department. [1991 c 328 § 24.]

18.165.250 Violation of injunction—Penalty. A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be paid to the department. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1991 c 328 § 25.]

18.165.260 Immunity. The director or individuals acting on the director's behalf are immune from suit in any action, civil or criminal, based on disciplinary proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter. [1991 c 328 § 26.]

18.165.270 Application of administrative procedure act to acts of the director. The director, in implementing and administering the provisions of this chapter, shall act in accordance with the administrative procedure act, chapter 34.05 RCW. [1991 c 328 § 27.]

18.165.900 Severability—1991 c 328. 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 328 § 29.]

Chapter 18.170 SECURITY GUARDS

Sections

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18.170.900	Severability—1991 c 334.

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

(1) "Armed private security guard" means a private security guard who has a current firearms certificate issued by the commission and is licensed as an armed private security guard under this chapter.

(2) "Armored vehicle guard" means a person who transports in an armored vehicle under armed guard, from one place to another place, valuables, jewelry, currency, documents, or any other item that requires secure delivery.

(3) "Burglar alarm response runner" means a person employed by a private security company to respond to burglar alarm system signals.

(4) "Burglar alarm system" means a device or an assembly of equipment and devices used to detect or signal unauthorized intrusion, movement, or exit at a protected premises, other than in a vehicle, to which police or private security guards are expected to respond.

(5) "Chief law enforcement officer" means the elected or appointed police administrator of a municipal, county, or state police or sheriff's department that has full law enforcement powers in its jurisdiction.

(6) "Commission" means the criminal justice training commission established in chapter 43.101 RCW.

(7) "Department" means the department of licensing.

(8) "Director" means the director of the department of licensing.

(9) "Employer" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent of any of the foregoing that employs or seeks to enter into an arrangement to employ any person as a private security guard.

(10) "Firearms certificate" means the certificate issued by the commission.

(11) "Licensee" means a person granted a license required by this chapter.

(12) "Person" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent or employee of any of the foregoing.

(13) "Principal corporate officer" means the president, vice-president, treasurer, secretary, comptroller, or any other person who performs the same functions for the corporation as performed by these officers.

(14) "Private security company" means a person or entity licensed under this chapter and engaged in the business of providing the services of private security guards on a contractual basis.

(15) "Private security guard" means an individual who is licensed under this chapter and principally employed as or typically referred to as one of the following:

- (a) Security officer or guard;
- (b) Patrol or merchant patrol service officer or guard;
- (c) Armed escort or bodyguard;
- (d) Armored vehicle guard;
- (e) Burglar alarm response runner; or
- (f) Crowd control officer or guard.

(16) "Qualifying agent" means an officer or manager of a corporation who meets the requirements set forth in this chapter for obtaining a license to own or operate a private security company.

(17) "Sworn peace officer" means a person who is an employee of the federal government, the state, a political subdivision, agency, or department branch of a municipality, or other unit of local government, and has law enforcement powers. [1991 c 334 § 1.]

18.170.020 Exemptions. The requirements of this chapter do not apply to:

(1) A person who is employed exclusively or regularly by one employer and performs the functions of a private security guard solely in connection with the affairs of that employer, if the employer is not a private security company;

(2) A sworn peace officer while engaged in the performance of the officer's official duties; or

(3) A sworn peace officer while employed by any person to engage in off-duty employment as a private security guard, but only if the employment is approved by the chief law enforcement officer of the jurisdiction where the employment takes place and the sworn peace officer does not employ, contract with, or broker for profit other persons to assist him or her in performing the duties related to his or her private employer. [1991 c 334 § 2.]

18.170.030 Security guard license—Requirements. An applicant must meet the following minimum requirements to obtain a private security guard license:

- (1) Be at least eighteen years of age;
- (2) Be a citizen of the United States or a resident alien;
- (3) Not have been convicted of a crime in any jurisdiction, if the director determines that the applicant's particular crime directly relates to his or her capacity to perform the duties of a private security guard, and the director determines that the license should be withheld to protect the citizens of Washington state. The director shall make her or his determination to withhold a license because of previous convictions consistent with the restoration of employment rights act, chapter 9.96A RCW;

(4) Be employed by or have an employment offer from a licensed private security company or be licensed as a private security company;

(5) Satisfy the training requirements established by the director;

(6) Submit a set of fingerprints; and

(7) Pay the required fee. [1991 c 334 § 3.]

18.170.040 Armed private security guard license—Requirements. (1) An applicant must meet the following minimum requirements to obtain an armed private security guard license:

- (a) Be licensed as a private security guard;
- (b) Be at least twenty-one years of age;
- (c) Have a current firearms certificate issued by the commission; and

(d) Pay the fee established by the director.

(2) An armed private security guard license may take the form of an endorsement to the security guard license if deemed appropriate by the director. [1991 c 334 § 4.]

18.170.050 Armed private security guard license authority—Registration of firearms. (1) An armed private security guard license grants authority to the holder, while in the performance of his or her duties, to carry a firearm with which the holder has met the proficiency requirements established by the commission.

(2) All firearms carried by armed private security guards in the performance of their duties must be owned or leased by the employer and, if required by law, must be registered with the proper government agency. [1991 c 334 § 5.]

18.170.060 Private security company license—Requirements—Qualifying agent—Assignment or transfer of license. (1) In addition to meeting the minimum requirements to obtain a license as a private security guard, an applicant, or, in the case of a partnership, each partner, or, in the case of a corporation, the qualifying agent must meet the following requirements to obtain a license to own or operate a private security company:

(a) Possess three years' experience as a manager, supervisor, or administrator in the private security business or a related field approved by the director, or be at least twenty-one years of age and pass an examination determined by the director to measure the person's knowledge and competence in the private security business;

(b) Meet the insurance requirements of this chapter; and

(c) Pay any additional fees established by the director.

(2) If the qualifying agent upon whom the licensee relies to comply with subsection (1) of this section ceases to perform his or her duties on a regular basis, the licensee must promptly notify the director by certified or registered mail. Within sixty days of sending notification to the director, the licensee must obtain a substitute qualifying agent who meets the requirements of this section. The director may extend the period for obtaining a substitute qualifying agent.

(3) A company license issued pursuant to this section may not be assigned or transferred without prior written approval of the director. [1991 c 334 § 6.]

18.170.070 Private security guard license cards, armed private security guard license cards, and private security company license certificates—Issuance and

requirements. (1) The director shall issue a private security guard license card to each licensed private security guard and an armed private security guard license card to each armed private security guard.

(a) The license card may not be used as security clearance or as identification.

(b) A private security guard shall carry the license card whenever he or she is performing the duties of a private security guard and shall exhibit the card upon request.

(c) An armed private security guard shall carry the license card whenever he or she is performing the duties of an armed private security guard and shall exhibit the card upon request.

(2) The director shall issue a license certificate to each licensed private security company.

(a) Within seventy-two hours after receipt of the license certificate, the licensee shall post and display the certificate in a conspicuous place in the principal office of the licensee within the state.

(b) It is unlawful for any person holding a license certificate to knowingly and willfully post the license certificate upon premises other than those described in the license certificate or to materially alter a license certificate.

(c) Every advertisement by a licensee that solicits or advertises business shall contain the name of the licensee, the address of record, and the license number as they appear in the records of the director.

(d) The licensee shall notify the director within thirty days of any change in the licensee's officers or directors or any material change in the information furnished or required to be furnished to the director. [1991 c 334 § 7.]

18.170.080 Licensed private security companies—Certificate of insurance required. A licensed private security company shall file and maintain with the director a certificate of insurance as evidence that it has comprehensive general liability coverage of at least twenty-five thousand dollars for bodily or personal injury and twenty-five thousand dollars for property damage. [1991 c 334 § 8.]

18.170.090 Temporary registration cards—Requirements—Expiration. (1) A licensed private security company may issue an employee a temporary registration card of the type and form prescribed by the director, but only after the employee has completed preassignment training and submitted an application for a private security guard license to the department. The temporary registration card is valid for a maximum period of sixty days and does not authorize a person to carry firearms during the performance of his or her duties as a private security guard. The temporary registration card permits the applicant to perform the duties of a private security guard for the issuing licensee.

(2) Upon expiration of a temporary registration card or upon the receipt of a permanent registration card or notification from the department that a permanent license is being withheld from an applicant, the applicant shall surrender his or her temporary registration card to the licensee who shall immediately forward it to the director. [1991 c 334 § 9.]

18.170.100 Preassignment training and testing requirements—Exemption. (1) The director shall adopt

rules establishing preassignment training and testing requirements, which shall include a minimum of four hours of classes. The director may establish, by rule, continuing education requirements for private security guards.

(2) The director shall consult with the private security industry and law enforcement before adopting or amending the preassignment training or continuing education requirements of this section.

(3) A private security guard or armed private security guard need not fulfill the preassignment training requirements of this chapter if he or she, within sixty days of July 28, 1991, provides proof to the director that he or she previously has met the training requirements of this chapter or has been employed as a private security guard or armed private security guard for at least eighteen consecutive months immediately prior to the date of application. [1991 c 334 § 10.]

18.170.110 Private security companies required to provide information on private security guards and armed private security guards. (1) A private security company shall notify the director within thirty days after the death or termination of employment of any employee who is a licensed private security guard or armed private security guard.

(2) A private security company shall notify the department within seventy-two hours and the chief law enforcement officer of the county, city, or town in which the private security guard or armed private security guard was last employed immediately upon receipt of information affecting his or her continuing eligibility to hold a license under the provisions of this chapter. [1991 c 334 § 11.]

18.170.120 Out-of-state private security guards—Application—Fee—Temporary assignment. (1) Any person from another state that the director determines has selection, training, and other requirements at least equal to those required by this chapter, and who holds a valid license, registration, identification, or similar card issued by the other state, may apply for a private security guard license card or armed private security guard license card on a form prescribed by the director. Upon receipt of a processing fee to be determined by the director, the director shall issue the individual a private security guard license card or armed private security guard license card.

(2) A valid private security guard license, registration, identification, or similar card issued by any other state of the United States is valid in this state for a period of ninety days, but only if the licensee is on temporary assignment as a private security guard for the same employer that employs the licensee in the state in which he or she is a permanent resident. [1991 c 334 § 12.]

18.170.130 License applications—Investigations—Information to be provided to applicant's employer and local law enforcement officer. (1) Applications for licenses required under this chapter shall be filed with the director on a form provided by the director. The director may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria.

(2) After receipt of an application for a license, the director shall conduct an investigation to determine whether the facts set forth in the application are true and shall request that the Washington state patrol compare the fingerprints submitted with the application to fingerprint records available to the Washington state patrol.

(3) A summary of the information acquired under this section, to the extent that it is public information, shall be forwarded by the department to the applicant's employer and to the chief law enforcement officer of the county and city or town in which the applicant's employer is located, for the purpose of comment prior to the issuance of a permanent private security guard license. [1991 c 334 § 13.]

18.170.140 Regulatory provisions exclusive—Authority of the state and political subdivisions.

(1) The provisions of this chapter relating to the licensing for regulatory purposes of private security guards, armed private security guards, and private security companies are exclusive. No governmental subdivision of this state may enact any laws or rules licensing for regulatory purposes such persons, except as provided in subsections (2) and (3) of this section.

(2) This section shall not be construed to prevent a political subdivision of this state from levying a business license fee, business and occupation tax, or other tax upon private security companies if such fees or taxes are levied on other types of businesses within its boundaries.

(3) This section shall not be construed to prevent this state or a political subdivision of this state from licensing or regulating private security companies with respect to activities performed or offered that are not of a security nature. [1991 c 334 § 14.]

18.170.150 Out-of-state private security guards operating across state lines. Private security guards or armed private security guards whose duties require them to operate across state lines may operate in this state if they are properly registered and certified in another state with training, insurance, and certification requirements that the director finds are at least equal to the requirements of this state. [1991 c 334 § 15.]

18.170.160 Licenses required—Use of public law enforcement insignia prohibited—Penalties—Enforcement.

(1) After June 30, 1992, any person who performs the functions and duties of a private security guard in this state without being licensed in accordance with this chapter, or any person presenting or attempting to use as his or her own the license of another, or any person who gives false or forged evidence of any kind to the director in obtaining a license, or any person who falsely impersonates any other licensee, or any person who attempts to use an expired or revoked license, or any person who violates any of the provisions of this chapter is guilty of a gross misdemeanor.

(2) After January 1, 1992, a person is guilty of a gross misdemeanor if he or she owns or operates a private security company in this state without first obtaining a private security company license.

(3) After June 30, 1992, the owner or qualifying agent of a private security company is guilty of a gross misdemeanor if he or she employs an unlicensed person to perform the duties of a private security guard without issuing the employee a valid temporary registration card if the employee does not have in his or her possession a permanent private security guard license issued by the department. This subsection does not preclude a private security company from requiring applicants to attend preassignment training classes or from paying wages for attending the required preassignment training classes.

(4) After June 30, 1992, a person is guilty of a gross misdemeanor if he or she performs the functions and duties of an armed private security guard in this state unless the person holds a valid armed private security guard license issued by the department.

(5) After June 30, 1992, it is a gross misdemeanor for a private security company to hire, contract with, or otherwise engage the services of an unlicensed armed private security guard knowing that he or she does not have a valid armed private security guard license issued by the director.

(6) It is a gross misdemeanor for a person to possess or use any vehicle or equipment displaying the word "police" or "law enforcement officer" or having any sign, shield, marking, accessory, or insignia that indicates that the equipment or vehicle belongs to a public law enforcement agency.

(7) It is the duty of all officers of the state and political subdivisions thereof to enforce the provisions of this chapter. The attorney general shall act as legal adviser of the director, and render such legal assistance as may be necessary in carrying out the provisions of this chapter. [1991 c 334 § 16.]

18.170.170 Grounds for disciplinary action or denial, suspension, or revocation of license. The following acts are prohibited and constitute grounds for disciplinary action or denial, suspension, or revocation of any license under this chapter, as deemed appropriate by the director:

(1) Knowingly violating any of the provisions of this chapter or the rules adopted under this chapter;

(2) Practicing fraud, deceit, or misrepresentation in any of the private security activities covered by this chapter;

(3) Knowingly making a material misstatement or omission in the application for a license or firearms certificate;

(4) Not meeting the qualifications set forth in RCW 18.170.030, 18.170.040, or 18.170.060;

(5) Failing to return immediately on demand a firearm issued by an employer;

(6) Carrying a firearm in the performance of his or her duties if not the holder of a valid armed private security guard license, or carrying a firearm not meeting the provisions of this chapter while in the performance of his or her duties;

(7) Failing to return immediately on demand any uniform, badge, or other item of equipment issued to the private security guard by an employer;

(8) Making any statement that would reasonably cause another person to believe that the private security guard is a sworn peace officer;

(9) Divulging confidential information that may compromise the security of any premises, or valuable shipment, or any activity of a client to which he or she was assigned;

(10) Conviction of a gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(11) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;

(12) Advertising that is false, fraudulent, or misleading;

(13) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(14) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(15) Failure to cooperate with the director by:

(a) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation for disciplinary action, denial, suspension, or revocation of a license under this chapter;

(b) Not furnishing in writing a full and complete explanation covering the matter contained in a complaint filed with the department; or

(c) Not responding to subpoenas issued by the director, whether or not the recipient of the subpoena is the accused in the proceeding;

(16) Failure to comply with an order issued by the director or an assurance of discontinuance entered into with the disciplining authority;

(17) Aiding or abetting an unlicensed person to practice if a license is required;

(18) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(19) Failure to adequately supervise employees to the extent that the public health or safety is at risk;

(20) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's authorized representative, or by the use of threats or harassment against a client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(21) Assigning or transferring any license issued pursuant to the provisions of this chapter, except as provided in RCW 18.170.060. [1991 c 334 § 17.]

18.170.180 Authority of director. The director has the following authority in administering this chapter:

(1) To adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

(2) To issue subpoenas and administer oaths in connection with an investigation, hearing, or proceeding held under this chapter;

(3) To take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;

(4) To compel attendance of witnesses at hearings;

(5) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews;

(6) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the director;

(7) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the director or the director's designee shall make the final decision in the hearing;

(8) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(9) To adopt standards of professional conduct or practice;

(10) In the event of a finding of unprofessional conduct by an applicant or license holder, to impose sanctions against a license applicant or license holder as provided by this chapter;

(11) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;

(12) To designate individuals authorized to sign subpoenas and statements of charges;

(13) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter; and

(14) To compel the attendance of witnesses at hearings. [1991 c 334 § 18.]

18.170.190 Complaints—Investigation—Immunity.

A person, including but not limited to consumers, licensees, corporations, organizations, and state and local governmental agencies, may submit a written complaint to the department charging a license holder or applicant with unprofessional conduct and specifying the grounds for this charge. If the director determines that the complaint merits investigation, or if the director has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the director shall investigate to determine if there has been unprofessional conduct. A person who files a complaint under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint. [1991 c 334 § 19.]

18.170.200 Violations—Statement of charges—Hearings. (1) If the director determines, upon investigation, that there is reason to believe a violation of this chapter has occurred, a statement of charges shall be prepared and served upon the license holder or applicant and notice of this action given to the owner or qualifying agent of the employing private security company. The statement of charges shall be accompanied by a notice that the license holder or applicant may request a hearing to contest the charges. The license holder or applicant must file a request for hearing with the department within twenty days after being served the statement of charges. The failure to request a hearing constitutes a default, whereupon the director may enter an order pursuant to RCW 34.05.440.

(2) If a hearing is requested, the time of the hearing shall be scheduled but the hearing shall not be held earlier than thirty days after service of the charges upon the license holder or applicant. A notice of hearing shall be issued at least twenty days prior to the hearing, specifying the time, date, and place of the hearing. [1991 c 334 § 20.]

18.170.210 Application of administrative procedures act to hearings. The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, govern all hearings before the director. [1991 c 334 § 21.]

18.170.220 Inability to practice by reason of a mental or physical condition—Statement of charges—Hearing—Sanctions—Mental or physical examinations—Presumed consent for examination. (1) If the director believes a license holder or applicant may be unable to practice with reasonable skill and safety to the public by reason of a mental or physical condition, a statement of charges shall be served on the license holder or applicant and notice shall also be issued providing an opportunity for a hearing. The hearing shall be limited to the sole issue of the capacity of the license holder or applicant to practice with reasonable skill or safety. If the director determines that the license holder or applicant is unable to practice with reasonable skill and safety for one of the reasons stated in this subsection, the director shall impose such sanctions as are deemed necessary to protect the public.

(2) In investigating or adjudicating a complaint or report that a license holder or applicant may be unable to practice with reasonable skill or safety by reason of a mental or physical condition, the department may require a license holder or applicant to submit to a mental or physical examination by one or more licensed or certified health professionals designated by the director. The cost of the examinations ordered by the department shall be paid by the department. In addition to any examinations ordered by the department, the licensee may submit physical or mental examination reports from licensed or certified health professionals of the license holder's or applicant's choosing and expense. Failure of the license holder or applicant to submit to examination when directed constitutes grounds for immediate suspension or withholding of the license, consequent upon which a default and final order may be entered without the taking of testimony or presentations of evidence, unless the failure was due to circumstances beyond the

person's control. A determination by a court of competent jurisdiction that a license holder or applicant is mentally incompetent or mentally ill is presumptive evidence of the license holder's or applicant's inability to practice with reasonable skill and safety. An individual affected under this section shall at reasonable intervals be afforded an opportunity to demonstrate that the individual can resume competent practice with reasonable skill and safety to the public.

(3) For the purpose of subsection (2) of this section, an applicant or license holder governed by this chapter, by making application, practicing, or filing a license renewal, is deemed to have given consent to submit to a mental, physical, or psychological examination if directed in writing by the department and further to have waived all objections to the admissibility or use of the examining health professional's testimony or examination reports by the director on the ground that the testimony or reports constitute hearsay or privileged communications. [1991 c 334 § 22.]

18.170.230 Unprofessional conduct or inability to practice—Penalties. Upon a finding that a license holder or applicant has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the director may issue an order providing for one or any combination of the following:

- (1) Revocation of the license;
- (2) Suspension of the license for a fixed or indefinite term;
- (3) Restriction or limitation of the practice;
- (4) Requiring the satisfactory completion of a specific program of remedial education or treatment;
- (5) Monitoring of the practice by a supervisor approved by the director;
- (6) Censure or reprimand;
- (7) Compliance with conditions of probation for a designated period of time;
- (8) Withholding a license request;
- (9) Other corrective action; or
- (10) Refund of fees billed to and collected from the consumer.

Any of the actions under this section may be totally or partly stayed by the director. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant. [1991 c 334 § 23.]

18.170.240 Enforcement of orders for payment of fines. If an order for payment of a fine is made as a result of a hearing and timely payment is not made as directed in the final order, the director may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement shall be in addition to any other rights the director may have as to a licensee ordered to pay a fine but shall not be construed to limit a licensee's ability to seek judicial review.

In an action for enforcement of an order of payment of a fine, the director's order is conclusive proof of the validity of the order of payment of a fine and the terms of payment. [1991 c 334 § 24.]

18.170.250 Unlicensed practice—Complaints—Director's authority—Injunctions—Penalty. (1) The director shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by this chapter. In the investigation of the complaints, the director shall have the same authority as provided the director under RCW 18.170.190. The director shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. The cease and desist order shall not relieve the person practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders.

(2) The attorney general, a county prosecuting attorney, the director, or any person may, in accordance with the law of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by this chapter without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(3) Unlicensed practice of a profession or operating a business for which a license is required by this chapter, unless otherwise exempted by law, constitutes a gross misdemeanor. All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the department. [1991 c 334 § 25.]

18.170.260 Violation of injunction—Penalty. A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be paid to the department. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1991 c 334 § 26.]

18.170.270 Immunity. The director or individuals acting on the director's behalf are immune from suit in any action, civil or criminal, based on disciplinary proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter. [1991 c 334 § 27.]

18.170.280 Application of administrative procedures act to acts of the director. The director, in implementing

and administering the provisions of this chapter, shall act in accordance with the administrative procedure act, chapter 34.05 RCW. [1991 c 334 § 28.]

18.170.900 Severability—1991 c 334. 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 334 § 30.]

Chapter 18.175 ATHLETE AGENTS

Sections

- 18.175.010 Findings.
- 18.175.020 Athlete agents and athlete agent firms—Certificate of registration required—Violations.
- 18.175.030 Definitions.
- 18.175.040 Exemptions.
- 18.175.050 Authority of director.
- 18.175.060 Disclosure statements.
- 18.175.070 Penalties.
- 18.175.080 Application of consumer protection act.

18.175.010 Findings. The legislature finds it necessary to regulate the practice of athlete agents and athlete agent firms to protect the public health, safety, and welfare. The public has a right to be kept informed about the role of athlete agents. The purpose of this chapter is to help ensure that public information is available and that the integrity of interscholastic athletics is preserved. [1991 c 236 § 1.]

18.175.020 Athlete agents and athlete agent firms—Certificate of registration required—Violations. (1) It is a violation of this chapter for a person to practice or represent himself or herself as an athlete agent or athlete agent firm without a certificate of registration as an athlete agent or athlete agent firm.

(2) It is a violation of this chapter for a person other than a registered athlete agent or an employee or representative of a professional sport team to directly or indirectly solicit an individual to enter into an agent contract or professional sport services contract or procure, offer, promise, or attempt to obtain employment for an individual with a professional sport team or as a professional athlete. [1991 c 236 § 2.]

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

- (1) "Department" means the department of licensing.
- (2) "Director" means the director of licensing.
- (3) "Athlete agent" means an individual registered under this chapter.
- (4) "Athlete agent firm" means a sole proprietorship, partnership, association, corporation, or other entity that employs one or more individuals to act as an athlete agent on behalf of the entity.

(5) "Agent contract" means a contract or agreement pursuant to which a person authorizes or empowers an athlete agent to negotiate or solicit on behalf of the person with one or more professional sport teams for the employ-

ment of the person by a professional sport team or to negotiate or solicit on behalf of the person for the employment of the person as a professional athlete.

(6) "Institution of higher education" means a public or private college or university in this state.

(7) "Professional athlete" means a person who is under contract to a professional sports team and is no longer enrolled in an institution of higher education as an undergraduate student.

(8) "Professional sport services contract" means a contract or agreement pursuant to which a person is employed or agrees to render services as a player on a professional sport team or as a professional athlete.

(9) "Student athlete" means a person who engages in, is eligible to engage in, or may be eligible to engage in any intercollegiate sporting event, contest, exhibition, or program in this state. The term also includes an individual who has applied for enrollment to an institution of higher education. A person ceases to be a "student athlete" as soon as his or her collegiate eligibility in the sport in which he or she is under scholarship has expired. [1991 c 236 § 3.]

18.175.040 Exemptions. The registration provisions of this chapter do not apply to a person:

(1) Who is related to the student athlete by blood or marriage;

(2) Who represents or advises no more than one student athlete in any given year; or

(3) Who represents only professional athletes. [1991 c 236 § 4.]

18.175.050 Authority of director. In addition to any other authority provided by law, the director may:

(1) Adopt rules in accordance with chapter 34.05 RCW as necessary to implement this chapter;

(2) Establish forms and procedures as necessary to administer this chapter;

(3) Register applicants;

(4) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter;

(5) Maintain the official departmental record of all applicants and registrants; and

(6) Set all registration, renewal, and late renewal fees in accordance with RCW 43.24.086. [1991 c 236 § 5.]

18.175.060 Disclosure statements. (1) An athlete agent shall file with the department a disclosure statement which contains all of the following:

(a) The educational background, training, and experience of the athlete agent with respect to practice as an athlete agent;

(b) The business name and address of each athlete agent firm represented by the athlete agent;

(c) A record of all felony convictions, or misdemeanor convictions punishable by imprisonment, of the athlete agent and each owner, partner, officer, or shareholder of ten percent or more of the stock of the athlete agent firm represented by the athlete agent; and

(d) A record of any sanctions issued to or disciplinary actions taken against the athlete agent, the athlete agent firm, or any athlete, professional sport team, or institution of

higher education as a result of the conduct of the athlete agent or the athlete agent firm.

(2) An athlete agent shall file an updated disclosure statement with the department within thirty days of a change in the information required under subsection (1) (b), (c), or (d) of this section.

(3) Before entering into negotiations for an agent contract, an athlete agent shall give to the prospective client a copy of the current disclosure statement on file with the department.

(4) The department shall make disclosure statements available to the public for inspection and copying. [1991 c 236 § 6.]

18.175.070 Penalties. (1) It is a gross misdemeanor punishable according to chapter 9A.20 RCW for an athlete agent, athlete agent firm, or any person exempt under RCW 18.175.040 to:

(a) Induce a student athlete to enter into an agent contract or professional sport services contract; or

(b) Enter into an agreement whereby the athletic agent offers anything of value to an employee of an institution of higher education in return for the referral of a student athlete by that employee.

(2) It is a class C felony punishable according to chapter 9A.20 RCW for an athlete agent, athlete agent firm, or any person exempt under RCW 18.175.040 to offer money or any valuable consideration to a student athlete to induce the student athlete to enter into a professional sports services contract. [1991 c 236 § 7.]

18.175.080 Application of consumer protection act. The regulation of athlete agents is a matter affecting the public interest for the purpose of applying chapter 19.86 RCW. Activities of athlete agents prohibited under this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter constitutes an unfair or deceptive act or practice in trade or commerce for the purpose of applying chapter 19.86 RCW. [1991 c 236 § 8.]

Chapter 18.180 PROCESS SERVERS

Sections

18.180.010 Registration—Exceptions.

18.180.020 Registration renewal.

18.180.030 Identification of process server on proof of service.

18.180.040 Collection of costs of service—Application.

18.180.900 Construction—1992 c 125.

18.180.010 Registration—Exceptions. (1) A person who serves legal process for a fee in the state of Washington shall register as a process server with the auditor of the county in which the process server resides or operates his or her principal place of business.

(2) The requirement to register under subsection (1) of this section does not apply to any of the following persons:

(a) A sheriff, deputy sheriff, marshal, constable, or government employee who is acting in the course of employment;

- (b) An attorney or the attorney's employees, who are not serving process on a fee basis;
- (c) A person who is court appointed to serve the court's process;
- (d) An employee of a person who is registered under this section;
- (e) A person who does not receive a fee or wage for serving process. [1992 c 125 § 1.]

18.180.020 Registration renewal. A process server required to register under RCW 18.180.010 must renew the registration within one year of the date of the initial registration or when the registrant changes his or her name, the name of his or her business, business address, or business telephone number, whichever occurs sooner. If the renewal is required because of a change in the information identifying the process server, the process server must renew the registration within ten days of the date the identifying information changes. The process server shall pay the registration fee upon renewal. [1992 c 125 § 3.]

18.180.030 Identification of process server on proof of service. (1) A process server required to register under RCW 18.180.010 shall indicate the process server's registration number and the process server's county of registration on any proof of service the process server signs.

(2) Employees of a process server required to register under RCW 18.180.010 shall indicate the employer's registration number and the employer's county of registration on any proof of service the registrant's employee signs. [1992 c 125 § 4.]

18.180.040 Collection of costs of service—Application. (1) Except as provided in subsection (2) of this section, any person who is otherwise entitled to collect the costs of service of process shall not be entitled to collect those costs if the person does not use a process server who under this chapter either is required to register or is exempt from the registration requirement.

(2) The person may collect the costs of the service of process if the process server registers within forty-five days after serving the process.

(3) This section shall apply to all process served on or after August 1, 1992. [1992 c 125 § 5.]

18.180.900 Construction—1992 c 125. Nothing in this act modifies Superior Court Civil Rule 4. [1992 c 125 § 7.]

Title 19

BUSINESS REGULATIONS—MISCELLANEOUS

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Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

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Chapter 19.02

BUSINESS LICENSE CENTER ACT

Sections

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19.02.885	Performance audit.
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19.02.900	Severability—1977 ex.s. c 319.
19.02.901	Severability—1982 c 182.
19.02.910	Effective date—1977 ex.s. c 319.
19.02.920	Construction.

Reviser's note: Throughout chapter 19.02 RCW, the term "this 1977 amendatory act" has been changed to "this chapter." This 1977 amendatory act [1977 ex.s. c 319] consists of the enactment of RCW 19.02.010, 19.02.020, 19.02.030, 19.02.040, 19.02.050, 19.02.060, and 19.02.070, the 1977 amendment to RCW 82.24.220, and the repeal of RCW 14.04.260, 14.04.270, 15.14.090, 16.44.100, 16.72.050, 18.04.210, 18.04.230, 46.08.060, 67.08.020, 67.08.025, 70.72.010 through 70.72.090, 75.28.310, and 78.40.100 through 78.40.145.

19.02.010 Purpose—Intent. Experience under the pilot program of the business coordination act suggests that the number of state licenses required for new businesses and the renewal of existing licenses places an undue burden on

business. Studies under this act also show that the state can reduce its costs by coordinating and consolidating application forms, information, and licenses. Therefore, the legislature extends the business coordination act by establishing a business license program and license center to develop and implement the following goals and objectives:

(1) The first goal of this system is to provide a convenient, accessible, and timely one-stop system for the business community to acquire and maintain the necessary state licenses to conduct business. This system shall be developed and operated in the most cost-efficient manner for the business community and state. The objectives of this goal are:

(a) To provide a service whereby information is available to the business community concerning all state licensing and regulatory requirements, and to the extent feasible, include local and federal information concerning the same regulated activities;

(b) To provide a system which will enable state agencies to efficiently store, retrieve, and exchange license information with due regard to privacy statutes; to issue and renew master licenses where such licenses are appropriate; and to provide appropriate support services for this objective;

(c) To provide at designated locations one consolidated application form to be completed by any given applicant; and

(d) To provide a state-wide system of common business identification.

(2) The second goal of this system is to aid business and the growth of business in Washington state by instituting a master license system that will reduce the paperwork burden on business, and promote the elimination of obsolete and duplicative licensing requirements by consolidating existing licenses and applications.

It is the intent of the legislature that the authority for determining if a requested license shall be issued shall remain with the agency legally authorized to issue the license.

It is the further intent of the legislature that those licenses which no longer serve a useful purpose in regulating certain business activities should be eliminated. [1982 c 182 § 1; 1977 ex.s. c 319 § 1.]

19.02.020 Definitions. As used in this chapter, the following words shall have the following meanings:

(1) "System" means the mechanism by which master licenses are issued and renewed, license and regulatory information is disseminated, and account data is exchanged by the agencies;

(2) "Business license center" means the business registration and licensing center established by this chapter and located in and under the administrative control of the department of licensing;

(3) "Board of review" means the body established to review policies and rules adopted by the department of licensing for carrying out the provisions of this chapter;

(4) "Master application" means a document incorporating pertinent data from existing applications for licenses covered under this chapter;

(5) "Master license" means the single document designed for public display issued by the business license

center which certifies state agency license approval and which incorporates the endorsements for individual licenses included in the master license system, which the state requires for any person subject to this chapter;

(6) "License" means the whole or part of any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity;

(7) "Regulatory" means all licensing and other governmental or statutory requirements pertaining to business or professional activities;

(8) "Person" means any individual, sole proprietorship, partnership, association, cooperative, corporation, nonprofit organization, state or local government agency, and any other organization required to register with the state to do business in the state and to obtain one or more licenses from the state or any of its agencies;

(9) "Director" means the director of licensing;

(10) "Department" means the department of licensing;

(11) "Regulatory agency" means any state agency, board, commission, or division which regulates one or more professions, occupations, industries, businesses, or activities;

(12) "Renewal application" means a document used to collect pertinent data for renewal of licenses covered under this chapter; and

(13) "License information packet" means a collection of information about licensing requirements and application procedures custom-assembled for each request. [1992 c 107 § 1; 1982 c 182 § 2; 1979 c 158 § 75; 1977 ex.s. c 319 § 2.]

Effective dates—1992 c 107: "(1) Sections 1 through 4, 6, 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 June 1, 1992.

(2) Sections 5 and 7 of this act shall take effect July 1, 1992." [1992 c 107 § 9.]

19.02.030 Center—Created—Duties—Administrator—Rules, review of. (1) There is created within the department of licensing a business license center.

(2) The duties of the center shall include:

(a) Developing and administering a computerized one-stop master license system capable of storing, retrieving, and exchanging license information with due regard to privacy statutes, as well as issuing and renewing master licenses in an efficient manner;

(b) Providing a license information service detailing requirements to establish or engage in business in this state;

(c) Providing for staggered master license renewal;

(d) Identifying types of licenses appropriate for inclusion in the master license system;

(e) Recommending in reports to the governor and the legislature the elimination, consolidation, or other modification of duplicative, ineffective, or inefficient licensing or inspection requirements; and

(f) Incorporating licenses into the master license system.

(3) The department of licensing shall establish the position of assistant director of the business license center who will also act as executive secretary to the board of review.

(4) The director of licensing may adopt under chapter 34.05 RCW such rules as may be necessary to effectuate the purposes of this chapter. All proposed rules shall be

submitted in writing to the board of review for its review and recommendations. [1982 c 182 § 3; 1979 c 158 § 76; 1977 ex.s. c 319 § 3.]

19.02.035 Center to compile and distribute information—Scope. The business license center shall compile information regarding the regulatory programs associated with each of the licenses obtainable under the master license system. This information shall include, at a minimum, a listing of the statutes and administrative rules requiring the licenses and pertaining to the regulatory programs that are directly related to the licensure. For example, for pesticide dealers' licenses, the information shall include the statutes and rules requiring licensing as well as those pertaining to the subject of registering or distributing pesticides.

The business license center shall provide information governed by this section to any person requesting it. Materials used by the center to describe the services provided by the center shall indicate that this information is available upon request. [1982 c 182 § 4.]

19.02.038 Center—Duties—To be completed by date certain. The business license center shall, with the assistance and full cooperation of the board of review, conclude the following tasks by the dates indicated:

(1) By February 1, 1982, ensure that packets containing the forms for the use of the master licensing system, as well as forms for those licenses commonly needed to begin most kinds of businesses, and materials explaining the use of the forms, the system, and the center are available at each headquarters and each field office of the departments of revenue, employment security, labor and industry, and licensing and at the office of the secretary of state;

(2) By July 1, 1982, revise the application forms distributed in subsection (1) of this section such that all of the forms have a common format;

(3) By January 1, 1983:

(a) Identify those licenses needed to begin most kinds of businesses in the state that should be consolidated and processed under the master license system;

(b) Develop a checklist for each major category of industry that identifies the license renewal requirements for licenses not included in the master license system;

(c) Identify a schedule for implementing the long-range goals of the business license center, including the use of a common data base by state agencies;

(d) For licenses not processed under the master license system and for which renewal fees are fixed rather than variable, develop a schedule for processing the licenses under the system;

(e) Authorize those offices of the various county auditors that are served by automated fee deposit systems to act as agents for the center to collect fees payable under the master license system;

(4) By July 1, 1983:

(a) Assign a common business identifier to each master license system account for use by all state agencies;

(b) Develop a common format for issuing all licenses to businesses for which inspections are not required; and

(5) By June 30, 1985, use the computer services of an agency of the state that has been designated as the state's

principal computer services agency, if one has been so designated. [1982 c 182 § 13.]

19.02.040 Board of review—Created—Members—Chairperson—Meetings—Duties. (1) There is hereby created a board of review to provide policy direction to the department of licensing as it establishes and operates the business registration and licensing system. The board of review shall be composed of the following officials or their designees:

- (a) Director, department of revenue;
- (b) Director, department of labor and industries;
- (c) Commissioner, employment security department;
- (d) Director, department of agriculture;
- (e) Director, department of trade and economic development;
- (f) Director, department of licensing;
- (g) Director, office of financial management;
- (h) Chairman, liquor control board;
- (i) Secretary, department of social and health services;
- (j) Secretary, department of health;
- (k) Secretary of state;
- (l) The governor; and
- (m) As ex officio members:
 - (i) The president of the senate or the president's designee;
 - (ii) The speaker of the house or the speaker's designee; and
 - (iii) A representative of a recognized state-wide organization of employers, representing a large cross section of the Washington business community, to be appointed by the governor.

(2) The governor shall be the chairperson. In the governor's absence, the secretary of state shall act as chairperson.

(3) The board shall meet at the call of the chairperson at least semi-annually or at the call of a member to:

- (a) Establish interagency policy guidelines for the system;
- (b) Review the findings, status, and problems of system operations and recommend courses of action;
- (c) Receive reports from industry and agency task forces;
- (d) Determine in questionable cases whether a specific license is to be included in the master license system;
- (e) Review and make recommendations on rules proposed by the business license center and any amendments to or revisions of the center's rules. [1989 1st ex.s. c 9 § 316; 1987 c 505 § 6; 1985 c 466 § 37; 1982 c 182 § 5; 1979 c 158 § 77; 1977 ex.s. c 319 § 4.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.005.

19.02.050 Participation of state agencies. (1) The legislature hereby directs the full participation by the following agencies in the implementation of this chapter:

- (a) Department of agriculture;
- (b) Secretary of state;
- (c) Department of social and health services;

- (d) Department of revenue;
 - (e) Department of fisheries;
 - (f) Department of employment security;
 - (g) Department of labor and industries;
 - (h) Department of trade and economic development;
 - (i) Liquor control board;
 - (j) Department of health;
 - (k) Department of licensing;
 - (l) Utilities and transportation commission; and
 - (m) Other agencies as determined by the governor.
- [1989 1st ex.s. c 9 § 317; 1985 c 466 § 38; 1979 c 158 § 78; 1977 ex.s. c 319 § 5.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.005.

19.02.070 Issuance of licenses—Scope—Master application and fees—Action by regulatory agency, when—Agencies provided information. (1) Any person requiring licenses which have been incorporated into the system shall submit a master application to the department requesting the issuance of the licenses. The master application form shall contain in consolidated form information necessary for the issuance of the licenses.

(2) The applicant shall include with the application the sum of all fees and deposits required for the requested individual license endorsements as well as the handling fee established under RCW 19.02.075.

(3) Irrespective of any authority delegated to the department of licensing to implement the provisions of this chapter, the authority for approving issuance and renewal of any requested license that requires a preclicensing or renewal investigation, inspection, testing, or other judgmental review by the regulatory agency otherwise legally authorized to issue the license shall remain with that agency. The business license center has the authority to issue those licenses for which proper fee payment and a completed application form have been received and for which no preclicensing or renewal approval action is required by the regulatory agency.

(4) Upon receipt of the application and proper fee payment for any license for which issuance is subject to regulatory agency action under subsection (3) of this section, the department shall immediately notify the regulatory agency with authority to approve issuance or renewal of the license requested by the applicant. Each regulatory agency shall advise the department within a reasonable time after receiving the notice: (a) That the agency approves the issuance of the requested license and will advise the applicant of any specific conditions required for issuing the license; (b) that the agency denies the issuance of the license and gives the applicant reasons for the denial; or (c) that the application is pending.

(5) The department shall issue a master license endorsed for all the approved licenses to the applicant and advise the applicant of the status of other requested licenses. It is the responsibility of the applicant to contest the decision regarding conditions imposed or licenses denied through the normal process established by statute or by the agency with the authority for approving issuance of the license.

(6) Regulatory agencies shall be provided information from the master application for their licensing and regulatory

functions. [1990 c 264 § 1; 1982 c 182 § 6; 1979 c 158 § 79; 1977 ex.s. c 319 § 7.]

Effective date—1990 c 264: "This act shall take effect July 1, 1990. The director of licensing may immediately take such steps as are necessary to ensure that sections 1 and 2 of this act are implemented on their effective date." [1990 c 264 § 5.] Sections 1 and 2 of this act are RCW 19.02.070 and 19.02.075, respectively.

19.02.075 Handling fees—Master application—License information packet—Renewal. (1) Beginning June 1, 1992, the department shall collect a fee of fifteen dollars on each master application and five dollars on each license information packet. From June 1, 1992, to June 30, 1992, twelve dollars of the master application fee shall be deposited in the general fund and three dollars deposited in the master license fund. Thereafter, the entire master application fee shall be deposited in the master license fund. License information packet fees shall be deposited in the general fund.

(2) Beginning July 1, 1992, the department shall collect a fee of nine dollars on each renewal application. Renewal application fees shall be deposited in the master license fund. [1992 c 107 § 2; 1990 c 264 § 2.]

Effective dates—1992 c 107: See note following RCW 19.02.020.

Effective date—1990 c 264: See note following RCW 19.02.070.

19.02.080 Licensing fees—Disposition of. All fees collected under the system shall be deposited with the state treasurer. Upon issuance or renewal of the master license or supplemental licenses, the department shall distribute the fees, except for fees covered under RCW 19.02.210 and for fees covered under RCW 19.80.075, to the appropriate accounts under the applicable statutes for those agencies' licenses. [1992 c 107 § 3; 1982 c 182 § 7.]

Effective dates—1992 c 107: See note following RCW 19.02.020.

19.02.085 Licensing fees—Master license delinquency fee—Rate—Disposition. To encourage timely renewal by applicants, a master license delinquency fee shall be imposed on licensees who fail to renew by the master license expiration date. The master license delinquency fee shall be the lesser of one hundred fifty dollars or fifty percent of a base comprised of the licensee's renewal fee minus corporate licensing taxes, corporation annual report fee, and any interest fees or penalties charged for late taxes or corporate renewals. The master license delinquency fee shall be added to the renewal fee and paid by the licensee before a master license shall be renewed. The delinquency fee shall be deposited in the master license fund. [1992 c 107 § 5; 1989 c 170 § 1; 1982 c 182 § 9.]

Effective dates—1992 c 107: See note following RCW 19.02.020.

19.02.090 Master license—Expiration date—Prorated fees—Conditions of renewal. (1) The department shall assign an expiration date for each master license. All renewable licenses endorsed on that master license shall expire on that date. License fees shall be prorated to accommodate the staggering of expiration dates.

(2) All renewable licenses endorsed on a master license shall be renewed by the department under conditions originally imposed unless a regulatory agency advises the

department of conditions or denials to be imposed before the endorsement is renewed. [1982 c 182 § 8.]

19.02.100 Master license—Issuance or renewal—Denied, when. (1) The department shall not issue or renew a master license to any person if:

(a) The person does not have a valid tax registration, if required;

(b) The person is a corporation delinquent in fees or penalties owing to the secretary of state or is not validly registered under Title 23B RCW, chapter 18.100 RCW, Title 24 RCW, and any other statute now or hereafter adopted which gives corporate or business licensing responsibilities to the secretary of state; or

(c) The person has not submitted the sum of all fees and deposits required for the requested individual license endorsements, any outstanding master license delinquency fee, or other fees and penalties to be collected through the system.

(2) Nothing in this section shall prevent registration by the state of an employer for the purpose of paying an employee of that employer industrial insurance or unemployment insurance benefits. [1991 c 72 § 8; 1982 c 182 § 10.]

19.02.110 Master license—System to include additional licenses. In addition to the licenses processed under the master license system prior to April 1, 1982, on July 1, 1982, use of the master license system shall be expanded as provided by this section.

Applications for the following shall be filed with the business license center and shall be processed, and renewals shall be issued, under the master license system:

(1) Nursery dealer's licenses required by chapter 15.13 RCW;

(2) Seed dealer's licenses required by chapter 15.49 RCW;

(3) Pesticide dealer's licenses required by chapter 15.58 RCW;

(4) Shopkeeper's licenses required by chapter 18.64 RCW;

(5) Refrigerated locker licenses required by chapter 19.32 RCW;

(6) Wholesalers licenses and retailers licenses required by *chapter 19.91 RCW;

(7) Egg dealer's licenses required by chapter 69.25 RCW. [1988 c 5 § 3; 1982 c 182 § 11.]

***Reviser's note:** Chapter 19.91 RCW was repealed by 1986 c 321 § 14, effective July 1, 1991.

19.02.200 Center as secretary of state's agent for corporate renewals—Proposals for—Schedule. See RCW 43.07.200.

19.02.210 Master license fund. The master license fund is created in the state treasury. Unless otherwise indicated in RCW 19.02.075, all receipts from handling and master license delinquency fees shall be deposited into the fund. Moneys in the fund may be spent only after appropriation beginning in fiscal year 1993. Expenditures from the fund may be used only to administer the master license services program. [1992 c 107 § 4.]

Effective dates—1992 c 107: See note following RCW 19.02.020.

19.02.800 Master license system—Certain business or professional activity licenses exempt. Except as provided in RCW 43.07.200, the provisions of this chapter regarding the processing of license applications and renewals under a master license system shall not apply to those business or professional activities that are licensed or regulated under chapter 31.04, *31.08, 31.12, 31.12A, or 31.13 RCW or under Title 30, 32, 33, or 48 RCW. [1982 c 182 § 17.]

***Reviser's note:** Chapter 31.08 RCW was repealed by 1991 c 208 § 24, effective January 1, 1993.

19.02.810 Master license system—Existing licenses or permits registered under, when. A license or permit affected by *this act and otherwise valid on April 1, 1982, need not be registered under the master license system until the renewal or expiration date of that license or permit under the laws in effect prior to April 1, 1982, unless otherwise revoked or suspended. [1982 c 182 § 46.]

***Reviser's note:** "This act" consists of the 1982 c 182 amendments to RCW 15.13.250, 15.13.280, 15.13.290, 15.13.300, 15.49.380, 15.49.390, 15.58.030, 15.58.180, 15.58.190, 18.64.011, 18.64.044, 19.02.010, 19.02.020, 19.02.030, 19.02.040, 19.02.070, 19.32.020, 19.32.040, 19.32.050, 19.91.010, 19.91.130, 19.91.140, 19.91.150, 69.12.020, 69.12.030, 69.12.040, 69.12.050, 69.25.020, 69.25.050, 69.25.060; the enactment of RCW 15.49.035, 19.02.035, 19.02.038, 19.02.080, 19.02.085, 19.02.090, 19.02.100, 19.02.110, 19.02.120, 19.02.130, 19.02.800, 19.02.810, 19.02.890, 19.02.901, 19.02.920, and 43.07.200; and the repeal of RCW 19.02.060 and 82.24.220.

19.02.885 Performance audit. The legislative budget committee shall conduct a performance audit of the master licensing program and report to the senate economic development and labor committee and the house of representatives trade and economic development committee. At a minimum, this study should include an examination of the program cost and effectiveness. [1990 c 264 § 3.]

Effective date—1990 c 264: See note following RCW 19.02.070.

19.02.890 Short title. This chapter may be known and cited as the business license center act. [1982 c 182 § 18.]

19.02.900 Severability—1977 ex.s. c 319. 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 319 § 10.]

19.02.901 Severability—1982 c 182. 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 182 § 47.]

19.02.910 Effective date—1977 ex.s. c 319. 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 319 § 11.]

19.02.920 Construction. The rule of strict construction shall have no application to this chapter and it shall be liberally construed in order to carry out its purposes. [1982 c 182 § 16.]

Chapter 19.06

BLIND MADE PRODUCTS—SERVICES

Sections

19.06.010	Labels—Contents—Requirements—Prohibited acts.
19.06.020	Governmental agencies shall purchase goods and services—Conditions.
19.06.030	Advertising limitations.
19.06.040	Penalty.

19.06.010 Labels—Contents—Requirements—Prohibited acts. Products made by blind persons and sold or distributed in this state as blind made may bear a label affixed directly to the product reading "MADE BY THE BLIND" and shall show the distributor's or manufacturer's name. Any product bearing such label shall have been made by blind people to the extent of at least seventy-five percent of the man hours required for its manufacture. No other label, trade name or sales device tending to create the impression that a product is made by blind persons shall be used in connection with the sale or distribution of such product unless the product shall have been made by blind people to the extent of at least seventy-five percent of the man hours required for its manufacture. [1961 c 56 § 1; 1959 c 100 § 1.]

19.06.020 Governmental agencies shall purchase goods and services—Conditions. Any board, commission, officer, employee or other person or persons of the state, or any county, city, town, school district or other agency, political subdivision or taxing district of the state, whose duty it is to purchase materials, supplies, goods, wares, merchandise or produce, or to procure services, for the use of any department or institution within the state, shall make such purchases and procure such services whenever available, from any nonprofit agency for the blind located within the state which manufactures or distributes blind made products: PROVIDED, That the goods and services made by or offered by such agencies shall be equal in quality and price to those available from other sources. [1961 c 56 § 4; 1959 c 100 § 2.]

19.06.030 Advertising limitations. No advertising of blind made products shall refer to any product which is not blind made, nor shall any such advertising contain or refer to names or pictures of any blind persons or otherwise exploit the blind. [1961 c 56 § 2.]

19.06.040 Penalty. Any violation of this chapter shall be a misdemeanor. [1961 c 56 § 3.]

Chapter 19.09

CHARITABLE SOLICITATIONS

Sections

19.09.010	Purpose.
19.09.020	Definitions.
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19.09.912	Effective date—1983 c 265.
19.09.913	Effective date—1986 c 230.

Telephone, solicitation regulated: RCW 80.36.390.

19.09.010 Purpose. The purpose of this chapter is to provide citizens of the state of Washington with information relating to persons and organizations who solicit funds from the public for public charitable purposes in order to prevent (1) deceptive and dishonest practices in the conduct of soliciting funds for or in the name of charity; and (2) improper use of contributions intended for charitable purposes. [1986 c 230 § 1; 1973 1st ex.s. c 13 § 1.]

19.09.020 Definitions. When used in this chapter, unless the context otherwise requires:

(1) A "bona fide officer or employee" of a charitable organization is one (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of an independent contractor in his or her relation with the organization; and (c) whose compensation is not computed on funds raised or to be raised.

(2) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable activity. "Charitable" (a) is not limited to its common law meaning unless the context clearly requires a narrower meaning; (b) does not include religious or political activities; and (c) includes, but is not limited to,

educational, recreational, social, patriotic, legal defense, benevolent, or health causes.

(3) "Compensation" means salaries, wages, fees, commissions, or any other remuneration or valuable consideration.

(4) "Contribution" means the donation, promise or grant, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights less the reasonable purchase price to the charitable organization of any such tangible merchandise, rights, or services resold by the organization, and not merely that portion of the purchase price to be applied to a charitable purpose.

(5) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation. Cost of solicitation does not include the reasonable purchase price to the charitable organization of any tangible goods or services resold by the organization as a part of its fund raising activities.

(6) "Entity" means an individual, organization, group, association, partnership, corporation, agency or unit of state government, or any combination thereof.

(7) "General public" or "public" means any individual located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

(8) "Independent fund raiser" or "independent fund-raising entity" means any entity that for compensation or other consideration, plans, conducts, manages, or administers any drive or campaign in this state for the purpose of soliciting contributions for or on behalf of any charitable organization or charitable or religious purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting contributions for such purposes, or the business of planning, conducting, managing, or carrying on any drive or campaign in this state for such solicitations. However, a nonprofit fund raiser or bona fide officer or other employee of a charitable organization shall not be deemed an independent fund raiser.

(9) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(10) "Nonprofit fund raiser" means an entity registered as a nonprofit corporation under Title 24 RCW, or any entity exempt from federal income tax under section 501(c) of the Internal Revenue Code, that solicits and receives contributions exceeding five thousand dollars in any accounting year on behalf of a charitable or religious organization other than the nonprofit corporation.

(11) "Other employee" of a charitable organization means any person (a) whose conduct is subject to direct

control by such organization; (b) who does not act in the manner of any independent contractor in his or her relation with the organization; and (c) who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable or religious purposes.

(12) "Parent organization" means that part of a charitable organization that coordinates, supervises, or exercises control over policy, fund raising, or expenditures, or assists or advises one or more chapters, branches, or affiliates of such organization in the state of Washington.

(13) "Political activities" means those activities subject to chapter 42.17 RCW or the Federal Elections Campaign Act of 1971, as amended.

(14) "Religious activities" means those religious, evangelical, or missionary activities under the direction of a religious organization duly organized and operating in good faith that are entitled to receive a declaration of current tax exempt status for religious purposes from the United States government and the duly organized branches or chapters of those organizations.

(15) "Secretary" means the secretary of state.

(16) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(a) Any appeal is made for any charitable purpose; or

(b) The name of any charitable organization is used as an inducement for consummating the sale; or

(c) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale.

Bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission are specifically excluded and shall not be deemed a solicitation under this chapter. [1986 c 230 § 2; 1983 c 265 § 1; 1979 c 158 § 80; 1977 ex.s. c 222 § 1; 1974 ex.s. c 106 § 1; 1973 1st ex.s. c 13 § 2.]

19.09.065 Charitable organizations, independent fund raisers, and nonprofit fund raisers—Registration required—Public record—Registration not endorsement.

(1) All charitable organizations, independent fund raisers, and nonprofit fund raisers, as defined in RCW 19.09.020, shall register with the secretary.

(2) Failure to register as required by this chapter is a violation of this chapter.

(3) Information provided to the secretary pursuant to this chapter shall be a public record.

(4) Registration shall not be considered or be represented as an endorsement by the secretary or the state of Washington. [1986 c 230 § 3; 1983 c 265 § 4.]

19.09.075 Charitable organizations—Application for registration—Contents—Fee. An application for registration as a charitable organization shall be submitted in the

form prescribed by the secretary, containing, but not limited to, the following:

(1) The name, address, and telephone number of the charitable organization;

(2) The name(s) under which the organization will solicit contributions;

(3) The name, address, and telephone number of the officers of the organization;

(4) The names of the three officers or employees receiving the greatest amount of compensation from the organization;

(5) The purpose of the organization;

(6)(a) Whether the organization is exempt from federal income tax; and

(b) Whether the financial affairs of the organization are audited by an independent entity and, if so, the name and address of the entity;

(7) A solicitation report of the organization for the preceding accounting year including:

(a) The number and types of solicitations conducted;

(b) The total dollar value of support received from solicitations and from all other sources received on behalf of the charitable purpose of the charitable organization;

(c) The total amount of money applied to charitable purposes, fund raising costs, and other expenses;

(d) The name, address, and telephone number of any independent fund raiser used by the organization; and

(8) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305.

The requirements of subsection (7) (b) and (c) of this section may be satisfied by the submission of such federal tax forms as may be approved by rule of the secretary.

The application shall be signed by the president, treasurer, or comparable officer of the organization and be submitted with a nonrefundable, ten-dollar filing fee. If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered. [1986 c 230 § 4; 1983 c 265 § 5.]

19.09.076 Charitable organizations—Application for registration—Exemptions. The application requirements of RCW 19.09.075 do not apply to the following:

(1) Any charitable organization raising less than five thousand dollars in any accounting year when all the activities of the organization, including all fund raising activities, are carried on by persons who are unpaid for their services and no part of the charitable organization's assets or income inures to the benefit of or is paid to any officer or member of the organization;

(2) Any charitable organization located outside of the state of Washington if the organization files the following with the secretary:

(a) The registration documents required under the charitable solicitation laws of the state in which the charitable organization is located;

(b) The registration required under the charitable solicitation laws of the state of California and the state of New York; and

(c) Such federal income tax forms as may be required by rule of the secretary. [1986 c 230 § 5.]

19.09.078 Nonprofit fund raisers—Application for registration—Contents—Fee. An application for registration as a nonprofit fund raiser shall be submitted in the form prescribed by the secretary and shall contain the following:

- (1) The name, address, and telephone number of the organization;
- (2) The name(s), address(es), and the telephone number(s) of the officers of the organization;
- (3) The names of the three officers or employees receiving the greatest amount of compensation from the organization;
- (4) Whether the financial affairs of the organization are audited by an independent entity, and, if so, the name and address of the entity; and
- (5) A solicitation report of the organization for the preceding accounting year, including:
 - (a) The number and types of fund raising activities conducted on behalf of charitable organizations;
 - (b) The names of charitable organizations on whose behalf fund raising activities were conducted;
 - (c) The total value of contributions received on behalf of charitable organizations; and
 - (d) The amount of money disbursed to charitable organizations for charitable purposes.

The application shall be signed by the president, treasurer, or comparable officer of the organization and be submitted with a nonrefundable, ten dollar filing fee. If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered. [1986 c 230 § 6.]

19.09.079 Independent fund raisers—Application for registration—Contents—Fee. An application for registration as an independent fund raiser shall be submitted in the form prescribed by the secretary, containing, but not limited to, the following:

- (1) The name, address, and telephone number of the independent fund-raising entity;
- (2) The name(s), address(es), and telephone number(s) of the owner(s) and principal officer(s) of the independent fund-raising entity;
- (3) The name, address, and telephone number of the individual responsible for the activities of the independent fund-raising entity in Washington;
- (4) A list of states and Canadian provinces in which fund raising has been performed;
- (5) The names of the three officers or employees receiving the greatest amount of compensation from the independent fund-raising entity;
- (6) Whether the financial affairs of the independent fund raiser are audited by an independent entity, and, if so, the name and address of the entity;
- (7) A solicitation report of the independent fund-raising entity for the preceding accounting year, including:
 - (a) The number and types of fund raising services conducted;
 - (b) The names of charitable organizations required to register under RCW 19.09.065 for whom fund raising services have been performed;
 - (c) The total value of contributions received on behalf of charitable organizations required to register under RCW

19.09.065 by the independent fund raiser, affiliate of the independent fund raiser, or any entity retained by the independent fund raiser; and

- (d) The amount of money disbursed to charitable organizations for charitable purposes, net of fund raising costs paid by the charitable organization as stipulated in any agreement between charitable organizations and the independent fund raiser;
- (8) The name, address, and telephone number of any independent fund raiser that was retained in the conduct of providing fund raising services; and
- (9) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305.

The application shall be signed by an officer or owner of the independent fund raiser and shall be submitted with a nonrefundable, fifty-dollar filing fee. If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered. [1986 c 230 § 7; 1983 c 265 § 15.]

19.09.085 Registration—Duration—Changes—Notice to reregister. (1) Registration under this chapter shall be effective for one year, or the end of the organization's accounting year, whichever comes first.

(2) Reregistration required under RCW 19.09.075 and 19.09.078 shall be received by the secretary no later than the fifteenth day of the fifth month after the organization's accounting period ends.

(3) Reregistration required under RCW 19.09.079 shall be received by the secretary no later than the fifteenth day of the third month after the organization's accounting period ends.

(4) Entities required to register under this chapter shall file a notice of change of information within thirty days of any change in the information contained in RCW 19.09.075 (1) through (6), 19.09.079 (1) through (6), or 19.09.078 (1) through (4).

(5) The secretary may notify entities registered under this chapter of the need to reregister upon the expiration of their current registration. The notification shall be by mail, sent at least sixty days prior to the expiration of their current registration. [1986 c 230 § 8; 1983 c 265 § 8.]

19.09.095 Subsidiary organizations—Requirement to register—Exemptions. A charitable organization that is supervised and controlled by a superior or parent organization that is incorporated, qualified to do business, or is doing business within this state shall not be required to register under RCW 19.09.065 if the superior or parent organization files an application, on behalf of its subsidiary, in addition to or as a part of its own application. If an application has been filed by a superior or parent organization, on behalf of the subsidiary organization, the superior or parent organization shall (1) report financial information either separately or in consolidated form for its subsidiary organization(s), and (2) identify the subsidiary organization(s) on whose behalf the application is being submitted, indicating which such organization(s), if any, collected or expended five thousand dollars or more during their fiscal year. [1986 c 230 § 9; 1983 c 265 § 6.]

19.09.097 Charitable organizations and independent fund raisers—Registration form—Contents—Fee. Before contracting for any fund raising service or activity, the charitable organization and independent fund raiser shall complete a registration form. The registration shall be filed by the charitable organization with the secretary, in the form prescribed by the secretary, within five working days of the execution of the contract containing, but not limited to the following information:

- (1) The name and registration number of the independent fund raiser;
- (2) The name of the surety or sureties issuing the bond required by RCW 19.09.190, the aggregate amount of such bond or bonds, the bond number(s), original effective date(s), and termination date(s);
- (3) The name and registration number of the charitable organization;
- (4) The name of the representative of the independent fund raiser who will be responsible for the conduct of the fund raising;
- (5) The type(s) of service(s) to be provided by the independent fund raiser;
- (6) The dates such service(s) will begin and end;
- (7) The terms of the agreement between the charitable organization and independent fund raiser relating to:
 - (a) Amount or percentages of amounts to inure to the charitable organization;
 - (b) Limitations placed on the maximum amount to be raised by the fund raiser, if the amount to inure to the charitable organization is not stated as a percentage of the amount raised;
 - (c) Costs of fund raising that will be the responsibility of the charitable organization, regardless of whether paid as a direct expense, deducted from the amounts disbursed, or otherwise;
 - (d) The manner in which contributions received directly by the charitable organization, not the result of services provided by the independent fund raiser, will be identified and used in computing the fee owed to the independent fund raiser; and
- (8) The names of any entity to which more than ten percent of the total anticipated fund raising cost is to be paid, and whether any principal officer or owner of the independent fund raiser or relative by blood or marriage thereof is an owner or officer of any such entity.

The registration form shall be submitted with a nonrefundable, five-dollar filing fee and shall be signed by an owner or principal officer of the independent fund raiser and the president, treasurer, or comparable officer of the charitable organization. [1986 c 230 § 10.]

19.09.100 Conditions applicable to solicitations. The following conditions apply to solicitations as defined by RCW 19.09.020:

- (1) Each person or organization soliciting charitable contributions shall disclose orally or in writing to each person or organization solicited:
 - (a) The name of the individual making the solicitation;
 - (b) The name of the charitable organization;
 - (c) The purpose of the solicitation, and the name of the organization that will receive the funds contributed; and

(d) Whether the charitable organization is or is not properly registered under this chapter, and if registered, that information relating to its financial affairs is available by contacting the office of the secretary of state, giving the secretary's toll-free telephone number, if available.

(2) Each person or organization soliciting charitable contributions shall conspicuously disclose in writing to each person or organization solicited:

(a) If the solicitation is conducted by a charitable organization, the percentage relationship between (i) the total amount of money applied to charitable purposes; and (ii) the dollar value of support received from solicitations and from all other sources received on behalf of the charitable purpose of the organization, as contained in the organization's most recent solicitation report filed in accordance with RCW 19.09.075(7);

(b) If the solicitation is conducted by an independent or nonprofit fund raiser, the percentage relationship between (i) the amount of money disbursed to charitable organizations for charitable purposes; and (ii) the total value of contributions received on behalf of charitable organizations by the independent or nonprofit fund raiser, as contained in the fund raiser's most recent solicitation report filed in accordance with RCW 19.09.079(7) or 19.09.078.

(3) Each person or organization soliciting charitable contributions by telephone shall make the disclosures required by RCW 19.09.100(2) (a) or (b) in writing within five days of the receipt of any contribution. If the person or organization sends any materials to the person or organization solicited before the receipt of any contribution, those materials shall include the disclosures required in RCW 19.09.100(1)(d), and 19.09.100 (2) (a) or (b), whichever is applicable.

(4) Each person or organization soliciting charitable contributions shall not represent orally or in writing that:

(a) The charitable contribution is tax deductible unless the charitable organization for which charitable contributions are being solicited or to which tickets for fund raising events or other services or goods will be donated, has applied for and received from the internal revenue service a letter of determination granting tax deductible status to the charitable organization;

(b) The person soliciting the charitable contribution is a volunteer or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor unless such person is unpaid for his or her services;

(c) The person soliciting the charitable contribution is a member, staffer, helper, or employee of the charitable organization or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor if the person soliciting is employed, contracted, or paid by an independent fund raiser.

(5) If the charitable organization is associated with, or has a name that is similar to, any unit of government each person or organization soliciting contributions shall disclose to each person solicited whether the charitable organization is or is not part of any unit of government and the true nature of its relationship to the unit of government.

(6) A charitable organization shall comply with all local governmental regulations that apply to soliciting for or on behalf of charitable organizations.

(7) The advertising material and the general promotional plan for a solicitation shall not be false, misleading, or deceptive, and shall afford full and fair disclosure.

(8) Solicitations shall not be conducted by a charitable organization or independent fund raiser that has, or if a corporation, its officers, directors, or principals have, been convicted of a crime involving solicitations for or on behalf of a charitable organization in this state, the United States, or any other state or foreign country within the past ten years or has been subject to any permanent injunction or administrative order or judgment under RCW 19.86.080 or 19.86.090, involving a violation or violations of RCW 19.86.020, within the past ten years, or of restraining a false or misleading promotional plan involving solicitations for charitable organizations.

Failure to comply with subsections (1) through (8) of this section is a violation of this chapter. [1986 c 230 § 11; 1983 c 265 § 9; 1982 c 227 § 7; 1977 ex.s. c 222 § 6; 1974 ex.s. c 106 § 3; 1973 1st ex.s. c 13 § 10.]

Effective date—1982 c 227: "Sections 5 and 6 of this act shall take effect June 30, 1983. The remaining sections 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 March 1, 1982." [1982 c 227 § 25.] "Sections 5 and 6 of this act" consist of a temporary section (unmodified) and the 1982 c 227 amendment to RCW 18.34.130, respectively.

Reviser's note: Substitute House Bill No. 778, (1982 c 227), was signed by the governor April 3, 1982.

19.09.190 Independent fund raisers—Surety bond.

Every independent fund raiser who (1) directly or indirectly receives contributions from the public on behalf of any charitable organization; or (2) is compensated based upon funds raised or to be raised, number of solicitations made or to be made, or any other similar method; or (3) incurs or is authorized to incur expenses on behalf of the charitable organization; or (4) has not been registered with the secretary as an independent fund raiser for the preceding accounting year shall execute a surety bond as principal with one or more sureties whose liability in the aggregate as such sureties will equal at least fifteen thousand dollars. The secretary may, by rule, provide for the reduction and reinstatement of the bond required by this section.

The issuer of the surety bond shall be licensed to do business in this state, and shall promptly notify the secretary when claims or payments are made against the bond. The bond shall be filed with the secretary in the form prescribed by the secretary. The bond shall run to the state and to any person who may have a cause of action against the obligor of said bond for any malfeasance, misfeasance, or deceptive practice in the conduct of such solicitation. [1986 c 230 § 16; 1983 c 265 § 16; 1982 c 227 § 8; 1977 ex.s. c 222 § 9; 1973 1st ex.s. c 13 § 19.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.09.200 Books, records, and contracts. Charitable organizations and independent fund raisers shall maintain accurate, current, and readily available books and records at their usual business locations until at least three years have elapsed following the effective period to which they relate.

All contracts between independent fund raisers and charitable organizations shall be in writing, and true and

correct copies of such contracts or records thereof shall be kept on file in the various offices of the charitable organization and the independent fund raiser for a three-year period. Such records and contracts shall be available for inspection and examination by the attorney general or by the county prosecuting attorney. A copy of such contract or record shall be submitted by the charitable organization or independent fund raiser, within ten days, following receipt of a written demand therefor from the attorney general or county prosecutor. [1986 c 230 § 12; 1982 c 227 § 9; 1973 1st ex.s. c 13 § 20.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.09.210 Financial statements. Upon the request of the attorney general or the county prosecutor, a charitable organization shall submit a financial statement containing, but not limited to, the following information:

(1) The gross amount of the contributions pledged and the gross amount collected.

(2) The amount thereof, given or to be given to charitable purposes represented together with details as to the manner of distribution as may be required.

(3) The aggregate amount paid and to be paid for the expenses of such solicitation.

(4) The amounts paid to and to be paid to independent fund raisers.

(5) Copies of any annual or periodic reports furnished by the charitable organization, of its activities during or for the same fiscal period, to its parent organization, subsidiaries, or affiliates, if any. [1986 c 230 § 13; 1983 c 265 § 10; 1982 c 227 § 10; 1977 ex.s. c 222 § 10; 1975 1st ex.s. c 219 § 1; 1973 1st ex.s. c 13 § 21.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.09.230 Using the name of another person. No charitable organization, independent fund raiser, or other entity may knowingly use the name of any other person for the purpose of soliciting contributions from persons in this state without the written consent of such other person. Such consent may be deemed to have been given by anyone who is a director, trustee, other officer, employee, agent, or independent fund raiser of the charitable organization.

A person may be deemed to have used the name of another person for the purpose of soliciting contributions if such latter person's name is listed on any stationery, advertisement, brochure, or correspondence of the charitable organization or person or if such name is listed or represented to any one who has contributed to, sponsored, or endorsed the charitable organization or person, or its or his activities. [1986 c 230 § 14; 1982 c 227 § 11; 1973 1st ex.s. c 13 § 23.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.09.240 Using similar name, symbol, or statement. No charitable organization, independent fund raiser, or other person soliciting contributions for or on behalf of a charitable organization may use a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public. [1986 c 230 § 15; 1973 1st ex.s. c 13 § 24.]

19.09.271 Failure to register—Late filing fee—Notice to attorney general. (1) Any charitable organization, nonprofit fund raiser, or independent fund raiser who, after notification by the secretary, fails to properly register under this chapter by the end of the first business day following the issuance of the notice, is liable for a late filing fee of five dollars per day from the date of the notice until the registration is properly completed and filed. The late filing fee is in addition to any other filing fee provided by this chapter.

(2) The secretary shall notify the attorney general of any entity liable for late filing fees under subsection (1) of this section. [1986 c 230 § 17.]

19.09.275 Violations—Penalties. Any person who wilfully and knowingly violates any provision of this chapter or who wilfully and knowingly gives false or incorrect information to the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

Any person who violates any provisions of this chapter or who gives false or incorrect information to the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified, is guilty of a misdemeanor punishable under chapter 9A.20 RCW. [1986 c 230 § 18; 1983 c 265 § 11; 1982 c 227 § 12; 1977 ex.s. c 222 § 14.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.09.305 Service on secretary when registrant not found—Procedure—Costs. When a person or an organization registered under this chapter, or its president, treasurer, or comparable officers, cannot be found after reasonably diligent effort, the secretary of state shall be an agent of such person or organization upon whom process may be served. Service on the secretary shall be made by delivering to the secretary or the secretary's designee duplicate copies of such process, and a twenty-five dollar filing fee. Thereupon, the secretary shall immediately cause one of the copies thereof to be forwarded to the registrant at the most current address shown in the secretary's files. Any service so had on the secretary shall be returnable in not less than thirty days.

Any fee under this section shall be taxable as costs in the action.

The secretary shall maintain a record of all process served on the secretary under this section, and shall record the date of service and the secretary's action with reference thereto.

Nothing in this section limits or affects the right to serve process required or permitted to be served on a registrant in any other manner now or hereafter permitted by law. [1983 c 265 § 7.]

19.09.315 Forms and procedures—Publications—Fee. The secretary may establish, by rule, standard forms and procedures for the efficient administration of this chapter. The secretary may issue such publications, reports, or information from the records as may be useful to the

solicited public and charitable organizations. To defray the costs of any such publication, the secretary is authorized to charge a reasonable fee to cover the costs of preparing, printing, and distributing such publications. [1983 c 265 § 17.]

19.09.340 Violations deemed unfair practice under chapter 19.86 RCW—Application of chapter 9.04 RCW—Procedure. (1) The commission by any person of an act or practice prohibited by this chapter is hereby declared to be an unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of application of the Consumer Protection Act, chapter 19.86 RCW.

(2) The secretary may refer such evidence, as may be available, concerning violations of this chapter to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose. In addition to any other action they might commence, the attorney general or the county prosecuting attorney may bring an action in the name of the state, with or without such reference, against any person to restrain and prevent the doing of any act or practice prohibited by this chapter: PROVIDED, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, as now or hereafter amended, and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all persons subject to this chapter. [1983 c 265 § 12; 1982 c 227 § 13; 1973 1st ex.s. c 13 § 34.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.09.355 Moneys to be transmitted to general fund. All fees and other moneys received by the secretary of state under this chapter shall be transmitted to the state treasurer for deposit in the state general fund. [1983 c 265 § 18.]

19.09.910 Severability—1973 1st ex.s. c 13. The provisions of this chapter are severable, and if any part or provision hereof shall be void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this chapter. [1973 1st ex.s. c 13 § 38.]

19.09.911 Severability—1983 c 265. 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. [1983 c 265 § 20.]

19.09.912 Effective date—1983 c 265. With the exception of section 19 of this act, this act shall take effect January 1, 1984. [1983 c 265 § 21.]

Reviser's note: "Section 19 of this act" is an uncodified appropriation section.

19.09.913 Effective date—1986 c 230. This act shall take effect on January 1, 1987. [1986 c 230 § 21.]

Chapter 19.16
COLLECTION AGENCIES

Sections

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19.16.100 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) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.

(2) "Collection agency" means and includes:

(a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to

collect claims owed or due or asserted to be owed or due another person;

(b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself in his own name;

(c) Any person who in attempting to collect or in collecting his own claim uses a fictitious name or any name other than his own which would indicate to the debtor that a third person is collecting or attempting to collect such claim.

(3) "Collection agency" does not mean and does not include:

(a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;

(b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are carried on in the name of the employer and if the individual is an employee of the employer;

(c) Any person whose collection activities are carried on in his or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to trust companies, savings and loan associations, building and loan associations, abstract companies doing an escrow business, real estate brokers, public officers acting in their official capacities, persons acting under court order, lawyers, insurance companies, credit unions, loan or finance companies, mortgage banks, and banks; or

(d) Any person who on behalf of another person prepares or mails monthly or periodic statements of accounts due if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of account.

(4) "Claim" means any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied.

(5) "Statement of account" means a report setting forth only amounts billed, invoices, credits allowed, or aged balance due.

(6) "Director" means the director of licensing.

(7) "Client" or "customer" means any person authorizing or employing a collection agency to collect a claim.

(8) "Licensee" means any person licensed under this chapter.

(9) "Board" means the Washington state collection agency board.

(10) "Debtor" means any person owing or alleged to owe a claim. [1990 c 190 § 1; 1979 c 158 § 81; 1971 ex.s. c 253 § 1.]

19.16.110 License required. No person shall act, assume to act, or advertise as a collection agency as defined in this chapter, except as authorized by this chapter, without first having applied for and obtained a license from the director.

Nothing contained in this section shall be construed to require a regular employee of a collection agency duly licensed under this chapter to procure a collection agency license. [1971 ex.s. c 253 § 2.]

19.16.120 Denial, suspension, revocation or refusal to renew license—Civil penalty—Grounds. In addition to other provisions of this chapter, any license issued pursuant to this chapter or any application therefor may be denied, not renewed, revoked, or suspended, or in lieu of or in addition to suspension a licensee may be assessed a civil, monetary penalty in an amount not to exceed one thousand dollars:

(1) If an individual applicant or licensee is less than eighteen years of age or is not a resident of this state.

(2) If an applicant or licensee is not authorized to do business in this state.

(3) If the application or renewal forms required by this chapter are incomplete, fees required under RCW 19.16.140 and 19.16.150 have not been paid, and the surety bond or cash deposit or other negotiable security acceptable to the director required by RCW 19.16.190 has not been filed or renewed or is canceled.

(4) If any individual applicant, owner, officer, director, or managing employee of a nonindividual applicant or licensee:

(a) Shall have knowingly made a false statement of a material fact in any application for a collection agency license or renewal thereof, or in any data attached thereto and two years have not elapsed since the date of such statement;

(b) Shall have had a license to engage in the business of a collection agency denied, not renewed, suspended, or revoked by this state, any other state, or foreign country, for any reason other than the nonpayment of licensing fees or failure to meet bonding requirements: PROVIDED, That the terms of this subsection shall not apply if:

(i) Two years have elapsed since the time of any such denial, nonrenewal, or revocation; or

(ii) The terms of any such suspension have been fulfilled;

(c) Has been convicted in any court of any felony involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and is incarcerated for that offense or five years have not elapsed since the date of such conviction;

(d) Has had any judgment entered against him in any civil action involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and five years have not elapsed since the date of the entry of the final judgment in said action: PROVIDED, That in no event shall a license be issued unless the judgment debt has been discharged;

(e) Has had his license to practice law suspended or revoked and two years have not elapsed since the date of such suspension or revocation, unless he has been relicensed to practice law in this state;

(f) Has had any judgment entered against him or it under the provisions of RCW 19.86.080 or 19.86.090 involving a violation or violations of RCW 19.86.020 and two years have not elapsed since the entry of the final judgment: PROVIDED, That in no event shall a license be

issued unless the terms of such judgment, if any, have been fully complied with: PROVIDED FURTHER, That said judgment shall not be grounds for denial, suspension, nonrenewal, or revocation of a license unless the judgment arises out of and is based on acts of the applicant, owner, officer, director, managing employee, or licensee while acting for or as a collection agency;

(g) Has petitioned for bankruptcy, and two years have not elapsed since the filing of said petition;

(h) Shall be insolvent in the sense that his or its liabilities exceed his or its assets or in the sense that he or it cannot meet his or its obligations as they mature;

(i) Has failed to pay any civil, monetary penalty assessed in accordance with RCW 19.16.351 or 19.16.360 within ten days after the assessment becomes final; or

(j) Has knowingly failed to comply with, or violated any provisions of this chapter or any rule or regulation issued pursuant to this chapter, and two years have not elapsed since the occurrence of said noncompliance or violation.

Any person who is engaged in the collection agency business as of January 1, 1972 shall, upon filing the application, paying the fees, and filing the surety bond or cash deposit or other negotiable security in lieu of bond required by this chapter, be issued a license hereunder. [1977 ex.s. c 194 § 1; 1973 1st ex.s. c 20 § 1; 1971 ex.s. c 253 § 3.]

19.16.130 License—Application—Form—Contents.

Every application for a license shall be in writing, under oath, and in the form prescribed by the director.

Every application shall contain such relevant information as the director may require.

The applicant shall furnish the director with such evidence as the director may reasonably require to establish that the requirements and qualifications for a licensee have been fulfilled by the applicant.

Every application for a license shall state, among other things that may be required, the name of the applicant with the name under which the applicant will do business and the location by street and number, city and state of each office of the business for which the license is sought.

No license shall be issued in any fictitious name which may be confused with or which is similar to any federal, state, county, or municipal governmental function or agency or in any name which may tend to describe any business function or enterprise not actually engaged in by the applicant or in any name which is the same as or so similar to that of any existing licensee as would tend to deceive the public or in any name which would otherwise tend to be deceptive or misleading. The foregoing shall not necessarily preclude the use of a name which may be followed by a geographically descriptive title which would distinguish it from a similar name licensed but operating in a different geographical area. [1971 ex.s. c 253 § 4.]

19.16.140 License—Application—Fees. Each applicant when submitting his application shall pay a licensing fee and an investigation fee determined by the director as provided in RCW 43.24.086. If a license is not issued in response to the application, the license fee shall be returned to the applicant.

An annual license fee determined by the director as provided in RCW 43.24.086 shall be paid to the director on or before January first of each year. If the annual license fee is not paid on or before January first, the licensee shall be assessed a penalty for late payment in an amount determined by the director as provided in RCW 43.24.086. If the fee and penalty are not paid by January thirty-first, it will be necessary for the licensee to submit a new application for a license: PROVIDED, That no license shall be issued upon such new application unless and until all fees and penalties previously accrued under this section have been paid.

Any license or branch office certificate issued under the provisions of this chapter shall expire on December thirty-first following the issuance thereof. [1985 c 7 § 81; 1975 1st ex.s. c 30 § 90; 1971 ex.s. c 253 § 5.]

19.16.150 Branch office certificate required. If a licensee maintains a branch office, he or it shall not operate a collection agency business in such branch office until he or it has secured a branch office certificate therefor from the director. A licensee, so long as his or its license is in full force and effect and in good standing, shall be entitled to branch office certificates for any branch office operated by such licensee upon payment of the fee therefor provided in this chapter.

Each licensee when applying for a branch office certificate shall pay a fee determined by the director as provided in RCW 43.24.086. An annual fee determined by the director as provided in RCW 43.24.086 for a branch office certificate shall be paid to the director on or before January first of each year. If the annual fee is not paid on or before January first, a penalty for late payment in an amount determined by the director as provided in RCW 43.24.086 shall be assessed. If the fee and the penalty are not paid by January thirty-first, it will be necessary for the licensee to apply for a new branch office certificate: PROVIDED, That no such new branch office certificate shall be issued unless and until all fees and penalties previously accrued under this section have been paid. [1985 c 7 § 82; 1975 1st ex.s. c 30 § 91; 1971 ex.s. c 253 § 6.]

19.16.160 License and branch office certificate—Form—Contents—Display. Each license and branch office certificate, when issued, shall be in the form and size prescribed by the director and shall state in addition to any other matter required by the director:

- (1) The name of the licensee;
- (2) The name under which the licensee will do business;
- (3) The address at which the collection agency business is to be conducted; and
- (4) The number and expiration date of the license or branch office certificate.

A licensee shall display his or its license in a conspicuous place in his or its principal place of business and, if he or it conducts a branch office, the branch office certificate shall be conspicuously displayed in the branch office.

Concurrently with or prior to engaging in any activity as a collection agency, as defined in this chapter, any person shall furnish to his or its client or customer the number indicated on the collection agency license issued to him

pursuant to this section. [1973 1st ex.s. c 20 § 2; 1971 ex.s. c 253 § 7.]

19.16.170 Procedure upon change of name or business location. Whenever a licensee shall contemplate a change of his or its trade name or a change in the location of his or its principal place of business or branch office, he or it shall give written notice of such proposed change to the director. The director shall approve the proposed change and issue a new license or a branch office certificate, as the case may be, reflecting the change. [1971 ex.s. c 253 § 8.]

19.16.180 Assignability of license or branch office certificate. (1) Except as provided in subsection (2) of this section, a license or branch office certificate granted under this chapter is not assignable or transferable.

(2) Upon the death of an individual licensee, the director shall have the right to transfer the license and any branch office certificate of the decedent to the personal representative of his estate for the period of the unexpired term of the license and such additional time, not to exceed one year from the date of death of the licensee, as said personal representative may need in order to settle the deceased's estate or sell the collection agency. [1971 ex.s. c 253 § 9.]

19.16.190 Surety bond requirements—Cash deposit or securities. (1) Each applicant shall, at the time of applying for a license, file with the director a surety bond in the sum of five thousand dollars. The bond shall be annually renewable on January first of each year, shall be approved by the director as to form and content, and shall be executed by the applicant as principal and by a surety company authorized to do business in this state as surety. Such bond shall run to the state of Washington as obligee for the benefit of the state and conditioned that the licensee shall faithfully and truly perform all agreements entered into with the licensee's clients or customers and shall, within thirty days after the close of each calendar month, account to and pay to his client or customer the net proceeds of all collections made during the preceding calendar month and due to each client or customer less any offsets due licensee under RCW 19.16.210 and 19.16.220. The bond required by this section shall remain in effect until canceled by action of the surety or the licensee or the director.

(2) An applicant for a license under this chapter may furnish, file, and deposit with the director, in lieu of the surety bond provided for herein, a cash deposit or other negotiable security acceptable to the director. The security deposited with the director in lieu of the surety bond shall be returned to the licensee at the expiration of one year after the collection agency's license has expired or been revoked if no legal action has been instituted against the licensee or on said security deposit at the expiration of said one year.

(3) A surety may file with the director notice of his or its withdrawal on the bond of the licensee. Upon filing a new bond or upon the revocation of the collection agency license or upon the expiration of sixty days after the filing of notice of withdrawal as surety by the surety, the liability of the former surety for all future acts of the licensee shall terminate.

(4) The director shall immediately cancel the bond given by a surety company upon being advised that the surety company's license to transact business in this state has been revoked.

(5) Upon the filing with the director of notice by a surety of his withdrawal as the surety on the bond of a licensee or upon the cancellation by the director of the bond of a surety as provided in this section, the director shall immediately give notice to the licensee of the withdrawal or cancellation. The notice shall be sent to the licensee by registered or certified mail with request for a return receipt and addressed to the licensee at his or its main office as shown by the records of the director. At the expiration of thirty days from the date of mailing the notice, the license of the licensee shall be terminated, unless the licensee has filed a new bond with a surety satisfactory to the director.

(6) All bonds given under this chapter shall be filed and held in the office of the director. [1971 ex.s. c 253 § 10.]

19.16.200 Action on bond, cash deposit or securities. In addition to all other legal remedies, an action may be brought in any court of competent jurisdiction upon the bond or cash deposit or security in lieu thereof, required by RCW 19.16.190, by any person to whom the licensee fails to account and pay as set forth in such bond or by any client or customer of the licensee who has been damaged by failure of the licensee to comply with all agreements entered into with such client or customer: PROVIDED, That the aggregate liability of the surety to all such clients or customers shall in no event exceed the sum of such bond.

An action upon such bond or security shall be commenced by serving and filing of the complaint within one year from the date of the cancellation of the bond or, in the case of a cash deposit or other security deposited in lieu of the surety bond, within one year of the date of expiration or revocation of license: PROVIDED, That no action shall be maintained upon such bond or such cash deposit or other security for any claim which has been barred by any nonclaim statute or statute of limitations of this state. Two copies of the complaint shall be served by registered or certified mail upon the director at the time the suit is started. Such service shall constitute service on the surety. The director shall transmit one of said copies of the complaint served on him to the surety within forty-eight hours after it shall have been received.

The director shall maintain a record, available for public inspection, of all suits commenced under this chapter upon surety bonds, or the cash or other security deposited in lieu thereof.

In the event of a judgment being entered against the deposit or security referred to in RCW 19.16.190(2), the director shall, upon receipt of a certified copy of a final judgment, pay said judgment from the amount of the deposit or security. [1971 ex.s. c 253 § 11.]

19.16.210 Accounting and payments by licensee to customer. A licensee shall within thirty days after the close of each calendar month account in writing to his or its customers for all collections made during that calendar month and pay to his or its customers the net proceeds due and payable of all collections made during that calendar

month except that a licensee need not account to the customer for:

(1) Court costs recovered which were previously advanced by licensee or his or its attorney.

(2) Attorney's fees and interest or other charges incidental to the principal amount of the obligation legally and properly belonging to the licensee, if such charges are retained by the licensee after the principal amount of the obligation has been accounted for and remitted to the customer. When the net proceeds are less than ten dollars at the end of any calendar month, payments may be deferred for a period not to exceed three months. [1971 ex.s. c 253 § 12.]

19.16.220 Accounting and payments by customer to licensee. Every customer of a licensee shall, within thirty days after the close of each calendar month, account and pay to his or its collection agency all sums owing to the collection agency for payments received by the customer during that calendar month on claims in the hands of the collection agency.

If a customer fails to pay a licensee any sums due under this section, the licensee shall, in addition to other remedies provided by law, have the right to offset any moneys due the licensee under this section against any moneys due customer under RCW 19.16.210. [1971 ex.s. c 253 § 13.]

19.16.230 Licensee—Business office—Records to be kept. (1) Every licensee required to keep and maintain records pursuant to this section shall establish and maintain a regular active business office in the state of Washington for the purpose of conducting his or its collection agency business. Said office must be open to the public during reasonable stated business hours, and must be managed by a resident of the state of Washington.

(2) Every licensee shall keep a record of all sums collected by him or it and all disbursements made by him or it. All such records shall be kept at the business office referred to in subsection (1) of this section.

(3) Licensees shall maintain and preserve accounting records of collections and payments to customers for a period of four years from the date of the last entry thereon. [1987 c 85 § 1; 1973 1st ex.s. c 20 § 3; 1971 ex.s. c 253 § 14.]

19.16.240 Licensee—Trust fund account. Each licensee shall at all times maintain a separate bank account in this state in which all moneys collected by the licensee shall be deposited except that negotiable instruments received may be forwarded directly to a customer. Moneys received must be deposited within ten days after posting to the book of accounts. In no event shall moneys received be disposed of in any manner other than to deposit such moneys in said account or as provided in this section.

The bank account shall bear some title sufficient to distinguish it from the licensee's personal or general checking account, such as "Customer's Trust Fund Account". There shall be sufficient funds in said trust account at all times to pay all moneys due or owing to all customers and no disbursements shall be made from such account except to customers or to remit moneys collected from debtors on

assigned claims and due licensee's attorney or to refund over payments except that a licensee may periodically withdraw therefrom such moneys as may accrue to licensee.

Any money in such trust account belonging to a licensee may be withdrawn for the purpose of transferring the same into the possession of licensee or into a personal or general account of licensee. [1971 ex.s. c 253 § 15.]

19.16.245 Financial statement. No licensee shall receive any money from any debtor as a result of the collection of any claim until he or it shall have submitted a financial statement showing the assets and liabilities of the licensee truly reflecting that the licensee's net worth is not less than the sum of seven thousand five hundred dollars, in cash or its equivalent, of which not less than five thousand dollars shall be deposited in a bank, available for the use of the licensee's business. Any money so collected shall be subject to the provisions of RCW 19.16.430(2). The financial statement shall be sworn to by the licensee, if the licensee is an individual, or by a partner, officer, or manager in its behalf if the licensee is a partnership, corporation, or unincorporated association. The information contained in the financial statement shall be confidential and not a public record, but is admissible in evidence at any hearing held, or in any action instituted in a court of competent jurisdiction, pursuant to the provisions of this chapter. **PROVIDED**, That this section shall not apply to those persons holding a valid license issued pursuant to this chapter on July 16, 1973. [1973 1st ex.s. c 20 § 9.]

19.16.250 Prohibited practices. No licensee or employee of a licensee shall:

(1) Directly or indirectly aid or abet any unlicensed person to engage in business as a collection agency in this state or receive compensation from such unlicensed person: **PROVIDED**, That nothing in this chapter shall prevent a licensee from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside the state.

(2) Collect or attempt to collect a claim by the use of any means contrary to the postal laws and regulations of the United States postal department.

(3) Publish or post or cause to be published or posted, any list of debtors commonly known as "bad debt lists" or threaten to do so. For purposes of this chapter, a "bad debt list" means any list of natural persons alleged to fail to honor their lawful debts. However, nothing herein shall be construed to prohibit a licensee from communicating to its customers or clients by means of a coded list, the existence of a check dishonored because of insufficient funds, not sufficient funds or closed account by the financial institution servicing the debtor's checking account: **PROVIDED**, That the debtor's identity is not readily apparent: **PROVIDED FURTHER**, That the licensee complies with the requirements of subsection (9)(e) of this section.

(4) Have in his possession or make use of any badge, use a uniform of any law enforcement agency or any simulation thereof, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any

other governmental agency, while engaged in collection agency business.

(5) Perform any act or acts, either directly or indirectly, constituting the practice of law.

(6) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce payment thereof or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under court order.

(7) Use any name while engaged in the making of a demand for any claim other than the name set forth on his or its current license issued hereunder.

(8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form which represents or implies that a claim exists unless it shall indicate in clear and legible type:

(a) The name of the licensee and the city, street, and number at which he is licensed to do business;

(b) The name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee: **PROVIDED**, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain the name of such person and provide this name to the debtor;

(c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or its first notice to the debtor, an itemization of the claim asserted must be made including:

(i) Amount owing on the original obligation at the time it was received by the licensee for collection or by assignment;

(ii) Interest or service charge, collection costs, or late payment charges, if any, added to the original obligation by the original creditor, customer or assignor before it was received by the licensee for collection, if such information is known by the licensee or employee: **PROVIDED**, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain information on such items and provide this information to the debtor;

(iii) Interest or service charge, if any, added by the licensee or customer or assignor after the obligation was received by the licensee for collection;

(iv) Collection costs, if any, that the licensee is attempting to collect;

(v) Attorneys' fees, if any, that the licensee is attempting to collect on his or its behalf or on the behalf of a customer or assignor;

(vi) Any other charge or fee that the licensee is attempting to collect on his or its own behalf or on the behalf of a customer or assignor.

(9) Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings except under the following conditions:

(a) A licensee or employee of a licensee may inform a credit reporting bureau of the existence of a claim: **PROVIDED**, That if the licensee or employee of a licensee reports a claim to a credit reporting bureau, the licensee shall upon receipt of written notice from the debtor that any part

of the claim is disputed, forward a copy of such written notice to the credit reporting bureau;

(b) A licensee or employee in collecting or attempting to collect a claim may communicate the existence of a claim to a debtor's employer if the claim has been reduced to a judgment;

(c) A licensee or employee in collecting or attempting to collect a claim that has not been reduced to judgment, may communicate the existence of a claim to a debtor's employer if:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing to the licensee disputed any part of the claim: PROVIDED, That the licensee or employee may only communicate the existence of a claim which has not been reduced to judgment to the debtor's employer once unless the debtor's employer has agreed to additional communications.

(d) A licensee may for the purpose of locating the debtor or locating assets of the debtor communicate the existence of a claim to any person who might reasonably be expected to have knowledge of the whereabouts of a debtor or the location of assets of the debtor if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(e) A licensee may communicate the existence of a claim to its customers or clients if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(10) Threaten the debtor with impairment of his credit rating if a claim is not paid.

(11) Communicate with the debtor after notification in writing from an attorney representing such debtor that all further communications relative to a claim should be addressed to the attorney: PROVIDED, That if a licensee requests in writing information from an attorney regarding such claim and the attorney does not respond within a reasonable time, the licensee may communicate directly with the debtor until he or it again receives notification in writing that an attorney is representing the debtor.

(12) Communicate with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats

of force or violence, by threats of criminal prosecution, and by use of offensive language. A communication shall be presumed to have been made for the purposes of harassment if:

(a) It is made with a debtor or spouse in any form, manner, or place, more than three times in a single week;

(b) It is made with a debtor at his or her place of employment more than one time in a single week;

(c) It is made with the debtor or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m.

(13) Communicate with the debtor through use of forms or instruments that simulate the form or appearance of judicial process, the form or appearance of government documents, or the simulation of a form or appearance of a telegraphic or emergency message.

(14) Communicate with the debtor and represent or imply that the existing obligation of the debtor may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor.

(15) Threaten to take any action against the debtor which the licensee cannot legally take at the time the threat is made.

(16) Send any telegram or make any telephone calls to a debtor or concerning a debt or for the purpose of demanding payment of a claim or seeking information about a debtor, for which the charges are payable by the addressee or by the person to whom the call is made.

(17) In any manner convey the impression that the licensee is vouched for, bonded to or by, or is an instrumentality of the state of Washington or any agency or department thereof.

(18) Collect or attempt to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs or handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs.

(19) Procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or acknowledgment under which a debtor may be required to pay any sum other than principal, allowable interest, and, in the case of suit, attorney's fees and taxable court costs. [1983 c 107 § 1; 1981 c 254 § 5; 1971 ex.s. c 253 § 16.]

19.16.260 Licensing prerequisite to suit. No collection agency may bring or maintain an action in any court of this state involving the collection of a claim of any third party without alleging and proving that he or it is duly licensed under this chapter and has satisfied the bonding requirements hereof: PROVIDED, That in any case where judgment is to be entered by default, it shall not be necessary for the collection agency to prove such matters.

A copy of the current collection agency license, certified by the director to be a true and correct copy of the original, shall be prima facie evidence of the licensing and bonding of such collection agency as required by this chapter. [1971 ex.s. c 253 § 17.]

19.16.270 Presumption of validity of assignment. In any action brought by licensee to collect the claim of his or its customer, the assignment of the claim to licensee by his or its customer shall be conclusively presumed valid, if the assignment is filed in court with the complaint, unless objection is made thereto by the debtor in a written answer or in writing five days or more prior to trial. [1971 ex.s. c 253 § 18.]

19.16.280 Board created—Composition of board—Qualification of members. There is hereby created a board to be known and designated as the "Washington state collection agency board". The board shall consist of five members, one of whom shall be the director and the other four shall be appointed by the governor. The director may delegate his duties as a board member to a designee from his department. The director or his designee shall be the executive officer of the board and its chairman.

At least two but no more than two members of the board shall be licensees hereunder. Each of the licensee members of the board shall be actively engaged in the collection agency business at the time of his appointment and must continue to be so engaged and continue to be licensed under this chapter during the term of his appointment or he will be deemed to have resigned his position: PROVIDED, That no individual may be a licensee member of the board unless he has been actively engaged as either an owner or executive employee or a combination of both of a collection agency business in this state for a period of not less than five years immediately prior to his appointment.

No board member shall be employed by or have any interest in, directly or indirectly, as owner, partner, officer, director, agent, stockholder, or attorney, any collection agency in which any other board member is employed by or has such an interest.

No member of the board other than the director or his designee shall hold any other elective or appointive state or federal office. [1971 ex.s. c 253 § 19.]

19.16.290 Board—Initial members—Terms—Oath—Removal. The initial members of the board shall be named by the governor within thirty days after January 1, 1972. At the first meeting of the board, the members appointed by the governor shall determine by lot the period of time from January 1, 1972 that each of them shall serve, one for one year; one for two years; one for three years; and one for four years. In the event of a vacancy on the board, the governor shall appoint a successor for the unexpired term.

Each member appointed by the governor shall qualify by taking the usual oath of a state officer, which shall be filed with the secretary of state, and each member shall hold office for the term of his appointment and until his successor is appointed and qualified.

Any member of the board other than the director or his designee may be removed by the governor for neglect of duty, misconduct, malfeasance or misfeasance in office, after being given a written statement of the charges against him and sufficient opportunity to be heard thereon. [1971 ex.s. c 253 § 20.]

19.16.300 Board meetings—Quorum—Effect of vacancy. The board shall meet as soon as practicable after the governor has appointed the initial members of the board. The board shall meet at least once a year and at such other times as may be necessary for the transaction of its business.

The time and place of the initial meeting of the board and the annual meetings shall be at a time and place fixed by the director. Other meetings of the board shall be held upon written request of the director at a time and place designated by him, or upon the written request of any two members of the board at a time and place designated by them.

A majority of the board shall constitute a quorum.

A vacancy in the board membership shall not impair the right of the remaining members of the board to exercise any power or to perform any duty of the board, so long as the power is exercised or the duty performed by a quorum of the board. [1971 ex.s. c 253 § 21.]

19.16.310 Board—Compensation—Reimbursement of travel expenses. Each member of the board appointed by the governor shall be compensated in accordance with RCW 43.03.240 and in addition thereto shall be reimbursed for travel expenses incurred while on official business of the board and in attending meetings thereof, in accordance with the provisions of RCW 43.03.050 and 43.03.060. [1984 c 287 § 54; 1975-'76 2nd ex.s. c 34 § 58; 1971 ex.s. c 253 § 22.]

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.

19.16.320 Board—Territorial scope of operations. The board may meet, function and exercise its powers and perform its duties at any place within the state. [1971 ex.s. c 253 § 23.]

19.16.330 Board—Immunity from suit. Members of the board shall be immune from suit in any civil action based upon an official act performed in good faith as members of such board. [1971 ex.s. c 253 § 24.]

19.16.340 Board—Records. All records of the board shall be kept in the office of the director. Copies of all records and papers of the board, certified to be true copies by the director, shall be received in evidence in all cases with like effect as the originals. All actions by the board which require publication, or any writing shall be over the signature of the director or his designee. [1971 ex.s. c 253 § 25.]

19.16.351 Additional powers and duties of board. The board, in addition to any other powers and duties granted under this chapter:

(1) May adopt, amend, and rescind such rules and regulations for its own organization and procedure and such other rules and regulations as it may deem necessary in order to perform its duties hereunder.

(2) When an applicant or licensee has requested a hearing as provided in RCW 19.16.360 the board shall meet

and after notice and hearing may deny any application for a license hereunder, and may fail to renew, suspend, or revoke any license issued hereunder, if the applicant or licensee has failed to comply with or violated any provision of this chapter or any rule or regulation issued pursuant to this chapter. In its discretion, the board may assess a civil, monetary penalty against a licensee in an amount not to exceed one thousand dollars in lieu of or in addition to suspension. It shall be the duty of the board within thirty days after the last day of hearing to notify the appellant of its decision.

(3) May inquire into the needs of the collection agency business, the needs of the director, and the matter of the policy of the director in administering this chapter, and make such recommendations with respect thereto as, after consideration, may be deemed important and necessary for the welfare of the state, the welfare of the public, and the welfare and progress of the collection agency business.

(4) Upon request of the director, confer and advise in matters relating to the administering of this chapter.

(5) May consider and make appropriate recommendations to the director in all matters referred to the board.

(6) Upon his request, confer with and advise the director in the preparation of any rules and regulations to be adopted, amended, or repealed.

(7) May assist the director in the collection of such information and data as the director may deem necessary to the proper administration of this chapter. [1977 ex.s. c 194 § 2; 1973 1st ex.s. c 20 § 8.]

19.16.360 Licenses—Denial, suspension, revocation or refusal to renew—Civil penalty—Hearing. (1) Whenever the director shall have reasonable cause to believe that grounds exist for denial, nonrenewal, revocation or suspension of a license issued or to be issued under this chapter, or in lieu of or in addition to suspension that a licensee should be assessed a civil, monetary penalty not to exceed one thousand dollars, he shall notify the applicant or licensee in writing by certified or registered mail, with return receipt requested, stating the grounds upon which it is proposed that the license be denied, revoked, not renewed, or suspended and upon which any monetary penalty is going to be assessed and the amount of the penalty.

(2) Within thirty days from the receipt of notice of the alleged grounds for denial, revocation, lack of renewal, or suspension or for the monetary penalty to be assessed in lieu of or in addition to suspension, the applicant or licensee may serve upon the director a written request for hearing before the board. Service of a request for a hearing shall be by certified mail and shall be addressed to the director at his office in Thurston county. Upon receiving a request for a hearing, the director shall fix a date for which the matter may be heard by the board, which date shall be not less than thirty days from the receipt of the request for such hearing. If no request for hearing is made within the time specified, the license shall be deemed denied, revoked, or not renewed or the license shall be deemed suspended and/or the civil, monetary penalty shall be deemed assessed.

(3) Whenever a licensee who has made timely and sufficient application for the renewal of a license, receives notice from the director that it is proposed that his or its

license is not to be renewed, and said licensee requests a hearing under subsection (2) of this section, the licensee's current license shall not expire until the last day for seeking review of the board's decision expires or if judicial review of the board's decision is sought until final judgment has been entered by the superior court, or in the event of an appeal or appeals, until final judgment has been entered by the last appellate court in which review has been sought. [1977 ex.s. c 194 § 3; 1973 1st ex.s. c 20 § 4; 1971 ex.s. c 253 § 27.]

19.16.380 Administrative procedure act—Application. Except as specifically provided in this chapter, the rules adopted and the hearings conducted shall be in accordance with the provisions of chapter 34.05 RCW (administrative procedure act). [1971 ex.s. c 253 § 29.]

19.16.390 Personal service of process outside state. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185. [1971 ex.s. c 253 § 30.]

19.16.400 Investigations or proceedings—Powers of director or designees—Contempt. (1) The director may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with the provisions of this chapter or any rules and regulations issued hereunder. For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(2) If any individual fails to obey a subpoena or obeys a subpoena but refuses to give evidence, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the court, to show cause why he should not be compelled to obey the subpoena and give evidence material to the matter under investigation. The failure to obey an order of the court may be punishable as contempt. [1973 1st ex.s. c 20 § 5; 1971 ex.s. c 253 § 31.]

19.16.410 Rules, orders, decisions, etc. The director may promulgate rules, make specific decisions, orders and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of his duties under this chapter. [1971 ex.s. c 253 § 32.]

19.16.420 Copy of this chapter, rules and regulations available to licensee. On or about the first day of February in each year, the director shall cause to be made available at reasonable expense to a licensee a copy of this

chapter, a copy of the current rules and regulations of the director, and board, and such other materials as the director or board prescribe. [1971 ex.s. c 253 § 33.]

19.16.430 Violations—Operating collection agency without a license—Penalty—Return of fees or compensation. (1) Any person who knowingly operates as a collection agency without a license or knowingly aids and abets such violation is punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year or both.

(2) Any person who operates as a collection agency in the state of Washington without a valid license issued pursuant to this chapter shall not charge or receive any fee or compensation on any moneys received or collected while operating without a license or on any moneys received or collected while operating with a license but received or collected as a result of his or its acts as a collection agency while not licensed hereunder. All such moneys collected or received shall be forthwith returned to the owners of the accounts on which the moneys were paid. [1973 1st ex.s. c 20 § 6; 1971 ex.s. c 253 § 34.]

19.16.440 Violations of RCW 19.16.110 and 19.16.250 are unfair and deceptive trade practices under chapter 19.86 RCW. The operation of a collection agency without a license as prohibited by RCW 19.16.110 and the commission by a licensee or an employee of a licensee of an act or practice prohibited by RCW 19.16.250 are declared to be unfair acts or practices or unfair methods of competition in the conduct of trade or commerce for the purpose of the application of the Consumer Protection Act found in chapter 19.86 RCW. [1973 1st ex.s. c 20 § 7; 1971 ex.s. c 253 § 35.]

19.16.450 Violation of RCW 19.16.250—Additional penalty. If an act or practice in violation of RCW 19.16.250 is committed by a licensee or an employee of a licensee in the collection of a claim, neither the licensee, the customer of the licensee, nor any other person who may thereafter legally seek to collect on such claim shall ever be allowed to recover any interest, service charge, attorneys' fees, collection costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the debtor on such claim: PROVIDED, That any person asserting the claim may nevertheless recover from the debtor the amount of the original claim or obligation. [1971 ex.s. c 253 § 36.]

19.16.460 Violations may be enjoined. Notwithstanding any other actions which may be brought under the laws of this state, the attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1971 ex.s. c 253 § 37.]

19.16.470 Violations—Assurance of discontinuance—Effect. The attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter from any person engaging in or who has engaged in such act or practice. Any such assurance

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shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in the alternative, in Thurston county.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose; however, proof of failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing an injunction as provided for in RCW 19.16.460: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided therein, the attorney general may not accept an assurance of discontinuance without the consent of said prosecuting attorney. [1971 ex.s. c 253 § 38.]

19.16.480 Violation of injunction—Civil penalty. Any person who violates any injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1971 ex.s. c 253 § 39.]

19.16.500 Public bodies may retain collection agencies to collect public debts. (1) Agencies, departments, taxing districts, political subdivisions of the state, counties, and incorporated cities may retain, by written contract, collection agencies licensed under this chapter for the purpose of collecting public debts owed by any person.

(2) No debt may be assigned to a collection agency unless (a) there has been an attempt to advise the debtor (i) of the existence of the debt and (ii) that the debt may be assigned to a collection agency for collection if the debt is not paid, and (b) at least thirty days have elapsed from the time the notice was sent.

(3) Collection agencies assigned debts under this section shall have only those remedies and powers which would be available to them as assignees of private creditors.

(4) For purposes of this section, the term debt shall include fines and other debts. [1982 c 65 § 1.]

19.16.900 Provisions cumulative—Violation of RCW 19.16.250 deemed civil. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law: PROVIDED, That the violation of RCW 19.16.250 shall be construed as exclusive civil and not penal in nature. [1971 ex.s. c 253 § 40.]

19.16.910 Severability—1971 ex.s. c 253. 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, provisions, or part thereof not adjudged invalid or unconstitutional. [1971 ex.s. c 253 § 41.]

19.16.920 Provisions exclusive—Authority of political subdivisions to levy business and occupation taxes not affected. (1) The provisions of this chapter relating to the licensing and regulation of collection agencies

shall be exclusive and no county, city, or other political subdivision of this state shall enact any laws or rules and regulations licensing or regulating collection agencies.

(2) This section shall not be construed to prevent a political subdivision of this state from levying a business and occupation tax upon collection agencies maintaining an office within that political subdivision if a business and occupation tax is levied by it upon other types of businesses within its boundaries. [1971 ex.s. c 253 § 42.]

19.16.930 Effective date—1971 ex.s. c 253. This act shall become effective January 1, 1972. [1971 ex.s. c 253 § 44.]

19.16.940 Short title. This chapter shall be known and may be cited as the "Collection Agency Act". [1971 ex.s. c 253 § 45.]

19.16.950 Section headings. Section headings used in this chapter shall not constitute any part of the law. [1971 ex.s. c 253 § 46.]

Chapter 19.25

REPRODUCED SOUND RECORDINGS

Sections

- 19.25.010 Definitions.
- 19.25.020 Reproduction of sound without consent of owner unlawful—Fine and penalty.
- 19.25.030 Use of recording of live performance without consent of owner unlawful—Fine and penalty.
- 19.25.040 Failure to disclose origin of certain recordings unlawful—Fine and penalty.
- 19.25.050 Contraband recordings—Disposition, forfeiture, penalty.
- 19.25.800 Chapter not applicable to broadcast by commercial or educational radio or television.
- 19.25.810 Chapter not applicable to certain nonrecorded broadcast use.
- 19.25.820 Chapter not applicable to defined public record.
- 19.25.900 Severability—1974 ex.s. c 100.
- 19.25.901 Severability—1991 c 38.

19.25.010 Definitions. As used in this chapter:

(1) "Owner" means a person who owns the sounds fixed in a master phonograph record, master disc, master tape, master film, or other recording on which sound is or can be recorded and from which the transferred recorded sounds are directly or indirectly derived.

(2) "Fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

(3) "Live performance" means a recitation, rendering, or playing of a series of images; musical, spoken or other sounds; or combination of images and sounds.

(4) "Recording" means a tangible medium on which sounds, images, or both are recorded or otherwise stored, including an original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now existing or developed later on which sounds, images, or both are or can

be recorded or otherwise stored or a copy or reproduction that duplicates in whole or in part the original.

(5) "Manufacturer" means the entity authorizing the duplication of the recording in question, but shall not include the manufacturer of the cartridge or casing itself. [1991 c 38 § 1; 1974 ex.s. c 100 § 1.]

19.25.020 Reproduction of sound without consent of owner unlawful—Fine and penalty. (1) A person commits an offense if the person:

(a) Knowingly reproduces for sale or causes to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain without the consent of the owner;

(b) Transports within this state, for commercial advantage or private financial gain, a recording with the knowledge that the sounds have been reproduced or transferred without the consent of the owner; or

(c) Advertises, offers for sale, sells, or rents, or causes the sale, resale, or rental of or possesses for one or more of these purposes any recording that the person knows has been reproduced or transferred without the consent of the owner.

(2) An offense under this section is a felony punishable by:

(a) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both if:

(i) The offense involves at least one thousand unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section;

(b) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less than one thousand unauthorized recordings during a one hundred eighty-day period.

(3) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

(4) This section does not affect the rights and remedies of a party in private litigation.

(5) This section applies only to recordings that were initially fixed before February 15, 1972. [1991 c 38 § 2; 1974 ex.s. c 100 § 2.]

19.25.030 Use of recording of live performance without consent of owner unlawful—Fine and penalty.

(1) A person commits an offense if the person:

(a) For commercial advantage or private financial gain advertises, offers for sale, sells, rents, transports, causes the sale, resale, rental, or transportation of or possesses for one or more of these purposes a recording of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner; or

(b) With the intent to sell for commercial advantage or private financial gain records or fixes or causes to be recorded or fixed on a recording a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner.

(2) An offense under this section is a felony punishable by:

(a) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one thousand unauthorized recordings embodying sound or at least one hundred unauthorized audiovisual recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section; or

(b) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less than one thousand unauthorized recordings embodying sound or more than ten but less than one hundred unauthorized audiovisual recordings during a one hundred eighty-day period.

(3) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

(4) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix those sounds.

(5) For the purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether or not the owner of the live performance consented to having the live performance recorded or fixed is a competent witness in a proceeding regarding the issue of consent.

(6) This section does not affect the rights and remedies of a party in private litigation. [1991 c 38 § 3; 1974 ex.s. c 100 § 3.]

19.25.040 Failure to disclose origin of certain recordings unlawful—Fine and penalty. (1) A person is guilty of failure to disclose the origin of a recording when, for commercial advantage or private financial gain, the person knowingly advertises, or offers for sale, resale, or rent, or sells or resells, or rents, leases, or lends, or possesses for any of these purposes, any recording which does not contain the true name and address of the manufacturer in a prominent place on the cover, jacket, or label of the recording.

(2) An offense under this section is a felony punishable by:

(a) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one hundred unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section;

(b) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than ten but less than one hundred unauthorized recordings during a one hundred eighty-day period.

(3) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-

five thousand dollars, imprisonment for not more than one year, or both.

(4) This section does not affect the rights and remedies of a party in private litigation. [1991 c 38 § 4; 1974 ex.s. c 100 § 4.]

19.25.050 Contraband recordings—Disposition, forfeiture, penalty. (1) All recordings which have been fixed transferred, or possessed without the consent of the owner in violation of RCW 19.25.020 or 19.25.030, and any recording which does not contain the true name and address of the manufacturer in violation of RCW 19.25.040 shall be deemed to be contraband. The court shall order the seizure, forfeiture, and destruction or other disposition of such contraband.

(2) The owner or the prosecuting attorney may institute proceedings to forfeit contraband recordings. The provisions of this subsection shall apply to any contraband recording, regardless of lack of knowledge or intent on the part of the possessor, retail seller, manufacturer, or distributor.

(3) Whenever a person is convicted of a violation under this chapter, the court, in its judgment of conviction, shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all contraband recordings and any and all electronic, mechanical, or other devices for manufacturing, reproducing, packaging, or assembling such recordings, which were used to facilitate any violation of this chapter. [1991 c 38 § 5.]

19.25.800 Chapter not applicable to broadcast by commercial or educational radio or television. This chapter shall not be applicable to any recording that is used or intended to be used only for broadcast by commercial or educational radio or television stations. [1991 c 38 § 6.]

19.25.810 Chapter not applicable to certain nonrecorded broadcast use. This chapter shall not be applicable to any recording that is received in the ordinary course of a broadcast by a commercial or educational radio or television station where no recording is made of the broadcast. [1991 c 38 § 7.]

19.25.820 Chapter not applicable to defined public record. This chapter shall not be applicable to any recording defined as a public record of any court, legislative body, or proceedings of any public body, whether or not a fee is charged or collected for copies. [1991 c 38 § 8.]

19.25.900 Severability—1974 ex.s. c 100. If any provision of this 1974 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 100 § 5.]

19.25.901 Severability—1991 c 38. 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 38 § 9.]

Chapter 19.27

STATE BUILDING CODE

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Underground storage tanks: RCW 90.76.020.

19.27.010 Short title. This chapter shall be known as the State Building Code Act. [1974 ex.s. c 96 § 1.]

19.27.015 Definitions. As used in this chapter:

- (1) "City" means a city or town; and
- (2) "Multifamily residential building" means common wall residential buildings that consist of four or fewer units, that do not exceed two stories in height, that are less than five thousand square feet in area, and that have a one-hour

fire-resistive occupancy separation between units. [1985 c 360 § 1.]

19.27.020 Purposes—Objectives—Standards. The purpose of this chapter is to promote the health, safety and welfare of the occupants or users of buildings and structures and the general public by the provision of building codes throughout the state. Accordingly, this chapter is designed to effectuate the following purposes, objectives, and standards:

(1) To require minimum performance standards and requirements for construction and construction materials, consistent with accepted standards of engineering, fire and life safety.

(2) To require standards and requirements in terms of performance and nationally accepted standards.

(3) To permit the use of modern technical methods, devices and improvements.

(4) To eliminate restrictive, obsolete, conflicting, duplicating and unnecessary regulations and requirements which could unnecessarily increase construction costs or retard the use of new materials and methods of installation or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction.

(5) To provide for standards and specifications for making buildings and facilities accessible to and usable by physically disabled persons.

(6) To consolidate within each authorized enforcement jurisdiction, the administration and enforcement of building codes. [1985 c 360 § 6; 1974 ex.s. c 96 § 2.]

19.27.031 State building code—Adoption—Conflicts—Opinions. Except as otherwise provided in this chapter, there shall be in effect in all counties and cities the state building code which shall consist of the following codes which are hereby adopted by reference:

(1) Uniform Building Code and Uniform Building Code Standards, published by the International Conference of Building Officials;

(2) Uniform Mechanical Code, including Chapter 22, Fuel Gas Piping, Appendix B, published by the International Conference of Building Officials;

(3) The Uniform Fire Code and Uniform Fire Code Standards, published by the International Conference of Building Officials and the Western Fire Chiefs Association: PROVIDED, That, notwithstanding any wording in this code, participants in religious ceremonies shall not be precluded from carrying hand-held candles;

(4) Except as provided in RCW 19.27.150, the Uniform Plumbing Code and Uniform Plumbing Code Standards, published by the International Association of Plumbing and Mechanical Officials: PROVIDED, That chapters 11 and 12 of such code are not adopted; and

(5) The rules and regulations adopted by the council establishing standards for making buildings and facilities accessible to and usable by the physically handicapped or elderly persons as provided in RCW 70.92.100 through 70.92.160.

In case of conflict among the codes enumerated in subsections (1), (2), (3), and (4) of this section, the first named code shall govern over those following.

The codes enumerated in this section shall be adopted by the council as provided in RCW 19.27.074.

The council may issue opinions relating to the codes at the request of a local building official. [1989 c 348 § 9; 1989 c 266 § 1; 1985 c 360 § 5.]

Reviser's note: This section was amended by 1989 c 266 § 1 and by 1989 c 348 § 9, 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 348: See note following RCW 90.54.020.

Rights not impaired—1989 c 348: See RCW 90.54.920.

19.27.035 Process for review. The building code council shall, within one year of July 23, 1989, adopt a process for the review of proposed state-wide amendments to the codes enumerated in RCW 19.27.031, and proposed or enacted local amendments to the codes enumerated in RCW 19.27.031 as amended and adopted by the state building code council. [1989 c 266 § 6.]

19.27.040 Cities and counties authorized to amend state building code—Limitations. The governing body of each county or city is authorized to amend the state building code as it applies within the jurisdiction of the county or city. The minimum performance standards of the codes and the objectives enumerated in RCW 19.27.020 shall not be diminished by any county or city amendments.

Nothing in this chapter shall authorize any modifications of the requirements of chapter 70.92 RCW. [1990 c 2 § 11; 1985 c 360 § 8; 1977 ex.s. c 14 § 12; 1974 ex.s. c 96 § 4.]

Effective dates—1990 c 2: "Sections 1 through 4, 6, 7, 9, and 10 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 March 1, 1990. Sections 11 and 12 of this act shall take effect January 1, 1991. Section 8 of this act shall take effect July 1, 1991." [1990 c 2 § 14.] For codification of this act [1990 c 2], see Codification Tables, Volume 0.

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

19.27.042 Cities and counties—Emergency exemptions for housing for indigent persons. (1) Effective January 1, 1992, the legislative authorities of cities and counties may adopt an ordinance or resolution to exempt from state building code requirements buildings whose character of use or occupancy has been changed in order to provide housing for indigent persons. The ordinance or resolution allowing the exemption shall include the following conditions:

(a) The exemption is limited to existing buildings located in this state;

(b) Any code deficiencies to be exempted pose no threat to human life, health, or safety;

(c) The building or buildings exempted under this section are owned or administered by a public agency or nonprofit corporation; and

(d) The exemption is authorized for no more than five years on any given building. An exemption for a building may be renewed if the requirements of this section are met for each renewal.

(2) By January 1, 1992, the state building code council shall adopt by rule, guidelines for cities and counties

exempting buildings under subsection (1) of this section. [1991 c 139 § 1.]

19.27.050 Enforcement. The state building code required by this chapter shall be enforced by the counties and cities. Any county or city not having a building department shall contract with another county, city, or inspection agency approved by the county or city for enforcement of the state building code within its jurisdictional boundaries. [1985 c 360 § 9; 1974 ex.s. c 96 § 5.]

19.27.060 Local building regulations superseded—Exceptions. (1) The governing bodies of counties and cities may amend the codes enumerated in RCW 19.27.031 as amended and adopted by the state building code council as they apply within their respective jurisdictions, but the amendments shall not result in a code that is less than the minimum performance standards and objectives contained in the state building code.

(a) No amendment to a code enumerated in RCW 19.27.031 as amended and adopted by the state building code council that affects single family or multifamily residential buildings shall be effective unless the amendment is approved by the building code council under RCW 19.27.074(1)(b).

(b) Any county or city amendment to a code enumerated in RCW 19.27.031 which is approved under RCW 19.27.074(1)(b) shall continue to be effective after any action is taken under RCW 19.27.074(1)(a) without necessity of reapproval under RCW 19.27.074(1)(b) unless the amendment is declared null and void by the council at the time any action is taken under RCW 19.27.074(1)(a) because such action in any way altered the impact of the amendment.

(2) Except as permitted or provided otherwise under this section, the state building code shall be applicable to all buildings and structures including those owned by the state or by any governmental subdivision or unit of local government.

(3) The governing body of each county or city may limit the application of any portion of the state building code to exclude specified classes or types of buildings or structures according to use other than single family or multifamily residential buildings: PROVIDED, That in no event shall fruits or vegetables of the tree or vine stored in buildings or warehouses constitute combustible stock for the purposes of application of the uniform fire code.

(4) The provisions of this chapter shall not apply to any building four or more stories high with a B occupancy as defined by the uniform building code, 1982 edition, and with a city fire insurance rating of 1, 2, or 3 as defined by a recognized fire rating bureau or organization.

(5) No provision of the uniform fire code concerning roadways shall be part of the state building code: PROVIDED, That this subsection shall not limit the authority of a county or city to adopt street, road, or access standards.

(6) The provisions of the state building code may be preempted by any city or county to the extent that the code provisions relating to the installation or use of sprinklers in jail cells conflict with the secure and humane operation of jails.

(7)(a) Effective one year after July 23, 1989, the governing bodies of counties and cities may adopt an ordinance or resolution to exempt from permit requirements certain construction or alteration of either group R, division 3, or group M, division 1 occupancies, or both, as defined in the uniform building code, 1988 edition, for which the total cost of fair market value of the construction or alteration does not exceed fifteen hundred dollars. The permit exemption shall not otherwise exempt the construction or alteration from the substantive standards of the codes enumerated in RCW 19.27.031, as amended and maintained by the state building code council under RCW 19.27.070.

(b) Prior to July 23, 1989, the state building code council shall adopt by rule, guidelines exempting from permit requirements certain construction and alteration activities under (a) of this subsection. [1989 c 266 § 2; 1989 c 246 § 1; 1987 c 462 § 12; 1986 c 118 § 15; 1985 c 360 § 10; 1981 2nd ex.s. c 12 § 5; 1980 c 64 § 1; 1975 1st ex.s. c 282 § 2; 1974 ex.s. c 96 § 6.]

Reviser's note: This section was amended by 1989 c 246 § 1 and by 1989 c 266 § 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).

Effective dates—1987 c 462: See note following RCW 13.04.116.

19.27.070 State building code council—Established—Membership—Travel expenses. There is hereby established a state building code council to be appointed by the governor.

(1) The state building code council shall consist of fifteen members, two of whom shall be county elected legislative body members or elected executives and two of whom shall be city elected legislative body members or mayors. One of the members shall be a local government building code enforcement official and one of the members shall be a local government fire service official. Of the remaining nine members, one member shall represent general construction, specializing in commercial and industrial building construction; one member shall represent general construction, specializing in residential and multifamily building construction; one member shall represent the architectural design profession; one member shall represent the structural engineering profession; one member shall represent the mechanical engineering profession; one member shall represent the construction building trades; one member shall represent manufacturers, installers, or suppliers of building materials and components; one member shall be a person with a physical disability and shall represent the disability community; and one member shall represent the general public. At least six of these fifteen members shall reside east of the crest of the Cascade mountains. The council shall include: Two members of the house of representatives appointed by the speaker of the house, one from each caucus; two members of the senate appointed by the president of the senate, one from each caucus; and an employee of the electrical division of the department of labor and industries, as ex officio, nonvoting members with all other privileges and rights of membership. Terms of office shall be for three years. The council shall elect a member to serve as chair of the council for one-year terms of office. Any member who is appointed by virtue of being an elected official or holding public employment shall be removed from

the council if he or she ceases being such an elected official or holding such public employment. Before making any appointments to the building code council, the governor shall seek nominations from recognized organizations which represent the entities or interests listed in this subsection. Members serving on the council on July 28, 1985, may complete their terms of office. Any vacancy shall be filled by alternating appointments from governmental and nongovernmental entities or interests until the council is constituted as required by this subsection.

(2) Members shall not be compensated but shall receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(3) The department of community development shall provide administrative and clerical assistance to the building code council. [1989 c 246 § 2; 1987 c 505 § 7; 1985 c 360 § 11; 1984 c 287 § 55; 1975-'76 2nd ex.s. c 34 § 59; 1974 ex.s. c 96 § 7.]

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.

Polling places—Standards—Revision, when: RCW 29.57.030.

19.27.074 State building code council—Duties—Public meetings—Timing of code changes. (1) The state building code council shall:

(a) Adopt and maintain the codes to which reference is made in RCW 19.27.031 in a status which is consistent with the state's interest as set forth in RCW 19.27.020. In maintaining these codes, the council shall regularly review updated versions of the codes referred to in RCW 19.27.031 and other pertinent information and shall amend the codes as deemed appropriate by the council;

(b) Approve or deny all county or city amendments to any code referred to in RCW 19.27.031 to the degree the amendments apply to single family or multifamily residential buildings;

(c) As required by the legislature, develop and adopt any codes relating to buildings; and

(d) Propose a budget for the operation of the state building code council to be submitted to the office of financial management pursuant to RCW 43.88.090.

(2) The state building code council may:

(a) Appoint technical advisory committees which may include members of the council;

(b) Employ permanent and temporary staff and contract for services; and

(c) Conduct research into matters relating to any code or codes referred to in RCW 19.27.031 or any related matter.

All meetings of the state building code council shall be open to the public under the open public meetings act, chapter 42.30 RCW. All actions of the state building code council which adopt or amend any code of state-wide applicability shall be pursuant to the administrative procedure act, chapter 34.05 RCW.

All council decisions relating to the codes enumerated in RCW 19.27.031 shall require approval by at least a majority of the members of the council.

All decisions to adopt or amend codes of state-wide application shall be made prior to December 1 of any year and shall not take effect before the end of the regular

legislative session in the next year. [1989 c 266 § 3; 1985 c 360 § 2.]

19.27.078 State building code council—Studies. (1)

The state building code council shall contract with a private entity to conduct a study and analysis of the codes referred to in RCW 19.27.031 and related regulations of state and local agencies to ascertain the amount and nature of any conflict and inconsistencies. The findings and proposed solutions resulting from this study and analysis shall be submitted to the state building code council no later than September 1, 1987. The state building code council shall consider these findings and proposed solutions when carrying out its responsibilities under RCW 19.27.074.

(2) The state building code council shall conduct a study of county and city enforcement of the requirements of the codes to which reference is made in RCW 19.27.031. In conducting the study, the council shall conduct public hearings at designated council meetings to seek input from interested individuals and organizations. The findings of the study shall be submitted in a report to the governor and the legislature no later than September 1, 1987.

(3) The study required under subsection (2) of this section shall include, but not be limited to, a review of the impact of discretionary building permit requirements imposed by local code enforcement personnel. This review shall be designed to determine the extent, if any, to which such discretionary requirements are based upon (a) the requirements of the state building code or (b) city or county amendments to the state building code.

(4) The state building code council shall conduct a study to identify and define stand-alone ordinances adopted by counties and cities that add or alter construction requirements to buildings and structures built under the codes enumerated in RCW 19.27.031, as adopted and amended by the state building code council. In conducting the study, the council shall consult with representatives from counties, cities, home builders, architects, building officials, and fire officials. To aid in data collection, local governments shall submit fire suppression ordinances, as defined by the state building code council, in effect on March 31, 1989, to the state building code council. The findings of the study shall be submitted in a written report to the house of representatives committee on housing and the senate governmental operations committee no later than November 1, 1989.

(5) The study required under subsection (4) of this section shall include, but not be limited to, a review of ordinances or regulations adopted by counties and cities that add or alter construction requirements to buildings and structures built under the codes enumerated in RCW 19.27.031. [1989 c 266 § 4; 1985 c 360 § 3.]

19.27.080 Chapters of RCW not affected. Nothing in this chapter affects the provisions of chapters 19.28, 43.22, 70.77, 70.79, 70.87, 48.48, 18.20, 18.46, 18.51, 28A.305, 70.41, 70.62, 70.75, 70.108, 71.12, 74.15, 70.94, 76.04, 90.76 RCW, or RCW 28A.195.010, or grants rights to duplicate the authorities provided under chapters 70.94 or 76.04 RCW. [1990 c 33 § 555; 1989 c 346 § 19; 1975 1st ex.s. c 282 § 1; 1974 ex.s. c 96 § 8.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Captions—Severability—Effective date—Expiration date—1989 c 346: See RCW 90.76.900 through 90.76.903.

19.27.085 Building code council account—Building permit fee. (1) There is hereby created the building code council account in the state treasury. Moneys deposited into the account shall be used by the building code council, after appropriation, to perform the purposes of the council.

(2) All moneys collected under subsection (3) of this section shall be deposited into the building code council account. Every four years the state treasurer shall report to the legislature on the balances in the account so that the legislature may adjust the charges imposed under subsection (3) of this section.

(3) There is imposed a fee of four dollars and fifty cents on each building permit issued by a county or a city, plus an additional surcharge of two dollars for each residential unit, but not including the first unit, on each building containing more than one residential unit. Quarterly each county and city shall remit moneys collected under this section to the state treasury; however, no remittance is required until a minimum of fifty dollars has accumulated pursuant to this subsection. [1989 c 256 § 1; 1985 c 360 § 4.]

19.27.090 Local jurisdictions reserved. Local land use and zoning requirements, building setbacks, side and rear-yard requirements, site development, property line requirements, requirements adopted by counties or cities pursuant to chapter 58.17 RCW, snow load requirements, wind load requirements, and local fire zones are specifically reserved to local jurisdictions notwithstanding any other provision of this chapter. [1989 c 266 § 5; 1974 ex.s. c 96 § 9.]

19.27.095 Building permit application—Consideration—Requirements. (1) A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.

(2) The requirements for a fully completed application shall be defined by local ordinance but for any construction project costing more than five thousand dollars the application shall include, at a minimum:

(a) The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor;

(b) The property owner's name, address, and phone number;

(c) The prime contractor's business name, address, phone number, current state contractor registration number; and

(d) Either:

(i) The name, address, and phone number of the office of the lender administering the interim construction financing, if any; or

(ii) The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner, if the bond is for an amount not less than fifty percent of the total amount of the construction project.

(3) The information required on the building permit application by subsection (2) (a) through (d) of this section shall be set forth on the building permit document which is issued to the owner, and on the inspection record card which shall be posted at the construction site.

(4) The information required by subsection (2) of this section and information supplied by the applicant after the permit is issued under subsection (5) of this section shall be kept on record in the office where building permits are issued and made available to any person on request. If a copy is requested, a reasonable charge may be made.

(5) If any of the information required by subsection (2)(d) of this section is not available at the time the application is submitted, the applicant shall so state and the application shall be processed forthwith and the permit issued as if the information had been supplied, and the lack of the information shall not cause the application to be deemed incomplete for the purposes of vesting under subsection (1) of this section. However, the applicant shall provide the remaining information as soon as the applicant can reasonably obtain such information.

(6) The limitations imposed by this section shall not restrict conditions imposed under chapter 43.21C RCW. [1991 c 281 § 27; 1987 c 104 § 1.]

Liberal construction—Effective date, application—1991 c 281: See RCW 60.04.900 and 60.04.902.

19.27.097 Building permit application—Evidence of adequate water supply—Applicability—Exemption. (1) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency. An application for a water right shall not be sufficient proof of an adequate water supply.

(2) Within counties not required or not choosing to plan pursuant to RCW 36.70A.040, the county and the state may mutually determine those areas in the county in which the requirements of subsection (1) of this section shall not apply. The departments of health and ecology shall coordinate on the implementation of this section. Should the county and the state fail to mutually determine those areas to be designated pursuant to this subsection, the county may petition the department of community development to mediate or, if necessary, make the determination.

(3) Buildings that do not need potable water facilities are exempt from the provisions of this section. The department of ecology, after consultation with local governments, may adopt rules to implement this section, which may

recognize differences between high-growth and low-growth counties. [1991 sp.s. c 32 § 28; 1990 1st ex.s. c 17 § 63.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

19.27.100 Cities, towns, counties may impose fees different from state building code. Nothing in this chapter shall prohibit a city, town, or county of the state from imposing fees different from those set forth in the state building code. [1975 1st ex.s. c 8 § 1.]

19.27.110 Uniform fire code—Administration and enforcement by counties, other political subdivisions and municipal corporations—Fees. Each county government shall administer and enforce the uniform fire code in the unincorporated areas of the county: PROVIDED, That any political subdivision or municipal corporation providing fire protection pursuant to RCW 14.08.120 shall, at its sole option, be responsible for administration and enforcement of the uniform fire code on its facility. Any fire protection district or political subdivision may, pursuant to chapter 39.34 RCW, the interlocal cooperation act, assume all or a portion of the administering responsibility and coordinate and cooperate with the county government in the enforcement of the uniform fire code.

It is not the intent of RCW 19.27.110 and 19.27.111 to preclude or limit the authority of any city, town, county, fire protection district, state agency, or political subdivision from engaging in those fire prevention activities with which they are charged.

It is not the intent of the legislature by adopting the state building code or RCW 19.27.110 and 19.27.111 to grant counties any more power to suppress or extinguish fires than counties currently possess under the Constitution or other statutes.

Each county is authorized to impose fees sufficient to pay the cost of inspections, administration, and enforcement pursuant to RCW 19.27.110 and 19.27.111. [1975-'76 2nd ex.s. c 37 § 1.]

19.27.111 RCW 19.27.080 not affected. Nothing in RCW 19.27.110 shall affect the provisions of RCW 19.27.080. [1975-'76 2nd ex.s. c 37 § 2.]

19.27.113 Fire extinguishers for certain school buildings. The building code council shall adopt rules by December 1, 1991, requiring that all buildings classed as E-1 occupancies, as defined in the state building code, except portable school classrooms, constructed after July 28, 1991, be provided with an automatic fire-extinguishing system. Rules adopted by the council shall consider applicable nationally recognized fire and building code standards and local conditions.

By December 15, 1991, the council shall transmit to the superintendent of public instruction, the state board of education, and the fire protection policy board copies of the rules as adopted. The superintendent of public instruction, the state board of education, and the fire protection policy board shall respond to the council by February 15, 1992, with any recommended changes to the rule. If changes are

recommended the council shall immediately consider those changes to the rules through its rule-making procedures. The rules shall be effective on July 1, 1992. [1991 c 170 § 1.]

Schools—Standards for fire prevention and safety: RCW 48.48.045.

19.27.120 Buildings or structures having special historical or architectural significance—Exception. (1) Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, strengthening, or continued use of a building or structure may be made without conformance to all of the requirements of the codes adopted under RCW 19.27.031, when authorized by the appropriate building official under the rules adopted under subsection (2) of this section, provided:

(a) The building or structure: (i) Has been designated by official action of a legislative body as having special historical or architectural significance, or (ii) is an unreinforced masonry building or structure on the state or the national register of historic places, or is potentially eligible for placement on such registers; and

(b) The restored building or structure will be less hazardous, based on life and fire risk, than the existing building.

(2) The state building code council shall adopt rules, where appropriate, to provide alternative methods to those otherwise required under this chapter for repairs, alterations, and additions necessary for preservation, restoration, rehabilitation, strengthening, or continued use of buildings and structures identified under subsection (1) of this section. [1985 c 360 § 13; 1975-'76 2nd ex.s. c 11 § 1.]

19.27.140 Copy of permit to county assessor. A copy of any permit obtained under the state building code for construction or alteration work of a total cost or fair market value in excess of five hundred dollars, shall be transmitted by the issuing authority to the county assessor of the county where the property on which the construction or alteration work is located. The building permit shall contain the county assessor's parcel number. [1989 c 246 § 5.]

19.27.150 Report to department of community development. Every month a copy of the United States department of commerce, bureau of the census' "report of building or zoning permits issued and local public construction" or equivalent report shall be transmitted by the governing bodies of counties and cities to the department of community development. [1989 c 246 § 6.]

19.27.160 Counties with populations of from five thousand to less than ten thousand—Ordinance reenactment. Any county with a population of from five thousand to less than ten thousand that had in effect on July 1, 1985, an ordinance or resolution authorizing and regulating the construction of owner-built residences may reenact such an ordinance or resolution if the ordinance or resolution is reenacted before September 30, 1989. After reenactment, the county shall transmit a copy of the ordinance or resolution to the state building code council. [1991 c 363 § 16; 1989 c 246 § 7.]

~~Purpose—Captions not law—1991 c 363:~~ See notes following RCW 2.32.180.

19.27.170 Water conservation performance standards—Testing and identifying fixtures that meet standards—Marking and labeling fixtures. (1) The state building code council shall adopt rules under chapter 34.05 RCW that implement and incorporate the water conservation performance standards in subsections (4) and (5) of this section. These standards shall apply to all new construction and all remodeling involving replacement of plumbing fixtures in all residential, hotel, motel, school, industrial, commercial use, or other occupancies determined by the council to use significant quantities of water.

(2) The legislature recognizes that a phasing-in approach to these new standards is appropriate. Therefore, standards in subsection (4) of this section shall take effect on July 1, 1990. The standards in subsection (5) of this section shall take effect July 1, 1993.

(3) No individual, public or private corporation, firm, political subdivision, government agency, or other legal entity may, for purposes of use in this state, distribute, sell, offer for sale, import, install, or approve for installation any plumbing fixtures unless the fixtures meet the standards as provided for in this section.

(4) Standards for water use efficiency effective July 1, 1990.

(a) Standards for waterclosets. The guideline for maximum water use allowed in gallons per flush (gpf) for any of the following waterclosets is the following:

- Tank-type toilets 3.5 gpf.
- Flushometer-valve toilets 3.5 gpf.
- Flushometer-tank toilets 3.5 gpf.
- Electromechanical hydraulic toilets 3.5 gpf.

(b) Standard for urinals. The guideline for maximum water use allowed for any urinal is 3.0 gallons per flush.

(c) Standard for showerheads. The guideline for maximum water use allowed for any showerhead is 3.0 gallons per minute.

(d) Standard for faucets. The guideline for maximum water use allowed in gallons per minute (gpm) for any of the following faucets and replacement aerators is the following:

- Bathroom faucets 3.0 gpm.
- Lavatory faucets 3.0 gpm.
- Kitchen faucets 3.0 gpm.
- Replacement aerators 3.0 gpm.

(e) Except where designed and installed for use by the physically handicapped, lavatory faucets located in restrooms intended for use by the general public must be equipped with a metering valve designed to close by spring or water pressure when left unattended (self-closing).

(f) No urinal or watercloset that operates on a continuous flow or continuous flush basis shall be permitted.

(5) Standards for water use efficiency effective July 1, 1993.

(a) Standards for waterclosets. The guideline for maximum water use allowed in gallons per flush (gpf) for any of the following waterclosets is the following:

- Tank-type toilets 1.6 gpf.
- Flushometer-tank toilets 1.6 gpf.
- Electromechanical hydraulic toilets 1.6 gpf.

(b) Standards for urinals. The guideline for maximum water use allowed for any urinal is 1.0 gallons per flush.

(c) Standards for showerheads. The guideline for maximum water use allowed for any showerhead is 2.5 gallons per minute.

(d) Standards for faucets. The guideline for maximum water use allowed in gallons per minute for any of the following faucets and replacement aerators is the following:

Bathroom faucets	2.5 gpm.
Lavatory faucets	2.5 gpm.
Kitchen faucets	2.5 gpm.
Replacement aerators	2.5 gpm.

(e) Except where designed and installed for use by the physically handicapped, lavatory faucets located in restrooms intended for use by the general public must be equipped with a metering valve designed to close by water pressure when unattended (self-closing).

(f) No urinal or watercloset that operates on a continuous flow or continuous basis shall be permitted.

(6) The building code council shall establish methods and procedures for testing and identifying fixtures that meet the standards established in subsection (5) of this section. The council shall use the testing standards designated as American national standards, written under American national standards institute procedures or other widely recognized national testing standards. The council shall either review test results from independent testing laboratories that are submitted by manufacturers of plumbing fixtures or accept data submitted to and evaluated by the international association of plumbing and mechanical officials. The council shall publish and widely distribute a current list of fixtures that meet the standards established in subsection (5) of this section.

(7) The building code council shall adopt rules for marking and labeling fixtures meeting the standards established in subsection (5) of this section.

(8) This section shall not apply to fixtures installed before July 28, 1991, that are removed and relocated to another room or area of the same building after July 28, 1991, nor shall it apply to fixtures, as determined by the council, that in order to perform a specialized function, cannot meet the standards specified in this section.

(9) The water conservation performance standards shall supersede all local government codes. After July 1, 1990, cities, towns, and counties shall not amend the code revisions and standards established under subsection (4) or (5) of this section. [1991 c 347 § 16; 1989 c 348 § 8.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Severability—1989 c 348: See note following RCW 90.54.020.

Rights not impaired—1989 c 348: See RCW 90.54.920.

19.27.175 Recycled materials—Study code and adopt changes. The state building code council, in consultation with the department of ecology and local governments, shall conduct a study of the state building code, and adopt changes as necessary to encourage greater use of recycled building materials from construction and building demolition debris, mixed waste paper, waste paint, waste plastics, and other waste materials. [1991 c 297 § 15.]

Captions not law—1991 c 297: See RCW 43.19A.900.

19.27.180 Residential buildings moved into a city or county—Applicability of building codes and electrical installation requirements. (1) Residential buildings or structures moved into or within a county or city are not required to comply with all of the requirements of the codes enumerated in chapters 19.27 and 19.27A RCW, as amended and maintained by the state building code council and chapter 19.28 RCW, if the original occupancy classification of the building or structure is not changed as a result of the move.

(2) This section shall not apply to residential structures or buildings that are substantially remodeled or rehabilitated, nor to any work performed on a new or existing foundation.

(3) For the purposes of determining whether a moved building or structure has been substantially remodeled or rebuilt, any cost relating to preparation, construction, or renovation of the foundation shall not be considered. [1992 c 79 § 1; 1989 c 313 § 2.]

Finding—1989 c 313: "The legislature finds that moved buildings or structures can provide affordable housing for many persons of lower income; that many of the moved structures or buildings were legally built to the construction standards of their day; and that requiring the moved building or structure to meet all new construction codes may limit their use as an affordable housing option for persons of lower income.

The legislature further finds that application of the new construction code standards to moved structures and buildings present unique difficulties and that it is the intent of the legislature that any moved structure or building that meets the codes at the time it was constructed does not need to comply with any updated state building code unless the structure is substantially remodeled or rebuilt." [1989 c 313 § 1.]

19.27.190 Indoor air quality—Interim and final requirements for maintenance. (1)(a) Not later than January 1, 1991, the state building code council, in consultation with the state energy office, shall establish interim requirements for the maintenance of indoor air quality in newly constructed residential buildings. In establishing the interim requirements, the council shall take into consideration differences in heating fuels and heating system types. These requirements shall be in effect July 1, 1991, through June 30, 1993.

(b) The interim requirements for new electrically space heated residential buildings shall include ventilation standards which provide for mechanical ventilation in areas of the residence where water vapor or cooking odors are produced. The ventilation shall be exhausted to the outside of the structure. The ventilation standards shall further provide for the capacity to supply outside air to each bedroom and the main living area through dedicated supply air inlet locations in walls, or in an equivalent manner. At least one exhaust fan in the home shall be controlled by a dehumidistat or clock timer to ensure that sufficient whole house ventilation is regularly provided as needed.

(c)(i) For new single family residences with electric space heating systems, zero lot line homes, each unit in a duplex, and each attached housing unit in a planned unit development, the ventilation standards shall include fifty cubic feet per minute of effective installed ventilation capacity in each bathroom and one hundred cubic feet per minute of effective installed ventilation capacity in each kitchen.

(ii) For other new residential units with electric space heating systems the ventilation standards may be satisfied by

the installation of two exhaust fans with a combined effective installed ventilation capacity of two hundred cubic feet per minute.

(iii) Effective installed ventilation capacity means the capability to deliver the specified ventilation rates for the actual design of the ventilation system. Natural ventilation and infiltration shall not be considered acceptable substitutes for mechanical ventilation.

(d) For new residential buildings that are space heated with other than electric space heating systems, the interim standards shall be designed to result in indoor air quality equivalent to that achieved with the interim ventilation standards for electric space heated homes.

(e) The interim requirements for all newly constructed residential buildings shall include standards for indoor air quality pollutant source control, including the following requirements: All structural panel components of the residence shall comply with appropriate standards for the emission of formaldehyde; the back-drafting of combustion by-products from combustion appliances shall be minimized through the use of dampers, vents, outside combustion air sources, or other appropriate technologies; and, in areas of the state where monitored data indicate action is necessary to inhibit indoor radon gas concentrations from exceeding appropriate health standards, entry of radon gas into homes shall be minimized through appropriate foundation construction measures.

(2) No later than January 1, 1993, the state building code council, in consultation with the state energy office, shall establish final requirements for the maintenance of indoor air quality in newly constructed residences to be in effect beginning July 1, 1993. For new electrically space heated residential buildings, these requirements shall maintain indoor air quality equivalent to that provided by the mechanical ventilation and indoor air pollutant source control requirements included in the February 7, 1989, Bonneville power administration record of decision for the environmental impact statement on new energy efficient homes programs (DOE/EIS-0127F) built with electric space heating. In residential units other than single family, zero lot line, duplexes, and attached housing units in planned unit developments, ventilation requirements may be satisfied by the installation of two exhaust fans with a combined effective installed ventilation capacity of two hundred cubic feet per minute. For new residential buildings that are space heated with other than electric space heating systems, the standards shall be designed to result in indoor air quality equivalent to that achieved with the ventilation and source control standards for electric space heated homes. In establishing the final requirements, the council shall take into consideration differences in heating fuels and heating system types. [1990 c 2 § 7.]

Effective dates—1990 c 2: See note following RCW 19.27.040.

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

19.27.192 Radon measurement device—Liability limited—Expiration of section. (1) Beginning July 1, 1992, at the time of final inspection of a new single-family residence or each ground floor unit in a multifamily residential building, the building inspector shall deliver to each

residence and each ground floor unit a three-month etched track radon measurement device that is listed on a current federal environmental protection agency radon measurement proficiency list. Postage to the testing facility and the cost of testing and notification to the homeowner shall be included with the device. The device, the instructions included with the device, and the instructions provided by the state building code council pursuant to subsection (2) of this section shall be placed in a conspicuous location. The device shall be provided to the building inspector by the local government.

(2) Not later than June 15, 1992, in consultation with the department of health and the Washington state association of building code officials, the state building code council shall:

(a) Develop instructions for use by the owner or occupant on the proper means of installation, maintenance and removal of the radon measurement device provided for in subsection (1) of this section and distribute the instructions to all affected county and city building departments; and

(b) Distribute to all affected county and city building departments the current federal environmental protection agency radon measurement proficiency list and known sources for the devices.

(3) The owner of a new single-family residence or of a multifamily residential building shall be responsible for returning the radon measurement device left by a building inspector pursuant to this section to the appropriate testing laboratory in accordance with the instructions left with the device by the building inspector.

(4) The building inspector's approval of the final inspection on the final inspection record card shall be prima facie evidence that the building inspector left the radon measurement device and instructions as required by this section.

(5) The building inspector responsible for the final inspection, the building inspector's employer, and the county or city within which a single-family residence or multifamily residential building is located shall not be liable for injuries caused by:

(a) The failure of the occupant or owner of the residence or building to properly install, monitor, or send a radon measurement device to the testing laboratory; or

(b) Radon entering into any single-family residence or multifamily residential building.

(6) This section shall expire June 30, 1995. [1992 c 132 § 1.]

19.27.470 Recyclable materials and solid waste—Multifamily residences. By July 1, 1992, the state building code council shall adopt rules to ensure that new multifamily residences have adequate and conveniently located space to store and dispose of recyclable materials and solid waste. [1991 c 298 § 5.]

Finding—1991 c 298: See note following RCW 70.95.030.

19.27.480 Recyclable materials and solid waste—Commercial facilities. By July 1, 1992, the state building code council shall adopt rules to ensure that new commercial facilities have adequate and conveniently located space to

store and dispose of recyclable materials and solid waste. [1991 c 298 § 6.]

Finding—1991 c 298: See note following RCW 70.95.030.

Chapter 19.27A

ENERGY-RELATED BUILDING STANDARDS

Sections

- 19.27A.015 State energy code—Minimum and maximum energy code.
- 19.27A.020 State energy code—Adoption by state building code council—Standards—Preemption of local residential energy codes—Study of enforcement of energy codes—Purchase of energy under the Pacific Northwest electric power planning and conservation act—Expiration of subsection.
- 19.27A.025 Nonresidential buildings—Minimum standards—Amendments.
- 19.27A.035 Payments by electric utilities to owners of residential buildings—Recovery of expenses—Effect of Pacific Northwest electric power planning and conservation act—Expiration of subsections.
- 19.27A.045 Maintaining energy code for residential structures.
- 19.27A.050 State building code advisory council—Construction—Inclusion of successor agency.
- 19.27A.055 Energy code training account.
- 19.27A.060 Hot water heaters—Temperature regulation.
- 19.27A.065 Study of state building code relating to energy by legislative committees on energy and utilities.
- 19.27A.070 Intent.
- 19.27A.080 Definitions.
- 19.27A.090 Portable oil-fueled heaters—Sales and use—Approval required.
- 19.27A.100 Portable oil-fueled heaters—Requirements for approval.
- 19.27A.110 Portable oil-fueled heaters—Jurisdiction over approval—Sale and use governed exclusively.
- 19.27A.120 Violations—Penalty.

State building code: Chapter 19.27 RCW.

19.27A.015 State energy code—Minimum and maximum energy code. Except as provided in RCW 19.27A.020(7), the Washington state energy code for residential buildings shall be the maximum and minimum energy code for residential buildings in each city, town, and county and shall be enforced by each city, town, and county no later than July 1, 1991. The Washington state energy code for nonresidential buildings shall be the minimum energy code for nonresidential buildings enforced by each city, town, and county. [1990 c 2 § 2.]

Findings—1990 c 2: "The legislature finds that using energy efficiently in housing is one of the lowest cost ways to meet consumer demand for energy; that using energy efficiently helps protect citizens of the state from negative impacts due to changes in energy supply and cost; that using energy efficiently will help mitigate negative environmental impacts of energy use and resource development; and that using energy efficiently will help stretch our present energy resources into the future. The legislature further finds that the electricity surplus in the Northwest is dwindling as the population increases and the economy expands, and that the region will eventually need new sources of electricity generation.

It is declared policy of the state of Washington that energy be used efficiently. It is the intent of this act to establish residential building standards that bring about the common use of energy efficient building methods, and to assure that such methods remain economically feasible and affordable to purchasers of newly constructed housing." [1990 c 2 § 1.] For codification of "this act" [1990 c 2], see Codification Tables, Volume 0.

Severability—1990 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 2 § 13.]

Effective dates—1990 c 2: See note following RCW 19.27.040.

19.27A.020 State energy code—Adoption by state building code council—Standards—Preemption of local residential energy codes—Study of enforcement of energy codes—Purchase of energy under the Pacific Northwest electric power planning and conservation act—Expiration of subsection. (1) No later than January 1, 1991, the state building code council shall promulgate rules to be known as the Washington state energy code as part of the state building code.

(2) The council shall follow the legislature's standards set forth in this section to promulgate rules to be known as the Washington state energy code. The Washington state energy code shall be designed to require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework. The Washington state energy code shall be designed to allow space heating equipment efficiency to offset or substitute for building envelope thermal performance.

(3) The Washington state energy code shall take into account regional climatic conditions. Climate zone 1 shall include all counties not included in climate zone 2. Climate zone 2 includes: Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, and Whitman counties.

(4) The Washington state energy code for residential buildings shall require:

(a) New residential buildings that are space heated with electric resistance heating systems to achieve energy use equivalent to that used in typical buildings constructed with:

(i) Ceilings insulated to a level of R-38. The code shall contain an exception which permits single rafter or joist vaulted ceilings insulated to a level of R-30 (R value includes insulation only);

(ii) In zone 1, walls insulated to a level of R-19 (R value includes insulation only), or constructed with two by four members, R-13 insulation batts, R-3.2 insulated sheathing, and other normal assembly components; in zone 2 walls insulated to a level of R-24 (R value includes insulation only), or constructed with two by six members, R-22 insulation batts, R-3.2 insulated sheathing, and other normal construction assembly components; for the purpose of determining equivalent thermal performance, the wall U-value shall be 0.058 in zone 1 and 0.044 in zone 2;

(iii) Below grade walls, insulated on the interior side, to a level of R-19 or, if insulated on the exterior side, to a level of R-10 in zone 1 and R-12 in zone 2 (R value includes insulation only);

(iv) Floors over unheated spaces insulated to a level of R-30 (R value includes insulation only);

(v) Slab on grade floors insulated to a level of R-10 at the perimeter;

(vi) Double glazed windows with values not more than U-0.4;

(vii) In zone 1 the glazing area may be up to twenty-one percent of floor area and in zone 2 the glazing area may be up to seventeen percent of floor area where consideration of the thermal resistance values for other building components and solar heat gains through the glazing result in thermal performance equivalent to that achieved with thermal

resistance values for other components determined in accordance with the equivalent thermal performance criteria of (a) of this subsection and glazing area equal to fifteen percent of the floor area. Throughout the state for the purposes of determining equivalent thermal performance, the maximum glazing area shall be fifteen percent of the floor area; and

(viii) Exterior doors insulated to a level of R-5; or an exterior wood door with a thermal resistance value of less than R-5 and values for other components determined in accordance with the equivalent thermal performance criteria of (a) of this subsection.

(b) New residential buildings which are space-heated with all other forms of space heating to achieve energy use equivalent to that used in typical buildings constructed with:

(i) Ceilings insulated to a level of R-30 in zone 1 and R-38 in zone 2 the code shall contain an exception which permits single rafter or joist vaulted ceilings insulated to a level of R-30 (R value includes insulation only);

(ii) Walls insulated to a level of R-19 (R value includes insulation only), or constructed with two by four members, R-13 insulation batts, R-3.2 insulated sheathing, and other normal assembly components;

(iii) Below grade walls, insulated on the interior side, to a level of R-19 or, if insulated on the exterior side, to a level of R-10 in zone 1 and R-12 in zone 2 (R value includes insulation only);

(iv) Floors over unheated spaces insulated to a level of R-19 in zone 1 and R-30 in zone 2 (R value includes insulation only);

(v) Slab on grade floors insulated to a level of R-10 at the perimeter;

(vi) Heat pumps with a minimum heating season performance factor (HSPF) of 6.8 or with all other energy sources with a minimum annual fuel utilization efficiency (AFUE) of seventy-eight percent;

(vii) Double glazed windows with values not more than U-0.65 in zone 1 and U-0.60 in zone 2. The state building code council, in consultation with the state energy office, shall review these U-values, and, if economically justified for consumers, shall amend the Washington state energy code to improve the U-values by December 1, 1993. The amendment shall not take effect until July 1, 1994; and

(viii) In zone 1, the maximum glazing area shall be twenty-one percent of the floor area. In zone 2 the maximum glazing area shall be seventeen percent of the floor area. Throughout the state for the purposes of determining equivalent thermal performance, the maximum glazing area shall be fifteen percent of the floor area.

(c) For log built homes with space heat other than electric resistance, the building code council shall establish equivalent thermal performance standards consistent with the standards and maximum glazing areas of (b) of this subsection.

(d) The state building code council may approve an energy code for pilot projects of residential construction that use innovative energy efficiency technologies intended to result in savings that are greater than those realized in the levels specified in this section.

(5) U-values for glazing shall be determined using the area weighted average of all glazing in the building. U-values for glazing are the tested values for thermal transmit-

tance due to conduction resulting from either the American architectural manufacturers' association (AAMA) 1503.1 test procedure or the American society for testing materials (ASTM) C236 or C976 test procedures. Testing shall be conducted under established winter horizontal heat flow test conditions using the fifteen miles per hour wind speed perpendicular to the exterior surface of the glazing as specified under AAMA 1503.1 and product sample sizes specified under AAMA 1503.1. The AAMA 1503.1 testing must be conducted by an AAMA certified testing laboratory. The ASTM C236 or C976 testing U-values include any tested values resulting from a future revised AAMA 1503.1 test procedure. Sealed insulation glass, where used, shall conform to ASTM E-774-81 level A or better. The state building code council shall maintain a list of the tested U-values for glazing products available in the state.

(6) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 1986 edition, as amended.

(7)(a) Except as provided in (b) of this subsection, the Washington state energy code for residential structures shall preempt the residential energy code of each city, town, and county in the state of Washington.

(b) The state energy code for residential structures does not preempt a city, town, or county's energy code for residential structures which exceeds the requirements of the state energy code and which was adopted by the city, town, or county prior to March 1, 1990. Such cities, towns, or counties may not subsequently amend their energy code for residential structures to exceed the requirements adopted prior to March 1, 1990.

(8) The state building code council shall consult with the state energy office as provided in RCW 34.05.310 prior to publication of proposed rules. The state energy office shall review the proposed rules for consistency with the guidelines adopted in subsection (4) of this section. The director of the state energy office shall recommend to the state building code council any changes necessary to conform the proposed rules to the requirements of this section.

(9) The state building code council shall conduct a study of county and city enforcement of energy codes in the state. In conducting the study, the council shall conduct public hearings at designated council meetings to seek input from interested individuals and organizations, and to the extent possible, hold these meetings in conjunction with adopting rules under this section. The study shall include recommendations as to how code enforcement may be improved. The findings of the study shall be submitted in a report to the legislature no later than January 1, 1991.

(10) If any electric utility providing electric service to customers in the state of Washington purchases at least one percent of its firm energy load from a federal agency, pursuant to section 5.(b)(1) of the Pacific Northwest electric power planning and conservation act (P.L. 96-501), and such utility is unable to obtain from that agency at least fifty percent of the funds for payments required by RCW 19.27A.035, the amendments to this section by chapter 2, Laws of 1990 shall be null and void, and the 1986 state energy code shall be in effect, except that a city, town, or county may enforce a local energy code with more stringent energy requirements adopted prior to March 1, 1990. This

subsection shall expire June 30, 1995. [1990 c 2 § 3; 1985 c 144 § 2; 1979 ex.s. c 76 § 3. Formerly RCW 19.27.075.]

Effective dates—1990 c 2: See note following RCW 19.27.040.

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

Severability—1985 c 144: "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 144 § 7.]

19.27A.025 Nonresidential buildings—Minimum standards—Amendments. (1) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 1986 edition, as amended. The state building code council may, by rule adopted pursuant to chapter 34.05 RCW, amend that code's requirements for new nonresidential buildings provided that:

(a) Such amendments increase the energy efficiency of typical newly constructed nonresidential buildings; and

(b) Any new measures, standards, or requirements adopted must be technically feasible, commercially available, and cost-effective to building owners and tenants.

(2) In considering amendments to the state energy code for nonresidential buildings, the state building code council shall establish and consult with a technical advisory committee including representatives of appropriate state agencies, local governments, general contractors, building owners and managers, design professionals, utilities, and other interested and affected parties.

(3) Decisions to amend the Washington state energy code for new nonresidential buildings shall be made prior to December 15th of any year and shall not take effect before the end of the regular legislative session in the next year. Any disputed provisions within an amendment presented to the legislature shall be approved by the legislature before going into effect. A disputed provision is one which was adopted by the state building code council with less than a two-thirds majority vote. Substantial amendments to the code shall be adopted no more frequently than every three years. [1991 c 122 § 3.]

Findings—Severability—1991 c 122: See notes following RCW 80.04.250.

19.27A.035 Payments by electric utilities to owners of residential buildings—Recovery of expenses—Effect of Pacific Northwest electric power planning and conservation act—Expiration of subsections. (1) Electric utilities shall make payments to the owner at the time of construction of a newly constructed residential building with electric resistance space heat built in compliance with the requirements of the Washington state energy code adopted pursuant to RCW 19.27A.020 or a residential energy code in effect pursuant to RCW 19.27A.020(7). All or a portion of the funds for payments may be accepted from federal agencies or other sources. Payments are required for residential buildings on which construction has begun on or after July 1, 1991, and prior to July 1, 1995. Payments in an amount equal to a fixed sum of at least nine hundred dollars per single family residence are required for such buildings so constructed which are single family residences having two thousand square feet or less of finished floor area. Payments in an amount equal to a fixed sum of at least three hundred

ninety dollars per multifamily residential unit, are required for such buildings so constructed which are multifamily residential units. For purposes of this section, a zero lot line home and each unit in a duplex and each attached housing unit in a planned unit development shall each be considered a single family residence.

(2) Electric utilities which provide electrical service in jurisdictions in which the local government has adopted an energy code not preempted by RCW 19.27A.020(7)(b) shall make payments as provided in subsection (1) of this section for residential buildings on which construction has begun on or after March 1, 1990, and prior to July 1, 1991.

(3) Nothing in this section shall prohibit an electric utility from providing incentives in excess of the payments required by this section or from providing additional incentives for energy efficiency measures in excess of those required under RCW 19.27A.020.

(4) This section is null and void if any electric utility providing electric service to its customers in the state of Washington purchases at least one percent of its firm energy load from a federal agency, pursuant to section 5.(b)(1) of the Pacific Northwest electric power planning and conservation act (P.L. 96-501), and if such electric utility is unable to obtain from the agency at least fifty percent of the funds to make the payments required by this section. This subsection shall expire June 30, 1995.

(5) The utilities and transportation commission shall provide an appropriate regulatory mechanism which allows a utility regulated by the commission to recover expenses incurred by the utility in making payments under this section.

(6) Subsections (1) through (3) of this section shall expire July 1, 1996. [1990 c 2 § 4.]

Effective dates—1990 c 2: See note following RCW 19.27.040.

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

19.27A.045 Maintaining energy code for residential structures. The state building code council shall maintain the state energy code for residential structures in a status which is consistent with the state's interest as set forth in section 1, chapter 2, Laws of 1990. In maintaining the Washington state energy code for residential structures, beginning in 1996 the council shall review the Washington state energy code every three years. After January 1, 1996, by rule adopted pursuant to chapter 34.05 RCW, the council may amend any provisions of the Washington state energy code to increase the energy efficiency of newly constructed residential buildings. Decisions to amend the Washington state energy code for residential structures shall be made prior to December 1 of any year and shall not take effect before the end of the regular legislative session in the next year. [1990 c 2 § 5.]

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

19.27A.050 State building code advisory council—Construction—Inclusion of successor agency. As used in this chapter, references to the state building code advisory council shall be construed to include any successor agency. [1985 c 144 § 5.]

Reviser's note: (1) The "state building code advisory council" was redesignated as the "state building code council" by 1985 c 360 § 11. See RCW 19.27.070.

(2) 1985 c 144 directed that this section be added to chapter 19.27 RCW. Since the energy-related building standards in chapter 19.27 RCW were recodified by 1985 c 360 to create a new chapter, chapter 19.27A RCW, it appears more appropriate to codify this section in chapter 19.27A RCW.

Severability—1985 c 144: See note following RCW 19.27A.020.

19.27A.055 Energy code training account. There is hereby created in the state treasury the energy code training account. The Washington state energy office shall administer expenditures from this account for the purpose of providing training for the inspection and training for the enforcement by local governments of the Washington state energy code in effect pursuant to RCW 19.27A.020. The revenues into this account shall derive from assessments by the state energy office on all investor-owned and publicly owned gas and electric utilities in the state of Washington in proportion to the number of housing starts served by a utility in 1989, based on an amount of one hundred fifty dollars per energy code inspection or enforcement official that is within the service area of the utility. Assessments may be made between January 1, 1991, and July 1, 1991. Federal funds available to qualifying utilities for code inspection retraining shall be used before obtaining funds from utilities under this section. Additional funds may be deposited in the account from federal agencies or other sources. All or a portion of the funds for the cost of local government inspection and enforcement may be accepted from federal agencies or other sources. [1990 c 2 § 6.]

Effective dates—1990 c 2: See note following RCW 19.27.040.

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

19.27A.060 Hot water heaters—Temperature regulation. (1) "Hot water heater" means the primary source of hot water for a residence.

(2) The thermostat of a new water heater offered for sale or lease in this state for use in a residential unit, shall be preset by the manufacturer no higher than one hundred twenty degrees Fahrenheit (or forty-nine degrees Celsius) or the minimum setting on any water heater which cannot be set as low as that temperature. Water heating systems may utilize higher reservoir temperature if mixing valves are set or systems are designed to restrict the temperature of water to one hundred twenty degrees Fahrenheit.

(3) Upon occupancy of a new tenant in a residential unit leased or rented in this state, if hot water is supplied from an accessible, individual water heater, the water heater shall be set by the owner or agent at a temperature not higher than one hundred twenty degrees Fahrenheit (forty-nine degrees Celsius) or the minimum setting on any water heater which cannot be set as low as that temperature. Water heating systems may utilize higher reservoir temperature if mixing valves are set or systems are designed to restrict the temperature of water to one hundred twenty degrees Fahrenheit.

(4) Nothing in this section shall prohibit an owner of an owner-occupied residential unit or resident of a leased or rented residential unit from readjusting the temperature setting after occupancy. Any readjustment of the temperature setting by the resident relieves the owner or agent of an

individual residential unit and the manufacturer of water heaters from liability for damages attributed to the readjustment by the resident.

(5) The utility providing energy for any water heater under this section shall at least annually, include in its billing a statement:

(a) Recommending that water heaters be set no higher than one hundred twenty degrees Fahrenheit or the minimum setting on a water heater which cannot be set as low as that temperature to prevent severe burns and reduce excessive energy consumption; and

(b) That the thermostat of an individual water heater furnished in a residential unit leased or rented in this state to new tenants shall be set no higher than one hundred twenty degrees Fahrenheit or the minimum setting on a water heater which cannot be set as low as that temperature pursuant to chapter 19.27 RCW.

(6) The manufacturer of a water heater under this section which is offered for sale or installed after July 24, 1983, shall have a tag attached to the thermostat access plate or immediately adjacent to exposed thermostats. The tag shall state that the thermostat settings above the preset temperature may cause severe burns and consume excessive energy.

(7) Nothing in this section requires or permits any inspections other than those otherwise required or permitted by law.

(8) This section does not apply to multiple-unit residences supplied by central water heater systems. [1985 c 119 § 1; 1983 c 178 § 2. Formerly RCW 19.27.130.]

Findings—1983 c 178: "The legislature recognizes that unnecessarily hot tap or bath water creates an extreme risk of severe burns, especially among the elderly, children, and retarded persons. Annually, numerous persons suffer severe scald burns, some resulting in death, from tap or bath water which is inordinately hot. Excessive tap and bath water temperatures in residential usage is unnecessary for sanitary purposes. Regulation of the setting of water temperatures upon installation can virtually eliminate incidences of dangerous scalding. Further, the legislature finds that projected future shortages of energy in our state could be reduced or prevented by the efficient utilization of existing energy resources. Reducing the temperature settings on thermostats to one hundred twenty degrees Fahrenheit (or forty-nine degrees Celsius) would save energy that is now unnecessarily consumed, reduce homeowners' average utility costs, and promote home safety without any loss of comfort or health." [1983 c 178 § 1.]

19.27A.065 Study of state building code relating to energy by legislative committees on energy and utilities. See RCW 44.39.038.

19.27A.070 Intent. It is hereby declared that modern, efficient, safety-tested portable oil-fueled heaters may be offered for sale, sold, and used in this state. However, fire hazards and other dangers to the health, safety, and welfare of the inhabitants of this state may exist absent legislation to provide reasonable assurances that portable oil-fueled heaters offered for sale to, sold to, and used by the inhabitants of this state are modern, efficient, and safety-tested. It is the intent of the legislature to set forth standards for the sale and use of approved portable oil-fueled heaters. [1983 c 134 § 1. Formerly RCW 19.27.410.]

19.27A.080 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 19.27A.080 through 19.27A.120.

(1) "Portable oil-fueled heater" means any nonflue-connected, self-contained, self-supporting, oil-fueled, heating appliance equipped with an integral reservoir, designed to be carried from one location to another.

(2) "Oil" means any liquid fuel with a flash point of greater than one hundred degrees Fahrenheit, including but not limited to kerosene.

(3) "Listed" means any portable oil-fueled heater which has been evaluated in accordance with the Underwriters Laboratories, Inc. standard for portable oil-fueled heaters or an equivalent standard and with respect to reasonably foreseeable hazards to life and property by a nationally recognized testing or inspection agency, such as Underwriters Laboratories, Inc., and which has been authorized as being reasonably safe for its specific purpose and shown in a list published by such agency and/or bears the mark, name, and/or symbol of such agency as indication that it has been so authorized. Such evaluation shall include but not be limited to evaluation of the requirements hereinafter set forth.

(4) "Approved" means any listed portable oil-fueled heater which is deemed approved if it satisfies the requirements set forth herein or adopted under RCW 19.27A.080 through 19.27A.120 and if the supplier certifies to the authority having jurisdiction over the sale and use of the heater that it is listed and in compliance with RCW 19.27A.080 through 19.27A.120.

(5) "Structure" means any building or completed construction of any kind included in state building code groups M, R-1, R-3, B-4 and B-2 occupancies, except sleeping rooms and bathrooms: PROVIDED, HOWEVER, That in B-2 occupancies, approved portable oil-fueled heaters shall only be used under permit of the fire chief.

(6) "Supplier" means any party offering to sell to retailers or to the general public approved portable oil-fueled heaters. [1985 c 360 § 15; 1983 c 134 § 2. Formerly RCW 19.27.420.]

19.27A.090 Portable oil-fueled heaters—Sales and use—Approval required. Notwithstanding any other section of the state building code, chapter 19.27 RCW, or any other code adopted by reference in chapter 19.27 RCW, approved portable oil-fueled heaters may be offered for sale, sold, and used as a supplemental heat source in structures in the state. Portable oil-fueled heaters which are not approved may not be offered for sale, sold, or used in this state. Any approved portable oil-fueled heater may be offered for sale, sold, and used in locations other than structures unless specifically prohibited by laws of this state. [1983 c 134 § 3. Formerly RCW 19.27.430.]

19.27A.100 Portable oil-fueled heaters—Requirements for approval. Approved portable oil-fueled heaters must adhere to the following requirements:

(1) Labeling must be affixed to the heater to caution and inform the user concerning:

(a) The necessity for an adequate source of ventilation when the heater is operating;

(b) The use of suitable fuel;

(c) The proper manner of refueling;

(d) The proper placement and handling of the heater when in operation; and

(e) The proper procedures for lighting, flame regulation, and extinguishing the heater.

(2) Packaging must include instructions that will inform the purchaser of proper maintenance and operation.

(3) Approved portable oil-fueled heaters must be constructed with a low center of gravity and minimum tipping angle of thirty-three degrees from the vertical with an empty reservoir.

(4) Approved portable oil-fueled heaters must have an automatic safety shut-off device or inherent design feature which eliminates fire hazards in the event of tipover and must otherwise conform with the standards set forth in National Fire Protection Association (NFPA) No. 31.

(5) Approved portable oil-fueled heaters must not produce carbon monoxide at rates creating a hazard when operated as intended and instructed. [1983 c 134 § 4. Formerly RCW 19.27.440.]

19.27A.110 Portable oil-fueled heaters—Jurisdiction over approval—Sale and use governed exclusively. The director of community development, through the director of fire protection, is the only authority having jurisdiction over the approval of portable oil-fueled heaters. The sale and use of portable oil-fueled heaters is governed exclusively by RCW 19.27A.080 through 19.27A.120: PROVIDED, That cities and counties may adopt local standards as provided in RCW 19.27.040. [1986 c 266 § 85; 1985 c 360 § 16; 1983 c 134 § 5. Formerly RCW 19.27.450.]

Severability—1986 c 266: See note following RCW 38.52.005.

19.27A.120 Violations—Penalty. The penalty for failure to comply with RCW 19.27A.080 through 19.27A.120 is a misdemeanor. [1985 c 360 § 17; 1983 c 134 § 6. Formerly RCW 19.27.460.]

Chapter 19.28

ELECTRICIANS AND ELECTRICAL INSTALLATIONS

Sections

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- 19.28.900 Severability—1935 c 169.
- 19.28.910 Effective date—1963 c 207.
- 19.28.911 Severability—1983 c 206.

Electrical construction: Chapter 19.29 RCW.

State building code: Chapter 19.27 RCW.

19.28.005 Definitions. The definitions in this section apply throughout this chapter.

(1) "Administrator" means a person designated by an electrical contractor to supervise electrical work and electricians in accordance with the rules adopted under this chapter.

(2) "Board" means the electrical board under RCW 19.28.065.

(3) "Chapter" means chapter 19.28 RCW.

(4) "Department" means the department of labor and industries.

(5) "Director" means the director of the department or the director's designee.

(6) "Electrical construction trade" includes but is not limited to installing or maintaining electrical wires and equipment that are used for light, heat, or power and installing and maintaining remote control, signaling, power limited, or communication circuits or systems.

(7) "Electrical contractor" means a person, firm, partnership, corporation, or other entity that offers to undertake, undertakes, submits a bid for, or does the work of installing or maintaining wires or equipment that convey electrical current.

(8) "Equipment" means any equipment or apparatus that directly uses, conducts, or is operated by electricity but does not mean plug-in household appliances.

(9) "Journeyman electrician" means a person who has been issued a journeyman electrician certificate of competency by the department.

(10) "Specialty electrician" means a person who has been issued a specialty electrician certificate of competency by the department. [1988 c 81 § 1; 1986 c 156 § 1; 1983 c 206 § 1.]

19.28.010 Electrical wiring requirements—General—Exceptions. (1) All wires and equipment, and installations thereof, that convey electric current and installations of equipment to be operated by electric current, in, on, or about buildings or structures, except for telephone, telegraph, radio, and television wires and equipment, and television antenna installations, signal strength amplifiers, and coaxial installations pertaining thereto shall be in strict conformity with this chapter, the statutes of the state of Washington, and the rules issued by the department, and shall be in conformity with approved methods of construction for safety to life and property. All wires and equipment that fall within section 90.2(b)(5) of the National Electrical Code, 1981 edition, are exempt from the requirements of this chapter. The regulations and articles in the National Electrical Code, as approved by the American Standards Association, and in the national electrical safety code, as approved by the American Standards Association, and other installation and safety regulations approved by the American Standards Association, as modified or supplemented by rules issued by the department in furtherance of safety to life and property under authority hereby granted, shall be prima facie evidence of the approved methods of construction. All materials, devices, appliances, and equipment used in such installations shall be of a type that conforms to applicable standards or be indicated as acceptable by the established standards of the Underwriters' Laboratories, Inc. or other electrical product testing laboratories which are accredited by the department.

(2) Residential buildings or structures moved into or within a county, city, or town are not required to comply with all of the requirements of this chapter, if the original occupancy classification of the building or structure is not changed as a result of the move. This subsection shall not apply to residential buildings or structures that are substantially remodeled or rehabilitated.

(3) This chapter shall not limit the authority or power of any city or town to enact and enforce under authority given by law, any ordinance, rule, or regulation requiring an equal, higher, or better standard of construction and an equal, higher, or better standard of materials, devices, appliances, and equipment than that required by this chapter. A city or town shall require that its electrical inspectors meet the qualifications provided for state electrical inspectors in accordance with RCW 19.28.070. In a city or town having an equal, higher, or better standard the installations, materials, devices, appliances, and equipment shall be in accordance with the ordinance, rule, or regulation of the city or town. Electrical equipment associated with spas, hot tubs, swimming pools, and hydromassage bathtubs shall not be offered for sale or exchange unless the electrical equipment is certified as being in compliance with the applicable

product safety standard by bearing the certification mark of an approved electrical products testing laboratory.

(4) Nothing in this chapter may be construed as permitting the connection of any conductor of any electric circuit with a pipe that is connected with or designed to be connected with a waterworks piping system, without the consent of the person or persons legally responsible for the operation and maintenance of the waterworks piping system. [1992 c 79 § 2. Prior: 1986 c 263 § 1; 1986 c 156 § 2; 1983 c 206 § 2; 1965 ex.s. c 117 § 1; 1963 c 207 § 1; 1935 c 169 § 1; RRS § 8307-1. Formerly RCW 19.28.010 through 19.28.050.]

19.28.015 Disputes regarding local regulations—Arbitration—Appeal. Disputes arising under *RCW 19.28.010(2) regarding whether the city or town's electrical rules, regulations, or ordinances are equal to the rules adopted by the department shall be resolved by arbitration. The department shall appoint two members of the board to serve on the arbitration panel, and the city or town shall appoint two persons to serve on the arbitration panel. These four persons shall choose a fifth person to serve. If the four persons cannot agree on a fifth person, the presiding judge of the superior court of the county in which the city or town is located shall choose a fifth person. A decision of the arbitration panel may be appealed to the superior court of the county in which the city or town is located within thirty days after the date the panel issues its final decision. [1988 c 81 § 2; 1983 c 206 § 3.]

*Reviser's note: RCW 19.28.010 was reenacted and amended by 1992 c 79 § 2, changing subsection (2) to subsection (3).

19.28.060 Rules, regulations, and standards. Prior to January 1st of each year, the director shall obtain an authentic copy of the national electrical code as approved by the American Standards Association, and an authentic copy of any applicable regulations and standards of the Underwriters' Laboratories, Inc., or other electrical product testing laboratory which is accredited by the department prescribing rules, regulations, and standards for electrical materials, devices, appliances, and equipment, including any modifications and changes that have been made during the previous year in the rules, regulations, and standards. The department, after consulting with the board and receiving the board's recommendations, shall adopt reasonable rules in furtherance of safety to life and property. All rules shall be kept on file by the department. Compliance with the rules shall be prima facie evidence of compliance with this chapter. The department upon request shall deliver to all persons, firms, partnerships, corporations, or other entities licensed under this chapter a copy of the rules. [1988 c 81 § 3; 1986 c 156 § 3; 1983 c 206 § 4; 1965 ex.s. c 117 § 2; 1935 c 169 § 10; RRS § 8307-10.]

19.28.065 Electrical board. There is hereby created an electrical board, consisting of ten members to be appointed by the governor with the advice of the director of labor and industries as herein provided. It shall be the purpose and function of the board to advise the director on all matters pertaining to the enforcement of this chapter including, but not limited to standards of electrical installation,

minimum inspection procedures, and the adoption of rules and regulations pertaining to the electrical inspection division: PROVIDED, HOWEVER, That no rules or regulations shall be amended or repealed until the electrical board has first had an opportunity to consider any proposed amendments or repeals and had an opportunity to make recommendations to the director relative thereto. The members of the electrical board shall be selected and appointed as follows: One member shall be an employee or officer of a corporation or public agency generating or distributing electric power; three members shall be licensed electrical contractors: PROVIDED, That one of these members may be a representative of a trade association in the electrical industry; one member shall be an employee, or officer, or representative of a corporation or firm engaged in the business of manufacturing or distributing electrical materials, equipment, or devices; one member shall be a person with knowledge of the electrical industry, not related to the electrical industry, to represent the public; three members shall be certified electricians; and one member shall be a licensed professional electrical engineer qualified to do business in the state of Washington. The regular term of each member shall be four years: PROVIDED, HOWEVER, The original board shall be appointed on June 9, 1988, for the following terms: The first term of the member representing a corporation or public agency generating or distributing electric power shall serve four years; two members representing licensed electrical contractors shall serve three years; the member representing a manufacturer or distributor of electrical equipment or devices shall serve three years; the member representing the public and one member representing licensed electrical contractors shall serve two years; the three members selected as certified electricians shall serve for terms of one, two, and three years, respectively; the member selected as the licensed professional electrical engineer shall serve for one year. In appointing the original board, the governor shall give due consideration to the value of continuity in membership from predecessor boards. Thereafter, the governor shall appoint or reappoint board members for terms of four years and to fill vacancies created by the completion of the terms of the original members. The governor shall also fill vacancies caused by death, resignation, or otherwise for the unexpired term of such members by appointing their successors from the same business classification. The same procedure shall be followed in making such subsequent appointments as is provided for the original appointments. The board, at this first meeting shall elect one of its members to serve as chairman. Any person acting as the chief electrical inspector shall serve as secretary of the board during his tenure as chief state inspector. Meetings of the board shall be held at least quarterly in accordance with a schedule established by the board. Each member of the board shall receive compensation 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 which shall be paid out of the electrical license fund, upon vouchers approved by the director of labor and industries. [1988 c 81 § 4; 1984 c 287 § 56; 1975-'76 2nd ex.s. c 34 § 60; 1969 ex.s. c 71 § 1; 1963 c 207 § 5.]

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.

19.28.070 Enforcement—State electrical inspectors—Qualifications—Salaries and expenses. The director of labor and industries of the state of Washington and the officials of all incorporated cities and towns where electrical inspections are required by local ordinances shall have power and it shall be their duty to enforce the provisions of this chapter in their respective jurisdictions. The director of labor and industries shall have power to appoint an electrical inspector, and such assistant inspectors as he shall deem necessary to assist him in the performance of his duties. All electrical inspectors appointed by the director of labor and industries shall have not less than four years experience as journeyman electricians in installing and maintaining electrical equipment, or two years electrical training in a college of electrical engineering of recognized standing and four years continuous practical electrical experience in installation work, or four years of electrical training in a college of electrical engineering of recognized standing and two years continuous practical electrical experience in electrical installation work. Such state inspectors shall be paid such salary as the director of labor and industries shall determine, together with their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. The expenses of the director of labor and industries and the salaries and expenses of state inspectors incurred in carrying out the provisions of this chapter shall be paid entirely out of the electrical license fund, upon vouchers approved by the director of labor and industries. [1986 c 156 § 4; 1975-'76 2nd ex.s. c 34 § 61; 1967 c 88 § 1; 1935 c 169 § 3; RRS § 8307-3. Formerly RCW 19.28.070 through 19.28.110.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

19.28.120 License required—General or specialty licenses—Fees—Application—Bond—Cash deposit in lieu of bond. (1) It is unlawful for any person, firm, partnership, corporation, or other entity to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to convey electric current, or installing or maintaining equipment to be operated by electric current as it pertains to the electrical industry, without having an unrevoked, unsuspended, and unexpired electrical contractor license, issued by the department in accordance with this chapter. All electrical contractor licenses expire twenty-four calendar months following the day of their issue. The department may issue an electrical contractors license for a period of less than twenty-four months only for the purpose of equalizing the number of electrical contractor licenses which expire each month. Application for an electrical contractor license shall be made in writing to the department, accompanied by the required fee. The application shall state:

(a) The name and address of the applicant; in case of firms or partnerships, the names of the individuals composing the firm or partnership; in case of corporations, the names of the managing officials thereof;

(b) The location of the place of business of the applicant and the name under which the business is conducted;

(c) Employer social security number;

(d) As applicable: (i) The industrial insurance account number covering employees domiciled in Washington; and (ii) evidence of workers' compensation coverage in the applicant's state of domicile for the applicant's employees working in Washington who are not domiciled in Washington;

(e) Employment security department number;

(f) State excise tax registration number;

(g) Unified business identifier (UBI) account number may be substituted for the information required by (d), (e), and (f) of this subsection; and

(h) Whether a general or specialty electrical contractor license is sought and, if the latter, the type of specialty. Electrical contractor specialties include, but are not limited to: Residential, domestic appliances, pump and irrigation, limited energy system, signs, nonresidential maintenance, and a combination specialty. A general electrical contractor license shall grant to the holder the right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electric current, and installing or maintaining equipment, or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current, in the state of Washington. A specialty electrical contractor license shall grant to the holder a limited right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electrical current, and installing or maintaining equipment; or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current in the state of Washington as expressly allowed by the license.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(d) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3) The application for a contractor license shall be accompanied by a bond in the sum of four thousand dollars with the state of Washington named as obligee in the bond, with good and sufficient surety, to be approved by the department. The bond shall at all times be kept in full force and effect, and any cancellation or revocation thereof, or withdrawal of the surety therefrom, suspends the license issued to the principal until a new bond has been filed and approved as provided in this section. Upon approval of a bond, the department shall on the next business day deposit the fee accompanying the application in the electrical license fund and shall file the bond in the office. The department shall upon request furnish to any person, firm, partnership, corporation, or other entity a certified copy of the bond upon the payment of a fee that the department shall set by rule. The fee shall cover but not exceed the cost of furnishing the certified copy. The bond shall be conditioned that in any installation or maintenance of wires or equipment to convey electrical current, and equipment to be operated by electrical current, the principal will comply with the provisions of this chapter and with any electrical ordinance, building code, or regulation of a city or town adopted pursuant to *RCW 19.28.010(2) that is in effect at the time of entering into a contract. The bond shall be conditioned further that the principal will pay for all labor, including employee benefits,

and material furnished or used upon the work, taxes and contributions to the state of Washington, and all damages that may be sustained by any person, firm, partnership, corporation, or other entity due to a failure of the principal to make the installation or maintenance in accordance with this chapter or any applicable ordinance, building code, or regulation of a city or town adopted pursuant to *RCW 19.28.010(2). In lieu of the surety bond required by this section the license applicant may file with the department a cash deposit or other negotiable security acceptable to the department. If the license applicant has filed a cash deposit, the department shall deposit the funds in a special trust savings account in a commercial bank, mutual savings bank, or savings and loan association and shall pay annually to the depositor the interest derived from the account.

(4) The department shall issue general or specialty electrical contractor licenses to applicants meeting all of the requirements of this chapter. The provisions of this chapter relating to the licensing of any person, firm, partnership, corporation, or other entity including the requirement of a bond with the state of Washington named as obligee therein and the collection of a fee therefor, are exclusive, and no political subdivision of the state of Washington may require or issue any licenses or bonds or charge any fee for the same or a similar purpose. No person, firm, partnership, corporation, or other entity holding more than one specialty contractor license under this chapter may be required to pay an annual fee for more than one such license or to post more than one four thousand dollar bond, equivalent cash deposit, or other negotiable security.

(5) To obtain a general or specialty electrical contractor license the applicant must designate an individual who currently possesses an administrator's certificate as a general electrical contractor administrator or as a specialty electrical contractor administrator in the specialty for which application has been made. Administrator certificate specialties include but are not limited to: Residential, domestic, appliance, pump and irrigation, limited energy system, signs, nonresidential maintenance, and combination specialty. To obtain an administrator's certificate an individual must pass an examination as set forth in RCW 19.28.123 unless the applicant was a licensed electrical contractor at any time during 1974. Applicants who were electrical contractors licensed by the state of Washington at any time during 1974 are entitled to receive a general electrical contractor administrator's certificate without examination if the applicants apply prior to January 1, 1984. The board of electrical examiners shall certify to the department the names of all persons who are entitled to either a general or specialty electrical contractor administrator's certificate. [1992 c 217 § 2; 1986 c 156 § 5; 1983 c 206 § 5; 1975 1st ex.s. c 195 § 1; 1975 1st ex.s. c 92 § 1; 1974 ex.s. c 188 § 1; 1971 ex.s. c 129 § 1; 1969 ex.s. c 71 § 2; 1969 c 30 § 1. Prior: 1967 ex.s. c 15 § 1; 1967 c 88 § 2; 1965 ex.s. c 117 § 3; 1963 c 207 § 2; 1959 c 325 § 1; 1935 c 169 § 4; RRS § 8307-4; prior: 1919 c 204 §§ 1, 2. Formerly RCW 19.28.120 through 19.28.170.]

*Reviser's note: Adoption of building codes, etc. by cities and towns is authorized by RCW 19.28.010(3), as amended by 1992 c 79 § 2.

Severability—1975 1st ex.s. c 195; 1975 1st ex.s. c 92: "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 195 § 4; 1975 1st ex.s. c 92 § 4.]

Effective date—1974 ex.s. c 188: "The effective date of this 1974 amendatory act is July 1, 1974." [1974 ex.s. c 188 § 6.]

Severability—1974 ex.s. c 188: "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 188 § 5.]

The above two annotations apply to 1974 ex.s. c 188. For codification of that act, see Codification Tables, Volume 0.

Effective date—1971 ex.s. c 129: "The effective date of this 1971 amendatory act shall be December 1, 1971." [1971 ex.s. c 129 § 3.]

19.28.123 Examinations. It shall be the purpose and function of the board to establish, in addition to a general electrical contractors' license, such classifications of specialty electrical contractors' licenses as it deems appropriate with regard to individual sections pertaining to state adopted codes in chapter 19.28 RCW. In addition, it shall be the purpose and function of the board to establish and administer written examinations for general electrical contractors' qualifying certificates and the various specialty electrical contractors' qualifying certificates. Examinations shall be designed to reasonably insure that general and specialty electrical contractor's qualifying certificate holders are competent to engage in and supervise the work covered by this statute and their respective licenses. The examinations shall include questions from the following categories to assure proper safety and protection for the general public: (1) Safety, (2) state electrical code, and (3) electrical theory. The department with the consent of the board shall be permitted to enter into a contract with a professional testing agency to develop, administer, and score these examinations. It shall be the further purpose and function of this board to advise the director as to the need of additional electrical inspectors and compliance officers to be utilized by the director on either a full-time or part-time employment basis and to carry out the duties enumerated in RCW 19.28.510 through 19.28.620 as well as generally advise the department on all matters relative to RCW 19.28.510 through 19.28.620. [1988 c 81 § 5; 1986 c 156 § 6; 1984 c 287 § 57; 1977 ex.s. c 79 § 1; 1975-'76 2nd ex.s. c 34 § 62; 1975 1st ex.s. c 195 § 2; 1975 1st ex.s. c 92 § 2; 1974 ex.s. c 188 § 2.]

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.

Severability—1975 1st ex.s. c 195; 1975 1st ex.s. c 92: See note following RCW 19.28.120.

Effective date—Severability—1974 ex.s. c 188: See notes following RCW 19.28.120.

19.28.125 Electrical contractors—Designee of firm to take administrator's examination—Certificate duration, renewal, nontransferable—Administrator's duties. (1) Each applicant for an electrical contractor's license, other than an individual, shall designate a supervisory employee or member of the firm to take the required administrator's examination. Effective July 1, 1987, a supervisory employee designated as the administrator shall be a full-time supervisory employee. This person shall be designated as administrator under the license. No person may qualify as administrator for more than one contractor. If the relationship of the

administrator with the electrical contractor is terminated, the contractor's license is void within ninety days unless another administrator is qualified by the board. However, if the administrator dies, the contractor's license is void within one hundred eighty days unless another administrator is qualified by the board. A certificate issued under this section is valid for two years from the nearest birthdate of the administrator, unless revoked or suspended, and further is nontransferable. The certificate may be renewed for a two-year period without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date. If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. An individual holding more than one administrator's certificate under this chapter shall not be required to pay annual fees for more than one certificate. A person may take the administrator's test as many times as necessary without limit.

(2) The administrator shall:

(a) Be a member of the firm or a supervisory employee and shall be available during working hours to carry out the duties of an administrator under this section;

(b) Ensure that all electrical work complies with the electrical installation laws and rules of the state;

(c) Ensure that the proper electrical safety procedures are used;

(d) Ensure that all electrical labels, permits, and licenses required to perform electrical work are used;

(e) See that corrective notices issued by an inspecting authority are complied with; and

(f) Notify the department in writing within ten days if the administrator terminates the relationship with the electrical contractor.

(3) The department shall not by rule change the administrator's duties under subsection (2) of this section. [1988 c 81 § 6; 1986 c 156 § 7; 1983 c 206 § 6; 1975 1st ex.s. c 195 § 3; 1975 1st ex.s. c 92 § 3; 1974 ex.s. c 188 § 4.]

Severability—1975 1st ex.s. c 195; 1975 1st ex.s. c 92: See note following RCW 19.28.120.

Effective date—Severability—1974 ex.s. c 188: See notes following RCW 19.28.120.

19.28.180 Licensee's bond—Action on—Priorities—Cash deposit, payment from. Any person, firm, or corporation sustaining any damage or injury by reason of the principal's breach of the conditions of the bond required under RCW 19.28.120 may bring an action against the surety named therein, joining in the action the principal named in the bond; the action shall be brought in the superior court of any county in which the principal on the bond resides or transacts business, or in the county in which the work was performed as a result of which the breach is alleged to have occurred; the action shall be maintained and prosecuted as other civil actions. Claims or actions against the surety on the bond shall be paid in full in the following order of priority: (1) Labor, including employee benefits, (2) materials and equipment used upon such work, (3) taxes and contributions due to the state, (4) damages sustained by any person, firm or corporation due to the failure of the principal to make the installation in accordance with the provisions of chapter 19.28 RCW, or any ordinance, building code, or

regulation applicable thereto: PROVIDED, That the total liability of the surety on any bond shall not exceed the sum of four thousand dollars and the surety on the bond shall not be liable for monetary penalties; and any action shall be brought within one year from the completion of the work in the performance of which the breach is alleged to have occurred. The surety shall mail a conformed copy of the judgment against the bond to the department within seven days.

In the event that a cash or securities deposit has been made in lieu of the surety bond, and in the event of a judgment being entered against such depositor and deposit, the director shall upon receipt of a certified copy of a final judgment, pay said judgment from such deposit. [1986 c 156 § 8; 1969 ex.s. c 71 § 3; 1965 ex.s. c 117 § 4; 1935 c 169 § 5; RRS § 8307-5. Prior: 1919 c 204 § 4.]

19.28.190 Actions—Local permits—Proof of licensure. No person, firm or corporation engaging in, conducting or carrying on the business of installing wires or equipment to convey electric current, or installing apparatus to be operated by said current, shall be entitled to commence or maintain any suit or action in any court of this state pertaining to any such work or business, without alleging and proving that such person, firm or corporation held, at the time of commencing and performing such work, an unexpired, unrevoked and unsuspended license issued under the provisions of this chapter; and no city or town requiring by ordinance or regulation a permit for inspection or installation of such electrical work, shall issue such permit to any person, firm or corporation not holding such license. [1986 c 156 § 9; 1935 c 169 § 6; RRS § 8307-6.]

19.28.200 Licensing—Exemptions. (1) No license under the provision of this chapter shall be required from any utility or any person, firm, partnership, corporation, or other entity employed by a utility because of work in connection with the installation, repair, or maintenance of lines, wires, apparatus, or equipment owned by or under the control of a utility and used for transmission or distribution of electricity from the source of supply to the point of contact at the premises and/or property to be supplied and service connections and meters and other apparatus or appliances used in the measurement of the consumption of electricity by the customer.

(2) No license under the provisions of this chapter shall be required from any utility because of work in connection with the installation, repair, or maintenance of the following:

(a) Lines, wires, apparatus, or equipment used in the lighting of streets, alleys, ways, or public areas or squares;

(b) Lines, wires, apparatus, or equipment owned by a commercial, industrial, or public institution customer that are an integral part of a transmission or distribution system, either overhead or underground, providing service to such customer and located outside the building or structure: PROVIDED, That a utility does not initiate the sale of services to perform such work;

(c) Lines and wires, together with ancillary apparatus, and equipment, owned by a customer that is an independent power producer who has entered into an agreement for the sale of electricity to a utility and that are used in transmitting

electricity from an electrical generating unit located on premises used by such customer to the point of interconnection with the utility's system.

(3) Any person, firm, partnership, corporation, or other entity licensed under RCW 19.28.120 may enter into a contract with a utility for the performance of work under subsection (2) of this section.

(4) No license under the provisions of this chapter shall be required from any person, firm, partnership, corporation, or other entity because of the work of installing and repairing ignition or lighting systems for motor vehicles.

(5) No license under the provisions of this chapter shall be required from any person, firm, partnership, corporation, or other entity because of work in connection with the installation, repair, or maintenance of wires and equipment, and installations thereof, exempted in RCW 19.28.010. [1992 c 240 § 1; 1980 c 30 § 15; 1935 c 169 § 11; RRS § 8307-11.]

19.28.210 Inspections—Notice to repair and change—Disconnection—Entry—Concealment—Connection to utility—Permits, fees—Limitation. (1) The director shall cause an inspector to inspect all wiring, appliances, devices, and equipment to which this chapter applies. Nothing contained in this chapter may be construed as providing any authority for any subdivision of government to adopt by ordinance any provisions contained or provided for in this chapter except those pertaining to cities and towns pursuant to *RCW 19.28.010(2).

(2) Upon request, electrical inspections will be made by the department within forty-eight hours, excluding holidays, Saturdays, and Sundays. If, upon written request, the electrical inspector fails to make an electrical inspection within twenty-four hours, the serving utility may immediately connect electrical power to the installation if the necessary electrical work permit is displayed: PROVIDED, That if the request is for an electrical inspection that relates to a mobile home installation, the applicant shall provide proof of a current building permit issued by the local government agency authorized to issue such permits as a prerequisite for inspection approval or connection of electrical power to the mobile home.

(3) Whenever the installation of any wiring, device, appliance, or equipment is not in accordance with this chapter, or is in such a condition as to be dangerous to life or property, the person, firm, partnership, corporation, or other entity owning, using, or operating it shall be notified by the department and shall within fifteen days, or such further reasonable time as may upon request be granted, make such repairs and changes as are required to remove the danger to life or property and to make it conform to this chapter. The director, through the inspector, is hereby empowered to disconnect or order the discontinuance of electrical service to conductors or equipment that are found to be in a dangerous or unsafe condition and not in accordance with this chapter. Upon making a disconnection the inspector shall attach a notice stating that the conductors have been found dangerous to life or property and are not in accordance with this chapter. It is unlawful for any person to reconnect such defective conductors or equipment without the approval of the department, and until the conductors and

equipment have been placed in a safe and secure condition, and in a condition that complies with this chapter.

(4) The director, through the electrical inspector, has the right during reasonable hours to enter into and upon any building or premises in the discharge of his or her official duties for the purpose of making any inspection or test of the installation of new construction or altered electrical wiring, electrical devices, equipment, or material contained in or on the buildings or premises. No electrical wiring or equipment subject to this chapter may be concealed until it has been approved by the inspector making the inspection.

(5) Persons, firms, partnerships, corporations, or other entities making electrical installations shall obtain inspection and approval from an authorized representative of the department as required by this chapter before requesting the electric utility to connect to the installations. Electric utilities may connect to the installations if approval is clearly indicated by certification of the electrical work permit required to be affixed to each installation or by equivalent means, except that increased or relocated services may be reconnected immediately at the discretion of the utility before approval if an electrical work permit is displayed. The permits shall be furnished upon payment of the fee to the department.

(6) The director, subject to the recommendations and approval of the board, shall set by rule a schedule of license and electrical work permit fees that will cover the costs of administration and enforcement of this chapter. The rules shall be adopted in accordance with the administrative procedure act, chapter 34.05 RCW. No fee may be charged for plug-in mobile homes, recreational vehicles, or portable appliances.

(7) Nothing in this chapter shall authorize the inspection of any wiring, appliance, device, or equipment, or installations thereof, by any utility or by any person, firm, partnership, corporation, or other entity employed by a utility in connection with the installation, repair, or maintenance of lines, wires, apparatus, or equipment owned by or under the control of the utility. All work covered by the national electric code not exempted by the 1981 edition of the national electric code 90-2(B)(5) shall be inspected by the department. [1992 c 240 § 2; 1989 c 344 § 1; 1988 c 81 § 7; 1983 c 206 § 7; 1971 ex.s. c 129 § 2; 1969 ex.s. c 71 § 4; 1967 c 88 § 3; 1965 ex.s. c 117 § 5; 1963 c 207 § 3; 1959 c 325 § 2; 1935 c 169 § 8; RRS § 8307-8. Formerly RCW 19.28.210 through 19.28.240.]

***Reviser's note:** RCW 19.28.010 was reenacted and amended by 1992 c 79 § 2, and the previous subsection (2) was renumbered as subsection (3).

Effective date—1971 ex.s. c 129: See note following RCW 19.28.120.

Adoption of certain regulations proscribed: RCW 36.32.125.

RCW 19.28.210 inapplicable in certain cities, towns, electricity supply agency service areas, and rights of way of state highways: RCW 19.28.360.

19.28.250 Inspection reports. If any inspection made under this chapter requires any correction or change in the work inspected, a written report of the inspection shall be made by the inspector, in which report the corrections or changes required shall be plainly stated. A copy of the report shall be furnished to the person, firm, partnership,

corporation, or other entity doing the installation work, and a copy shall be filed with the department. [1983 c 206 § 8; 1935 c 169 § 9; RRS § 8307-9.]

19.28.260 Nonconforming installations—Disputes—Reference to board. It is unlawful for any person, firm, partnership, corporation, or other entity to install or maintain any electrical wiring, appliances, devices, or equipment not in accordance with this chapter. In cases where the interpretation and application of the installation or maintenance standards prescribed in this chapter is in dispute or in doubt, the board shall, upon application of any interested person, firm, partnership, corporation, or other entity, determine the methods of installation or maintenance or the materials, devices, appliances, or equipment to be used in the particular case submitted for its decision. [1988 c 81 § 8; 1983 c 206 § 9; 1935 c 169 § 2; RRS § 8307-2.]

19.28.300 Board—Request for ruling—Fee—Costs. Any person, firm, partnership, corporation, or other entity desiring a decision of the board pursuant to RCW 19.28.260 shall, in writing, notify the director of such desire and shall accompany the notice with a certified check payable to the department in the sum of two hundred dollars. The notice shall specify the ruling or interpretation desired and the contention of the person, firm, partnership, corporation, or other entity as to the proper interpretation or application on the question on which a decision is desired. If the board determines that the contention of the applicant for a decision was proper, the two hundred dollars shall be returned to the applicant; otherwise it shall be used in paying the expenses and per diem of the members of the board in connection with the matter. Any portion of the two hundred dollars not used in paying the per diem and expenses of the board in the case shall be paid into the electrical license fund. [1988 c 81 § 9; 1983 c 206 § 10; 1935 c 169 § 13; RRS § 8307-13.]

19.28.310 Revocation or suspension of license—Grounds—Appeal to board—Fee—Costs. The department has the power, in case of continued noncompliance with the provisions of this chapter, to revoke or suspend for such a period as it determines, any electrical contractor license or electrical contractor administrator certificate issued under this chapter. The department shall notify the holder of the license or certificate of the revocation or suspension by certified mail. A revocation or suspension is effective fifteen days after the holder receives the notice. Any revocation or suspension is subject to review by an appeal to the board. The filing of an appeal stays the effect of a revocation or suspension until the board makes its decision. The appeal shall be filed within fifteen days after notice of the revocation or suspension is given by certified mail sent to the address of the holder of the license or certificate as shown on the application for the license or certificate, and shall be effected by filing a written notice of appeal with the department, accompanied by a certified check for two hundred dollars, which shall be returned to the holder of the license or certificate if the decision of the department is not sustained by the board. The hearing shall be conducted in accordance with chapter 34.05 RCW. If the board sustains the decision of the department, the two hundred dollars shall

be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any balance remaining after payment of per diem and expenses shall be paid into the electrical license fund. [1988 c 81 § 10; 1986 c 156 § 10; 1983 c 206 § 11; 1935 c 169 § 7; RRS § 8307-7. Formerly RCW 19.28.310 and 19.28.320.]

19.28.330 Electrical license fund. All sums received from licenses, permit fees, or other sources, herein shall be paid to the state treasurer and placed in a special fund designated as the "electrical license fund," and by him paid out upon vouchers duly and regularly issued therefor and approved by the director of labor and industries or the director's designee following determination by the board that the sums are necessary to accomplish the intent of chapter 19.28 RCW. The treasurer shall keep an accurate record of payments into, or receipts of, said fund, and of all disbursements therefrom. [1988 c 81 § 11; 1979 ex.s. c 67 § 1; 1935 c 169 § 18; RRS § 8307-18.]

Severability—1979 ex.s. c 67: "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 67 § 22.]

19.28.340 Liability for injury or damage. Nothing contained in this chapter will be construed to relieve from or lessen the responsibility or liability of any person for injury or damage to person or property caused by or resulting from any defect of any nature in any electrical work performed by said person or in any electrical equipment owned, controlled, installed, operated or used by him; nor shall the state of Washington, or any officer, agent, or employee thereof incur or be held as assuming any liability by reason or in consequence of any permission, certificate of inspection, inspection or approval authorized herein, or issued or given as herein provided, or by reason of consequence of any things done or acts performed pursuant to any provision of this chapter. [1935 c 169 § 16; RRS § 8307-16.]

19.28.350 Violations of RCW 19.28.010 through 19.28.360—Schedule of penalties—Appeal. Any person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through 19.28.360 shall be assessed a penalty of not less than fifty dollars or more than ten thousand dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.010 through 19.28.360. The department shall notify the person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through 19.28.360 of the amount of the penalty and of the specific violation by certified mail, return receipt requested, sent to the last known address of the assessed party. Any penalty is subject to review by an appeal to the board. The filing of an appeal stays the effect of the penalty until the board makes its decision. The appeal shall be filed within fifteen days after notice of the penalty is given to the assessed party by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. The notice shall be accompanied by a certified check for two hundred

dollars, which shall be returned to the assessed party if the decision of the department is not sustained by the board. If the board sustains the decision of the department, the two hundred dollars shall be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any balance remaining after payment of per diem and expenses shall be paid into the electrical license fund. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW. The board shall assign its hearings to an administrative law judge to conduct the hearing and issue a proposed decision and order. The board shall be allowed a minimum of twenty days to review a proposed decision and shall issue its decision no later than the next regularly scheduled board meeting. [1988 c 81 § 12; 1986 c 156 § 11; 1983 c 206 § 12; 1980 c 30 § 16; 1935 c 169 § 14; RRS § 8307-14.]

19.28.360 RCW 19.28.210 inapplicable in certain cities and towns, electricity supply agency service areas, and rights of way of state highways. The provisions of RCW 19.28.210 shall not apply:

(1) Within the corporate limits of any incorporated city or town which has heretofore adopted and enforced or subsequently adopts and enforces an ordinance requiring an equal, higher or better standard of construction and of materials, devices, appliances and equipment than is required by this chapter.

(2) Within the service area of an electricity supply agency owned and operated by a city or town which is supplying electricity and enforcing a standard of construction and materials outside its corporate limits at the time this act takes effect: PROVIDED, That such city, town or agency shall henceforth enforce by inspection within its service area outside its corporate limits the same standards of construction and of materials, devices, appliances and equipment as is enforced by the department of labor and industries under the authority of this chapter: PROVIDED FURTHER, That fees charged henceforth in connection with such enforcement shall not exceed those established in RCW 19.28.210.

(3) Within the rights of way of state highways, provided the state department of transportation maintains and enforces an equal, higher or better standard of construction and of materials, devices, appliances and equipment than is required by RCW 19.28.010 through 19.28.360. [1986 c 156 § 12; 1967 ex.s. c 97 § 1; 1963 c 207 § 4; 1959 c 325 § 3.]

Effective date—1963 c 207: See RCW 19.28.910.

19.28.370 RCW 19.28.010 through *19.28.380 inapplicable to telegraph or telephone companies exercising certain functions. The provisions of RCW 19.28.010 through *19.28.380 shall not apply to the work of installing, maintaining or repairing any and all electrical wires, apparatus, installations or equipment used or to be used by a telegraph company or a telephone company in the exercise of its functions and located outdoors or in a building or buildings used exclusively for that purpose. [1980 c 30 § 17; 1959 c 325 § 4.]

*Reviser's note: RCW 19.28.380 was repealed by 1986 c 156 § 18. See RCW 19.28.360.

19.28.390 Devices for diagnosis or treatment of disease or injury—Compliance with chapter. Any device used or useful in the diagnosis or treatment of disease or injury which is not in violation of the Medical Device Amendments of 1976, Public Law No. 94-295, 90 Stat. 539, as amended from time to time, and as interpreted by the Food and Drug Administration of the United States Department of Health and Human Services or its successor, shall be deemed to be in compliance with all requirements imposed by this chapter. [1981 c 57 § 1.]

19.28.510 Certificate of competency required—Electrical training certificate—Fee. (1) No person may engage in the electrical construction trade without having a current journeyman electrician certificate of competency or a current specialty electrician certificate of competency issued by the department in accordance with this chapter. Electrician certificate of competency specialties include, but are not limited to: Residential, domestic appliances, pump and irrigation, limited energy system, signs, and nonresidential maintenance.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade or who is learning the electrical construction trade may work in the electrical construction trade if supervised by a certified journeyman electrician or a certified specialty electrician in that electrician's specialty. All apprentices and individuals learning the electrical construction trade shall obtain an electrical training certificate from the department. The certificate shall authorize the holder to learn the electrical construction trade while under the direct supervision of a journeyman electrician or a specialty electrician working in his or her specialty. The holder of the electrical training certificate shall renew the certificate annually. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the electrical construction industry for the previous year and the number of hours worked for each employer. An annual fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. Apprentices and individuals learning the electrical construction trade shall have their electrical training certificates in their possession at all times that they are performing electrical work. They shall show their certificates to an authorized representative of the department at the representative's request.

(3) Any person who has been issued an electrical training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a journeyman electrician or an appropriate specialty electrician who has an applicable certificate of competency issued under this chapter. Either a journeyman electrician or an appropriate specialty electrician shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter. The ratio of noncertified individuals to certified journeymen or specialty electricians working on a job site shall be:

(a) From September 1, 1979, through December 31, 1982, not more than three noncertified electricians working on any one job site for every certified journeyman or specialty electrician;

(b) Effective January 1, 1983, not more than two noncertified individuals working on any one job site for every specialty electrician or journeyman electrician working as a specialty electrician;

(c) Effective January 1, 1983, not more than one noncertified individual working on any one job site for every certified journeyman electrician.

The ratio requirements do not apply to a trade school program in the electrical construction trade established during 1946.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in a technical school program in the electrical construction trade in a school approved by the *commission for vocational education, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter. [1983 c 206 § 13; 1980 c 30 § 2.]

***Reviser's note:** The commission on vocational education and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1986, and repealed June 30, 1987. See 1983 c 197 §§ 17 and 43.

19.28.520 Application for certificate of competency.

Any person desiring to be issued a certificate of competency as provided in this chapter shall deliver evidence in a form prescribed by the department affirming that said person has met the qualifications required under RCW 19.28.530, as now or hereafter amended. [1980 c 30 § 3.]

19.28.530 Certificate of competency—Eligibility for examination—Rules. (1) Upon receipt of the application, the department shall review the application and determine whether the applicant is eligible to take an examination for the journeyman or specialty certificate of competency. To be eligible to take the examination for a journeyman certificate the applicant must have worked in the electrical construction trade for a minimum of four years employed full time, of which two years shall be in industrial or commercial electrical installation under the supervision of a journeyman electrician certified under this chapter and not more than a total of two years in all specialties under the supervision of a journeyman electrician certified under this chapter or an appropriate specialty electrician certified under this chapter or have successfully completed an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade. To be eligible to take the examination to become a specialty electrician the applicant shall have worked in that specialty of the electrical construction trade, under the supervision of a journeyman electrician certified under this chapter or an appropriate specialty electrician certified under this chapter, for a minimum of two years employed full time, or have successfully completed an approved apprenticeship program under chapter 49.04 RCW for the applicant's specialty in the electrical construction trade. Before January 1, 1984, applicants for nonresidential maintenance specialty licenses are eligible to become nonresidential maintenance specialists upon certification to

the department that they have the equivalent of two years full-time experience in that specialty field. Persons applying before January 1, 1984, for a journeyman certificate are eligible to take the examination to become journeymen until July 1, 1984, upon certification to the department that they have the equivalent of five years full-time experience in nonresidential maintenance, of which two years shall be in industrial electrical installation. Any applicant who has successfully completed a two-year technical school program in the electrical construction trade in a school that is approved by the *commission for vocational education may substitute up to two years of the technical school program for two years of work experience under a journeyman electrician. The applicant shall obtain the additional two years of work experience required in industrial or commercial electrical installation prior to the beginning, or after the completion, of the technical school program. Any applicant who has received training in the electrical construction trade in the armed service of the United States may be eligible to take the examination for the certificate of competency. Any applicant who is a graduate of a trade school program in the electrical construction trade that was established during 1946 is eligible to take the examination for the certificate of competency. No other requirement for eligibility may be imposed.

(2) The department shall establish reasonable rules for the examinations to be given applicants for certificates of competency. In establishing the rules, the department shall consult with the board. Upon determination that the applicant is eligible to take the examination, the department shall so notify the applicant, indicating the time and place for taking the examination. [1988 c 81 § 13; 1983 c 206 § 14; 1980 c 30 § 4.]

***Reviser's note:** The commission on vocational education and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1986, and repealed June 30, 1987. See 1983 c 197 §§ 17 and 43.

19.28.540 Examination—Contents—Times—Fees—Certification of results. The department, in coordination with the board, shall prepare an examination to be administered to applicants for journeyman and specialty certificates of competency. The examination shall be constructed to determine:

(1) Whether the applicant possesses varied general knowledge of the technical information and practical procedures that are identified with the status of journeyman electrician or specialty electrician; and

(2) Whether the applicant is sufficiently familiar with the applicable electrical codes and the rules of the department pertaining to electrical installations and electricians.

The department shall, at least four times annually, administer the examination to persons eligible to take it under RCW 19.28.530. A person may take the journeyman or specialty test as many times as necessary without limit. All applicants shall, before taking the examination, pay to the department an examination fee. The department shall set the fee by rule. The fee shall cover but not exceed the costs of preparing and administering the examination.

The department shall certify the results of the examination upon such terms and after such a period of time as the

department, in cooperation with the board, deems necessary and proper.

(3) The department upon the consent of the board may enter into a contract with a professional testing agency to develop, administer, and score journeyman and/or speciality electrician certification examinations. [1988 c 81 § 14; 1986 c 156 § 13; 1983 c 206 § 15; 1980 c 30 § 5.]

19.28.550 Certificate of competency—Issuance—Renewal—Fees—Effect. The department shall issue a certificate of competency to all applicants who have passed the examination provided in RCW 19.28.540, and who have complied with RCW 19.28.510 through 19.28.620 and the rules adopted under this chapter. The certificate shall bear the date of issuance, and shall expire on the holder's birthdate two years immediately following the date of issuance. The certificate shall be renewed every two years, upon application, on or before the holder's birthdate. A fee shall be assessed for each certificate and for each annual renewal. The certificate may be renewed without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date. If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. The department shall set the fees by rule for issuance and renewal of a certificate of competency. The fees shall cover but not exceed the costs of issuing the certificates and of administering and enforcing the electrician certification requirements of this chapter.

The certificates of competency and temporary permits provided for in this chapter grant the holder the right to work in the electrical construction trade as a journeyman electrician or specialty electrician in accordance with their provisions throughout the state and within any of its political subdivisions without additional proof of competency or any other license, permit, or fee to engage in such work. [1986 c 156 § 14; 1983 c 206 § 16; 1980 c 30 § 6.]

19.28.560 Persons engaged in trade or business on July 16, 1973. No examination shall be required of any applicant for a certificate of competency who, on July 16, 1973, was engaged in a bona fide business or trade as a journeyman electrician in the state of Washington. Applicants qualifying under this section shall be issued a certificate by the department upon making an application as provided in RCW 19.28.520 and paying the fee required under RCW 19.28.540: PROVIDED, That no applicant under this section shall be required to furnish such evidence as required by RCW 19.28.520. [1980 c 30 § 7.]

19.28.570 Temporary permits. The department is authorized to grant and issue temporary permits in lieu of certificates of competency whenever an electrician coming into the state of Washington from another state requests the department for a temporary permit to engage in the electrical construction trade as an electrician during the period of time between filing of an application for a certificate as provided in RCW 19.28.520 and the date the results of taking the examination provided for in RCW 19.28.540 are furnished to the applicant. The department is authorized to enter into reciprocal agreements with other states providing for the

acceptance of such states' journeyman and speciality electrician certificate of competency or its equivalent when such states requirements are equal to the standards set by this chapter. No temporary permit shall be issued to:

(1) Any person who has failed to pass the examination for a certificate of competency, except that any person who has failed the examination for competency under this section shall be entitled to continue to work under a temporary permit for ninety days if the person is enrolled in a journeyman electrician refresher course and shows evidence to the department that he or she has not missed any classes. The person, after completing the journeyman electrician refresher course, shall be eligible to retake the examination for competency at the next scheduled time.

(2) Any applicant under this section who has not furnished the department with such evidence required under RCW 19.28.520.

(3) To any apprentice electrician. [1986 c 156 § 15; 1983 c 206 § 17; 1980 c 30 § 8.]

19.28.580 Revocation of certificate of competency—Grounds—Procedure. (1) The department may revoke any certificate of competency upon the following grounds:

(a) The certificate was obtained through error or fraud;
 (b) The holder thereof is judged to be incompetent to work in the electrical construction trade as a journeyman electrician or specialty electrician;

(c) The holder thereof has violated any of the provisions of RCW 19.28.510 through 19.28.620 or any rule adopted under this chapter.

(2) Before any certificate of competency shall be revoked, the holder shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to the holder's last known address. The notice shall enumerate the allegations against the holder, and shall give the holder the opportunity to request a hearing before the board. At the hearing, the department and the holder may produce witnesses and give testimony. The hearing shall be conducted in accordance with chapter 34.05 RCW. The board shall render its decision based upon the testimony and evidence presented, and shall notify the parties immediately upon reaching its decision. A majority of the board shall be necessary to render a decision. [1988 c 81 § 15; 1983 c 206 § 18; 1980 c 30 § 9.]

19.28.600 Powers and duties of director—Administration of RCW 19.28.510 through 19.28.620 by the department. The director may promulgate rules, make specific decisions, orders, and rulings, including demands and findings, and take other necessary action for the implementation and enforcement of RCW 19.28.510 through 19.28.620. In the administration of RCW 19.28.510 through 19.28.620 the department shall not enter any controversy arising over work assignments with respect to the trades involved in the construction industry. [1983 c 206 § 20; 1980 c 30 § 11.]

19.28.610 Exemptions from RCW 19.28.510 through 19.28.620. Nothing in RCW 19.28.510 through 19.28.620 shall be construed to require that a person obtain a license or a certified electrician in order to do electrical work at his or

her residence or farm or place of business or on other property owned by him: PROVIDED, HOWEVER, That nothing in RCW 19.28.510 through 19.28.620 shall be intended to derogate from or dispense with the requirements of any valid electrical code enacted by a city or town pursuant to *RCW 19.28.010(2), except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the electrical construction trade: AND PROVIDED FURTHER, That RCW 19.28.510 through 19.28.620 shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees: AND PROVIDED FURTHER, That nothing in RCW 19.28.510 through 19.28.620 shall be deemed to apply to the installation or maintenance of telephone, telegraph, radio, or television wires and equipment; nor to any electrical utility or its employees in the installation, repair, and maintenance of electrical wiring, circuits, and equipment by or for the utility, or comprising a part of its plants, lines or systems. The licensing provisions of RCW 19.28.510 through 19.28.620 shall not apply to:

(1) Persons making electrical installations on their own property;

(2) Regularly employed employees working on the premises of their employer; or

(3) Employees of an employer while the employer is performing utility type work of the nature described in RCW 19.28.200 so long as such employees have registered in the state of Washington with or graduated from a state-approved outside lineman apprenticeship course that is recognized by the department and that qualifies a person to perform such work:

AND PROVIDED FURTHER, That nothing in RCW 19.28.510 through 19.28.620 shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing the electrical installation hold themselves out as engaged in the trade or business of electrical installations. Nothing precludes any person who is exempt from the licensing requirements of this chapter under this section from obtaining a journeyman or specialty certificate of competency if they otherwise meet the requirements of this chapter. [1992 c 240 § 3; 1986 c 156 § 16; 1983 c 206 § 21; 1980 c 30 § 12.]

*Reviser's note: RCW 19.28.010 was reenacted and amended by 1992 c 79 § 2, and the previous subsection (2) was renumbered as subsection (3).

19.28.620 Violations of RCW 19.28.510 through 19.28.620—Schedule of penalties—Appeal. (1) It is unlawful for any person, firm, partnership, corporation, or other entity to employ an individual for purposes of RCW 19.28.510 through 19.28.620 who has not been issued a certificate of competency or a training certificate. It is unlawful for any individual to engage in the electrical construction trade or to maintain or install any electrical equipment or conductors without having in his or her possession a certificate of competency or a training certificate under RCW 19.28.510 through 19.28.620. Any person, firm, partnership, corporation, or other entity found in violation of RCW 19.28.510 through 19.28.620 shall be

assessed a penalty of not less than fifty dollars or more than five hundred dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.510 through 19.28.620. An appeal may be made to the board as is provided in RCW 19.28.350. The appeal shall be filed within fifteen days after the notice of the penalty is given to the assessed party by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. Any equipment maintained or installed by any person who does not possess a certificate of competency under RCW 19.28.510 through 19.28.620 shall not receive an electrical work permit and electrical service shall not be connected or maintained to operate the equipment. Each day that a person, firm, partnership, corporation, or other entity violates the provisions of RCW 19.28.510 through 19.28.620 is a separate violation.

(2) A civil penalty shall be collected in a civil action brought by the attorney general in the county wherein the alleged violation arose at the request of the department if any of the provisions of RCW 19.28.510 through 19.28.620 or any rules promulgated under RCW 19.28.510 through 19.28.620 are violated. [1988 c 81 § 16; 1986 c 156 § 17; 1983 c 206 § 22; 1980 c 30 § 13.]

19.28.900 Severability—1935 c 169. If any section or part of this chapter shall be held and adjudged to be void or unconstitutional such adjudication shall not affect any other section or part of this chapter not adjudged to be void or unconstitutional. [1935 c 169 § 17.]

19.28.910 Effective date—1963 c 207. This act shall take effect on July 1, 1963. [1963 c 207 § 6.]

19.28.911 Severability—1983 c 206. 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. [1983 c 206 § 24.]

Chapter 19.29

ELECTRICAL CONSTRUCTION

Sections

19.29.010	Rules for use of electrical apparatus or construction.
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19.29.030	Time for compliance.
19.29.040	Enforcement by director of labor and industries—Change of rules—Violation.
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19.29.060	Violation of rules by agent, employee or officer—Penalty.

Electricians, licensing, etc.: Chapter 19.28 RCW.

19.29.010 Rules for use of electrical apparatus or construction. It shall be unlawful from and after the passage of this chapter for any officer, agent, or employee of the state of Washington, or of any county, city or other political subdivision thereof, or for any other person, firm or corporation, or its officers, agents or employees, to run,

place, erect, maintain, or use any electrical apparatus or construction, except as provided in the rules of this chapter.

Rule 1. No wire or cable, except the neutral, carrying a current of less than seven hundred fifty volts of electricity within the corporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is less than thirteen inches from the center line of any pole. And no such wire, except the neutral, shall be run past any pole to which it is not attached at a distance of less than thirteen inches from the center line thereof. This rule shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure and the point of attachment to such building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole; nor to bridle or jumper wires on any pole which are attached to or connected with signal wires on the same pole; nor to any aerial cable as between such cable and any pole upon which it originates or terminates; nor to exclusive telephone or telegraph toll lines; nor to aerial cables containing telephone, telegraph, or signal wires, or wires continuing from same, where the cable is attached to poles on which no wires or cables other than the wires continuing from said cable are maintained, provided, that electric light or power wires or cables are in no case maintained on the same side of the street or highway on which said aerial cable is placed.

Rule 2. No wire or cable used to carry a current of over seven hundred fifty volts of electricity within the incorporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is nearer than twenty-four inches to the center line of any pole. And no such wire or cable shall be run past any pole to which it is not attached at a distance of less than twenty-four inches from the center line thereof: PROVIDED, That this shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture, as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with transformers or other appliances on the same pole: PROVIDED FURTHER, That where said wire or cable is run vertically, it shall be rigidly supported and where possible run on the ends of the cross-arms.

Rule 3. No wire or cable carrying a current of more than seven hundred fifty volts, and less than seventy-five hundred volts of electricity, shall be run, placed, erected, maintained or used within three feet of any wire or cable carrying a current of seven hundred fifty volts or less of electricity; and no wire or cable carrying a current of more than seventy-five hundred volts of electricity shall be run, placed, erected, maintained, or used within seven feet of any wire or cable carrying less than seventy-five hundred volts: PROVIDED, That the foregoing provisions of this paragraph

shall not apply to any wire or cable within buildings or other structures; nor where the same are run from under ground and placed vertically upon the pole; nor to any service wire or cable where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole: PROVIDED, That where run vertically, wires or cables shall be rigidly supported, and where possible run on the ends of the cross-arms: PROVIDED FURTHER, That as between any two wires or cables mentioned in Rules 1, 2 and 3 of this section, only the wires or cables last in point of time so run, placed, erected or maintained, shall be held to be in violation of the provisions thereof.

Rule 4. No wire or cable used for telephone, telegraph, district messenger, or call bell circuit, fire or burglar alarm, or any other similar system, shall be run, placed, erected, maintained or used on any pole at a distance of less than three feet from any wire or cable carrying a current of over three hundred volts of electricity; and in all cases (except those mentioned in exceptions to Rules 1, 2 and 3) where such wires or cables are run, above or below, or cross over or under electric light or power wires, or a trolley wire, a suitable method of construction, or insulation or protection to prevent contact shall be maintained as between such wire or cable and such electric light, power or trolley wire; and said methods of construction, insulation or protection shall be installed by, or at the expense of the person owning the wire last placed in point of time: PROVIDED, That telephone, telegraph or signal wires or cables operated for private use and not furnishing service to the public, may be placed less than three feet from any line carrying a voltage of less than seven hundred and fifty volts.

Rule 5. Transformers, either single or in bank, that exceed a total capacity of over ten K.W. shall be supported by a double cross-arm, or some fixture equally as strong. No transformer shall be placed, erected, maintained or used on any cross-arm or other appliance on a pole upon which is placed a series electric arc lamp or arc light: PROVIDED, This shall not apply to a span wire supporting a lamp only. All aerial and underground transformers used for low potential distribution shall be subjected to an insulation test in accordance with the standardized rules of the American Institute of Electrical Engineers. In addition to this each transformer shall be tested at rated line voltage prior to each installation and shall have attached to it a tag showing the date on which the test was made, and the name of the person making the test.

Rule 6. No wire or cable, other than ground wires, used to conduct or carry electricity, shall be placed, run, erected, maintained or used vertically on any pole without causing such wire or cable to be at all times sufficiently insulated the full length thereof to insure the protection of anyone coming in contact with said wire or cable.

Rule 7. The neutral point or wire of all transformer secondaries strung or erected for use in low potential distributing systems shall be grounded in all cases where the normal maximum difference of potential between the ground and any point in the secondary circuit will not exceed one hundred and fifty volts. When no neutral point or wire is accessible one side of the secondary circuit shall be ground-

ed in the case of single phase transformers, and any one common point in the case of interconnected polyphase bank or banks of transformers. Where the maximum difference of potential between the ground and any point in the secondary circuit will, when grounded, exceed one hundred fifty volts, grounding shall be permitted. Such grounding shall be done in the manner provided in Rule 30.

Rule 8. In all cases where a wire or cable larger than No. 14 B.W.G. originates or terminates on insulators attached to any pin or other appliance, said wire or cable shall be attached to at least two insulators: PROVIDED HOWEVER, That this section shall not apply to service wires to buildings; nor to wires run vertically on a pole; nor to wires originating or terminating on strain insulators or circuit breakers; nor to telephone, telegraph or signal wires outside the limits of any incorporated city or town.

Rule 9. Fixtures placed or erected for the support of wires on the roofs of buildings shall be of sufficient strength to withstand all strains to which they may be subjected, due to the breaking of all wires on one side thereof, and except where insulated wires or cables are held close to fire walls by straps or rings, shall be of such height and so placed that all of the wires supported by such fixtures shall be at least seven feet above any point of roofs less than one-quarter pitch over which they pass or may be attached, and no roof fixtures or wire shall be so placed that they will interfere with the free passage of persons upon, over, to or from the roofs.

Rule 10. No guy wire or cable shall be placed, run, erected, maintained or used within the incorporate limits of any city or town on any pole or appliance to which is attached any wire or cable used to conduct electricity without causing said guy wire or cable to be efficiently insulated with circuit breakers at all times at a distance of not less than eight feet nor more than ten feet measured along the line of said guy wire or cable from each end thereof: PROVIDED, No circuit breaker shall be required at the lower end of the guy wire or cable where the same is attached to a ground anchor, nor shall any circuit breaker be required where said guy wire or cable runs direct from a grounded messenger wire to a grounded anchor rod.

Rule 11. In all span wires used for the purpose of supporting trolley wires or series arc lamps there shall be at least two circuit breakers, one of which shall at all times be maintained no less than four feet nor more than six feet distant from the trolley wire or series arc lamp, and in cases where the same is supported by a building or metallic pole, the other circuit breaker shall be maintained at the building or at the pole: PROVIDED, That in span wires which support two or more trolley wires no circuit breaker shall be required in the span wire between any two of the trolley wires: PROVIDED FURTHER, That in span wires supporting trolley wires attached to wooden poles only the circuit breaker adjacent to the trolley wire shall be required.

Rule 12. At all points where in case of a breakdown of trolley span wires, the trolley wire would be liable to drop within seven feet of the ground, there shall be double span wires and hangers placed at such points.

Rule 13. All energized wires or appliances installed inside of any building or vault, for the distribution of electrical energy, shall be sufficiently insulated, or so

guarded, located, or arranged as to protect any person from injury.

Rule 14. The secondary circuit of current transformers, the casings of all potential regulators and arc light transformers, all metal frames of all switch boards, metal oil tanks used on oil switches except where the tank is part of the conducting system, all motor and generator frames, the entire frame of the crane and the tracks of all traveling cranes and hoisting devices, shall be thoroughly grounded, as provided in Rule 30.

Rule 15. All generators and motors having a potential of more than three hundred volts shall be provided with a suitable insulated platform or mat so arranged as to permit the attendant to stand upon such platform or mat when working upon the live parts of such generators or motors.

Rule 16. Suitable insulated platforms or mats shall be provided for the use of all persons while working on any live part of switchboards on which any wire or appliance carries a potential in excess of three hundred volts.

Rule 17. Every generator, motor, transformer, switch or other similar piece of apparatus and device used in the generation, transmission or distribution of electrical energy in stations or substations, shall be either provided with a name plate giving the capacity in volts and amperes, or have this information stamped thereon in such a manner as to be clearly legible.

Rule 18. When lines of seven hundred fifty volts or over are cut out at the station or substation to allow employees to work upon them, they shall be short-circuited and grounded at the station, and shall in addition, if the line wires are bare, be short-circuited, and where possible grounded at the place where the work is being done.

Rule 19. All switches installed with overload protection devices, and all automatic overload circuit breakers must have the trip coils so adjusted as to afford complete protection against overloads and short circuits, and the same must be so arranged that no pole can be opened manually without opening all the poles, and the trip coils shall be instantly operative upon closing.

Rule 20. All feeders for electric railways must, before leaving the plant or substation, be protected by an approved circuit breaker which will cut off the circuit in case of an accidental ground or short circuit.

Rule 21. There shall be provided in all distributing stations a ground detecting device.

Rule 22. There shall be provided in all stations, plants, and buildings herein specified warning cards printed on red cardboard not less than two and one-quarter by four and one-half inches in size, which shall be attached to all switches opened for the purpose of linemen or other employees working on the wires. The person opening any line switch shall enter upon said card the name of the person ordering the switch opened, the time opened, the time line was reported clear and by whom, and shall sign his own name.

Rule 23. No manhole containing any wire carrying a current of over three hundred volts shall be less than six feet from floor to inside of roof; if circular in shape it shall not be less than six feet in diameter; if square it shall be six feet from wall to wall: PROVIDED HOWEVER, That this paragraph shall not apply to any manhole in which it shall not be required that any person enter to perform work: PROVIDED FURTHER, That the foregoing provisions of

this paragraph shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with this law within the space or location designated by the proper authorities.

Rule 24. All manholes containing any wires or appliances carrying electrical current shall be kept in a sanitary condition, free from stagnant water or seepage or other drainage which is offensive or dangerous to health, either by sewer connection or otherwise, while any person is working in the same.

Rule 25. No manhole shall have an opening to the outer air of less than twenty-six inches in diameter, and the cover of same shall be provided with vent hole or holes equivalent to three square inches in area.

Rule 26. No manhole shall have an opening which is, at the surface of the ground, within a distance of three feet at any point from any rail of any railway or street car track: PROVIDED, That this shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with the provisions of this paragraph: PROVIDED, That in complying with the provisions of this rule only the construction last in point of time performed, placed or erected shall be held to be in violation thereof.

Rule 27. Whenever persons are working in any manhole whose opening to the outer air is less than three feet from the rail of any railway or street car track, a watchman or attendant shall be stationed on the surface at the entrance of such manhole at all times while work is being performed therein.

Rule 28. All persons employed in manholes shall be furnished with insulated platforms so as to protect the workers while at work in the manholes: PROVIDED, That this paragraph shall not apply to manholes containing only telephone, telegraph or signal wires or cables.

Rule 29. No work shall be permitted to be done on any live wire, cable or appliance carrying more than seven hundred fifty volts of electricity by less than two competent and experienced persons, who, at all times while performing such work shall be in the same room, chamber, manhole or other place in which, or on the same pole on which, such work is being done: PROVIDED, That in districts where only one competent and experienced person is regularly employed, and a second competent and experienced person cannot be obtained without delay at prevailing rate of pay in said district, such work shall be permitted to be done by one competent and experienced person and a helper who need not be on the same pole on which said work is being done.

No work shall be permitted to be done in any manhole or subway on any live wire, cable or appliance carrying more than three hundred volts of electricity by less than two competent and experienced persons, who at all times while performing such work shall be in the same manhole or subway in which such work is being done.

Rule 30. The grounding provided for in these rules shall be done in the following manner: By connecting a wire or wires not less than No. 6 B.&S. gauge to a water pipe of a metallic system outside of the meter, if there is one, or to a copper plate one-sixteenth inch thick and not less than three feet by six feet area buried in coke below the permanent moisture level, or to other device equally as efficient. The ground wire or wires of a direct current

system of three or more wires shall not be smaller than the neutral wire at the central station, and not smaller than a No. 6 B.&S. gauge elsewhere: PROVIDED, That the maximum cross section area of any ground wire or wires at the central station need not exceed one million circular mils. The ground wires shall be carried in as nearly a straight line as possible, and kinks, coils and short bends shall be avoided: PROVIDED, That the provisions of this rule shall not apply as to size to ground wires run from instrument transformers or meters. [1989 c 12 § 3; 1987 c 79 § 1; 1965 ex.s. c 65 § 1; 1913 c 130 § 1; RRS § 5435.] [1954 SLC-RO 29.]

19.29.020 Copy of chapter to be posted. A copy of this chapter printed in a legible manner shall be kept posted in a conspicuous place in all electric plants, stations and storerooms. [1913 c 130 § 2; RRS § 5436.] [1954 SLC-RO-29.]

19.29.030 Time for compliance. All wires, cables, poles, electric fixtures and appliances of every kind being used or operated at the time of the passage of this chapter, shall be changed, and made to conform to the provisions of this chapter, on or before the 1st day of July, 1940: PROVIDED HOWEVER, That the director of labor and industries of Washington shall have power, upon reasonable notice, to order and require the erection of all guards, protective devices, and methods of protection which in the judgment of the director are necessary and should be constructed previous to the expiration of the time fixed in this section: PROVIDED FURTHER, That nothing in this chapter shall apply to manholes already constructed, except the provisions for guards, sanitary conditions, drainage and safety appliances specified in rules 20, 24, 26, 29, 30, 31 and 32. [1937 c 105 § 1; 1931 c 24 § 1; 1921 c 20 § 1; 1917 c 41 § 1; 1913 c 130 § 3; RRS § 5437.] [1954 SLC-RO-29.]

19.29.040 Enforcement by director of labor and industries—Change of rules—Violation. It shall be the duty of the director of labor and industries of Washington to enforce all the provisions and rules of this chapter and the director is hereby empowered upon hearing to amend, alter and change any and all rules herein contained, or any part thereof, and to supplement the same by additional rules and requirements, after first giving reasonable public notice and a reasonable opportunity to be heard to all affected thereby: PROVIDED, That no rule amending, altering or changing any rule supplementary to the rules herein contained shall provide a less measure of safety than that provided by the rule amended, altered or changed.

A violation of any rule herein contained or of any rule or requirement made by the director of labor and industries which it is hereby permitted to make shall be deemed a violation of this chapter. [1983 c 4 § 2; 1913 c 130 § 4; RRS § 5438.] [1954 SLC-RO-29.]

19.29.050 Violation of rules by public service company or political subdivision—Penalty. Every public service company, county, city, or other political subdivision of the state of Washington, and all officers, agents and employees of any public service company, county, city, or

other political subdivision of the state of Washington, shall obey, observe and comply with every order, rule, direction or requirement made by the commission [director of labor and industries] under authority of this chapter, so long as the same shall be and remain in force. Any public service company, county, city, or other political subdivision of the state of Washington, which shall violate or fail to comply with any provision of this chapter, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission [director of labor and industries], pursuant to this chapter, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this chapter shall be a separate and distinct offense, and in case of a continued violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense. [1913 c 130 § 5; RRS § 5439.] [1954 SLC-RO-29.]

Reviser's note: (1) Duties of the public service commission devolved on director of labor and industries. 1921 c 7 § 80 subdivision (5) relating to powers and duties of the director of labor and industries reads: "(5) To exercise all the powers and perform all the duties in relation to the enforcement, amendment, alteration, change, and making additions to rules and regulations concerning the operation, placing, erection, maintenance, and use of electrical apparatus, and the construction thereof, now vested in, and required to be performed by, the public service commission;". See also RCW 43.22.050(3).

(2) Name of "public service commission" changed to "utilities and transportation commission" by 1961 c 290 § 1.

19.29.060 Violation of rules by agent, employee or officer—Penalty. Every officer, agent or employee of any public service company, the state of Washington, or any county, city, or other political subdivision of the state of Washington, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company, the state of Washington, or any county, city or other political subdivision of the state of Washington, of any provision of this chapter, or who shall fail to obey, observe or comply with any order of the commission [director of labor and industries], pursuant to this chapter, or any provision of any order of the commission [director of labor and industries], or who procures, aids or abets any such public service company, the state of Washington, or any county, city, or other political subdivision of the state of Washington, in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor. [1913 c 130 § 6; RRS § 5440.] [1954 SLC-RO-29.]

Reviser's note: See note following RCW 19.29.050.

Chapter 19.30

FARM LABOR CONTRACTORS

Sections

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- 19.30.180 Injunctions—Costs—Attorney fee.
- 19.30.190 Retaliation against employee prohibited.
- 19.30.200 Unlicensed farm labor contractors—Liability for services.
- 19.30.900 Severability—1955 c 392.
- 19.30.901 Severability—1985 c 280.
- 19.30.902 Effective date—1985 c 280.

19.30.010 Definitions. As used in this chapter:

(1) "Person" includes any individual, firm, partnership, association, corporation, or unit or agency of state or local government.

(2) "Farm labor contractor" means any person, or his or her agent or subcontractor, who, for a fee, performs any farm labor contracting activity.

(3) "Farm labor contracting activity" means recruiting, soliciting, employing, supplying, transporting, or hiring agricultural employees.

(4) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, and other related activities.

(5) "Agricultural employee" means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.

(6) This chapter shall not apply to employees of the employment security department acting in their official capacity or their agents, nor to any common carrier or full time regular employees thereof while transporting agricultural employees, nor to any person who performs any of the services enumerated in subsection (3) of this section only within the scope of his or her regular employment for one agricultural employer on whose behalf he or she is so acting, unless he or she is receiving a commission or fee, which commission or fee is determined by the number of workers recruited, or to a nonprofit corporation or organization which performs the same functions for its members. Such nonprofit corporation or organization shall be one in which:

(a) None of its directors, officers, or employees are deriving any profit beyond a reasonable salary for services performed in its behalf.

(b) Membership dues and fees are used solely for the maintenance of the association or corporation.

(7) "Fee" means:

(a) Any money or other valuable consideration paid or promised to be paid for services rendered or to be rendered by a farm labor contractor.

(b) Any valuable consideration received or to be received by a farm labor contractor for or in connection with any of the services described in subsection (3) of this section, and shall include the difference between any amount received or to be received by him, and the amount paid out

by him for or in connection with the rendering of such services.

(8) "Director" as used in this chapter means the director of the department of labor and industries of the state of Washington. [1985 c 280 § 1; 1955 c 392 § 1.]

19.30.020 License required—Duplicates. No person shall act as a farm labor contractor until a license to do so has been issued to him or her by the director, and unless such license is in full force and effect and is in the contractor's possession. The director shall, by regulation, provide a means of issuing duplicate licenses in case of loss of the original license or any other appropriate instances. The director shall issue, on a monthly basis, a list of currently licensed farm labor contractors. [1985 c 280 § 2; 1955 c 392 § 2.]

19.30.030 Applicants—Qualifications—Fee—Liability insurance. The director shall not issue to any person a license to act as a farm labor contractor until:

(1) Such person has executed a written application on a form prescribed by the director, subscribed and sworn to by the applicant, and containing (a) a statement by the applicant of all facts required by the director concerning the applicant's character, competency, responsibility, and the manner and method by which he or she proposes to conduct operations as a farm labor contractor if such license is issued, and (b) the names and addresses of all persons financially interested, either as partners, stockholders, associates, profit sharers, or providers of board or lodging to agricultural employees in the proposed operation as a labor contractor, together with the amount of their respective interests;

(2) The director, after investigation, is satisfied as to the character, competency, and responsibility of the applicant;

(3) The applicant has paid to the director a license fee of: (1) Thirty-five dollars in the case of a farm labor contractor not engaged in forestation or reforestation, or (2) one hundred dollars in the case of a farm labor contractor engaged in forestation or reforestation or such other sum as the director finds necessary, and adopts by rule, for the administrative costs of evaluating applications;

(4) The applicant has filed proof satisfactory to the director of the existence of a policy of insurance with any insurance carrier authorized to do business in the state of Washington in an amount satisfactory to the director, which insures the contractor against liability for damage to persons or property arising out of the contractor's operation of, or ownership of, any vehicle or vehicles for the transportation of individuals in connection with the contractor's business, activities, or operations as a farm labor contractor;

(5) The applicant has filed a surety bond or other security which meets the requirements set forth in RCW 19.30.040;

(6) The applicant executes a written statement which shall be subscribed and sworn to and shall contain the following declaration:

"With regards to any action filed against me concerning my activities as a farm labor contractor, I appoint the director of the Washington department of labor and industries as my lawful agent to accept service of summons when

I am not present in the jurisdiction in which the action is commenced or have in any other way become unavailable to accept service"; and

(7) The applicant has stated on his or her application whether or not his or her contractor's license or the license of any of his or her agents, partners, associates, stockholders, or profit sharers has ever been suspended, revoked, or denied by any state or federal agency, and whether or not there are any outstanding judgments against him or her or any of his or her agents, partners, associates, stockholders, or profit sharers in any state or federal court arising out of activities as a farm labor contractor. [1985 c 280 § 3; 1955 c 392 § 3.]

19.30.040 Surety bond—Security. (1) The director shall require the deposit of a surety bond by any person acting as a farm labor contractor under this chapter to insure compliance with the provisions of this chapter. Such bond shall be in an amount specified by the director in accordance with such criteria as the director adopts by rule but shall not be less than five thousand dollars. The bond shall be payable to the state of Washington and be conditioned on payment of sums legally owing under contract to an agricultural employee. The aggregate liability of the surety upon such bond for all claims which may arise thereunder shall not exceed the face amount of the bond.

(2) The amount of the bond may be raised or additional security required by the director, upon his or her own motion or upon petition to the director by any person, when it is shown that the security or bond is insufficient to satisfy the contractor's potential liability for the licensed period.

(3) No surety insurer may provide any bond, undertaking, recognizance, or other obligation for the purpose of securing or guaranteeing any act, duty, or obligation, or the refraining from any act with respect to a contract using the services of a farm labor contractor unless the farm labor contractor has made application for or has a valid license issued under RCW 19.30.030 at the time of issuance of the bond, undertaking, recognizance, or other obligation.

(4) Surety bonds may not be canceled or terminated during the period in which the bond is executed unless thirty days' notice is provided by the surety to the department. The bond is written for a one-year term and may be renewed or extended by continuation certification at the option of the surety.

(5) In lieu of the surety bond required by this section, the contractor may file with the director a deposit consisting of cash or other security acceptable to the director. The deposit shall not be less than five thousand dollars in value. The security deposited with the director in lieu of the surety bond shall be returned to the contractor at the expiration of three years after the farm labor contractor's license has expired or been revoked if no legal action has been instituted against the contractor or on the security deposit at the expiration of the three years.

(6) If a contractor has deposited a bond with the director and has failed to comply with the conditions of the bond as provided by this section, and has departed from this state, service may be made upon the surety as prescribed in RCW 4.28.090. [1987 c 216 § 1; 1986 c 197 § 15; 1985 c 280 § 4; 1955 c 392 § 4.]

19.30.045 Claim for wages—Action upon surety bond or security. (1) Any person, having a claim for wages pursuant to this chapter may bring suit upon the surety bond or security deposit filed by the contractor pursuant to RCW 19.30.040, in any court of competent jurisdiction of the county in which the claim arose, or in which either the claimant or contractor resides.

(2) The right of action is assignable in the name of the director or any other person. [1987 c 216 § 2; 1986 c 197 § 19.]

19.30.050 License—Grounds for denying. A license to operate as a farm labor contractor shall be denied:

(1) To any person who sells or proposes to sell intoxicating liquors in a building or on premises where he or she operates or proposes to operate as a farm labor contractor, or

(2) To a person whose license has been revoked within three years from the date of application. [1985 c 280 § 5; 1955 c 392 § 5.]

19.30.060 License—Revocation, suspension, refusal to issue or renew. Any person may protest the grant or renewal of a license under this section. The director may revoke, suspend, or refuse to issue or renew any license when it is shown that:

(1) The farm labor contractor or any agent of the contractor has violated or failed to comply with any of the provisions of this chapter;

(2) The farm labor contractor has made any misrepresentations or false statements in his or her application for a license;

(3) The conditions under which the license was issued have changed or no longer exist;

(4) The farm labor contractor, or any agent of the contractor, has violated or wilfully aided or abetted any person in the violation of, or failed to comply with, any law of the state of Washington regulating employment in agriculture, the payment of wages to farm employees, or the conditions, terms, or places of employment affecting the health and safety of farm employees, which is applicable to the business activities, or operations of the contractor in his or her capacity as a farm labor contractor;

(5) The farm labor contractor or any agent of the contractor has in recruiting farm labor solicited or induced the violation of any then existing contract of employment of such laborers; or

(6) The farm labor contractor or any agent of the contractor has an unsatisfied judgment against him or her in any state or federal court, arising out of his or her farm labor contracting activities. [1985 c 280 § 6; 1955 c 392 § 6.]

19.30.070 License—Contents. Each license shall contain, on the face thereof:

(1) The name and address of the licensee and the fact that he or she is licensed to act as a farm labor contractor for the period upon the face of the license only;

(2) The number, date of issuance, and date of expiration of the license;

(3) The amount of the surety bond deposited by the licensee;

(4) The fact that the license may not be transferred or assigned; and

(5) A statement that the licensee is or is not licensed to transport workers. [1985 c 280 § 7; 1955 c 392 § 7.]

19.30.081 License—Duration—Renewal. Farm labor contractors may hold either a one-year license or a two-year license, at the director's discretion.

The one-year license shall run to and include the 31st day of December next following the date thereof unless sooner revoked by the director. A license may be renewed each year upon the payment of the annual license fee, but the director shall require that evidence of a renewed bond be submitted and that the contractor have a bond in full force and effect.

The two-year license shall run to and include the 31st day of December of the year following the year of issuance unless sooner revoked by the director. This license may be renewed every two years under the same terms as the one-year license, except that a farm labor contractor possessing a two-year license shall have evidence of a bond in full force and effect, and file an application on which he or she shall disclose all information required by RCW 19.30.030 (1)(b), (4), and (7). [1987 c 216 § 3; 1986 c 197 § 16; 1985 c 280 § 8.]

19.30.090 License—Application for renewal. All applications for renewal shall state the names and addresses of all persons financially interested either as partners, associates or profit sharers in the operation as a farm labor contractor. [1955 c 392 § 9.]

19.30.110 Farm labor contractor—Duties. Every person acting as a farm labor contractor shall:

(1) Carry a current farm labor contractor's license at all times and exhibit it to all persons with whom the contractor intends to deal in the capacity of a farm labor contractor prior to so dealing.

(2) Disclose to every person with whom he or she deals in the capacity of a farm labor contractor the amount of his or her bond and the existence and amount of any claims against the bond.

(3) File at the United States post office serving the address of the contractor, as noted on the face of the farm labor contractor's license, a correct change of address immediately upon each occasion the contractor permanently moves his or her address, and notify the director within ten days after an address change is made.

(4) Promptly when due, pay or distribute to the individuals entitled thereto all moneys or other things of value entrusted to the contractor by any third person for such purpose.

(5) Comply with the terms and provisions of all legal and valid agreements and contracts entered into between the contractor in the capacity of a farm labor contractor and third persons.

(6) File information regarding work offers with the nearest employment service office, such information to include wages and work to be performed and any other information prescribed by the director.

(7) On a form prescribed by the director, furnish to each worker, at the time of hiring, recruiting, soliciting, or supplying, whichever occurs first, a written statement in English and any other language common to workers who are not fluent or literate in English that contains a description of:

(a) The compensation to be paid and the method of computing the rate of compensation;

(b) The terms and conditions of any bonus offered, including the manner of determining when the bonus is earned;

(c) The terms and conditions of any loan made to the worker;

(d) The conditions of any transportation, housing, board, health, and day care services or any other employee benefit to be provided by the farm labor contractor or by his or her agents, and the costs to be charged for each of them;

(e) The terms and conditions of employment, including the approximate length of season or period of employment and the approximate starting and ending dates thereof, and the crops on which and kinds of activities in which the worker may be employed;

(f) The terms and conditions under which the worker is furnished clothing or equipment;

(g) The place of employment;

(h) The name and address of the owner of all operations, or the owner's agent, where the worker will be working as a result of being recruited, solicited, supplied, or employed by the farm labor contractor;

(i) The existence of a labor dispute at the worksite;

(j) The name and address of the farm labor contractor;

(k) The existence of any arrangements with any owner or agent of any establishment at the place of employment under which the farm labor contractor is to receive a fee or any other benefit resulting from any sales by such establishment to the workers; and

(1) The name and address of the surety on the contractor's bond and the workers' right to claim against the bond.

(8) Furnish to the worker each time the worker receives a compensation payment from the farm labor contractor, a written statement itemizing the total payment and the amount and purpose of each deduction therefrom, hours worked, rate of pay, and pieces done if the work is done on a piece rate basis, and if the work is done under the Service Contract Act (41 U.S.C. Secs. 351 through 401) or related federal or state law, a written statement of any applicable prevailing wage.

(9) With respect to each worker recruited, solicited, employed, supplied, or hired by the farm labor contractor:

(a) Make, keep, and preserve for three years a record of the following information:

(i) The basis on which wages are paid;

(ii) The number of piecework units earned, if paid on a piecework basis;

(iii) The number of hours worked;

(iv) The total pay period earnings;

(v) The specific sums withheld and the purpose of each sum withheld; and

(vi) The net pay; and

(b) Provide to any other farm labor contractor and to any user of farm labor for whom he or she recruits, solicits, supplies, hires, or employs workers copies of all records, with respect to each such worker, which the contractor is

required by this chapter to make, keep, and preserve. The recipient of such records shall keep them for a period of three years from the end of the period of employment. When necessary to administer this chapter, the director may require that any farm labor contractor provide the director with certified copies of his or her payroll records for any payment period.

The record-keeping requirements of this chapter shall be met if either the farm labor contractor or any user of the contractor's services makes, keeps, and preserves for the requisite time period the records required under this section, and so long as each worker receives the written statements specified in subsection (8) of this section. [1985 c 280 § 9; 1955 c 392 § 11.]

19.30.120 Farm labor contractor—Prohibited acts.

No person acting as a farm labor contractor shall:

(1) Make any misrepresentation or false statement in an application for a license.

(2) Make or cause to be made, to any person, any false, fraudulent, or misleading representation, or publish or circulate or cause to be published or circulated any false, fraudulent, or misleading information concerning the terms or conditions or existence of employment at any place or places, or by any person or persons, or of any individual or individuals.

(3) Send or transport any worker to any place where the farm labor contractor knows a strike or lockout exists.

(4) Do any act in the capacity of a farm labor contractor, or cause any act to be done, which constitutes a crime involving moral turpitude under any law of the state of Washington. [1985 c 280 § 10; 1955 c 392 § 12.]

19.30.130 Rules—Adjustment of controversies. (1)

The director shall adopt rules not inconsistent with this chapter for the purpose of enforcing and administering this chapter.

(2) The director shall investigate and attempt to adjust equitably controversies between farm labor contractors and their workers with respect to claims arising under this chapter. [1985 c 280 § 11; 1955 c 392 § 14.]

19.30.150 Penalties. Any person who violates any provisions of this chapter, or who causes or induces another to violate any provisions of this chapter, shall be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars, or imprisonment in the county jail for not more than six months, or both. [1955 c 392 § 13.]

19.30.160 Civil penalty—Hearing—Court action.

(1) In addition to any criminal penalty imposed under RCW 19.30.150, the director may assess against any person who violates this chapter, or any rule adopted under this chapter, a civil penalty of not more than one thousand dollars for each violation.

(2) The person shall be afforded the opportunity for a hearing, upon request to the director made within thirty days after the date of issuance of the notice of assessment. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(3) If any person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the agency, the director shall refer the matter to the state attorney general, who shall recover the amount assessed by action in the appropriate superior court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(4) Without regard to other remedies provided in this chapter, the department may bring suit upon the surety bond filed by the farm labor contractor on behalf of a worker whose rights under this chapter have been violated by the contractor. The action may be commenced in any court of competent jurisdiction. In any such action, there shall be compliance with the notice and service requirements set forth in RCW 19.30.170. [1987 c 216 § 4; 1986 c 197 § 17; 1985 c 280 § 15.]

19.30.170 Civil actions—Damages, costs, attorney's fees—Actions upon bond or security deposit. (1) After filing a notice of a claim with the director, in addition to any other penalty provided by law, any person aggrieved by a violation of this chapter or any rule adopted under this chapter may bring suit in any court of competent jurisdiction of the county in which the claim arose, or in which either the plaintiff or respondent resides, without regard to the amount in controversy and without regard to exhaustion of any alternative administrative remedies provided in this chapter. No such action may be commenced later than three years after the date of the violation giving rise to the right of action. In any such action the court may award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees at trial and appeal.

(2) In any action under subsection (1) of this section, if the court finds that the respondent has violated this chapter or any rule adopted under this chapter, it may award damages up to and including an amount equal to the amount of actual damages, or statutory damages of five hundred dollars per plaintiff per violation, whichever is greater, or other equitable relief.

(3) Without regard to other remedies provided in this chapter, a person having a claim against the farm labor contractor for any violation of this chapter may bring suit against the farm labor contractor and the surety bond or security deposit filed by the contractor pursuant to RCW 19.30.040, in any court of competent jurisdiction of the county in which the claim arose, or in which either the claimant or contractor resides.

(4) An action upon the bond or security deposit shall be commenced by serving and filing the summons and complaint within three years from the date of expiration or cancellation of the bond or expiration or cancellation of the license, whichever is sooner, or in the case of a security deposit, within three years of the date of expiration or revocation of the license.

(5) A copy of the summons and complaint in any such action shall be served upon the director at the time of commencement of the action and the director shall maintain a record, available for public inspection, of all suits so commenced. Such service shall constitute service on the farm labor contractor and the surety for suit upon the bond

and the director shall transmit the complaint or a copy thereof to the contractor at the address listed in his or her application and to the surety within forty-eight hours after it has been received.

(6) The surety upon the bond may, upon notice to the director and the parties, tender to the clerk of the court having jurisdiction of the action an amount equal to the claims or the amount of the bond less the amount of judgments, if any, previously satisfied therefrom and to the extent of such tender the surety upon the bond shall be exonerated.

(7) If the actions commenced and pending at any one time exceed the amount of the bond then unimpaired, the claims shall be satisfied from the bond in the following order:

- (a) Wages, including employee benefits;
- (b) Other contractual damage owed to the employee;
- (c) Any costs and attorneys' fees the claimant may be entitled to recover by contract or statute.

(8) If any final judgment impairs the bond so furnished so that there is not in effect a bond undertaking in the full amount prescribed by the director, the director shall suspend the license of the contractor until the bond liability in the required amount unimpaired by unsatisfied judgment claims has been furnished. If such bond becomes fully impaired, a new bond must be furnished.

(9) A claimant against a security deposit shall be entitled to damages under subsection (2) of this section. If the farm labor contractor has filed other security with the director in lieu of a surety bond, any person having an unsatisfied final judgment against the contractor for any violation of this chapter may execute upon the security deposit held by the director by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the director. Upon the receipt of service of such certified copy, the director shall pay or order paid from the deposit, through the registry of the court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the director shall be the order of receipt by the director, but the director shall have no liability for payment in excess of the amount of the deposit. [1987 c 216 § 5; 1986 c 197 § 18; 1985 c 280 § 16.]

19.30.180 Injunctions—Costs—Attorney fee. The director or any other person may bring suit in any court of competent jurisdiction to enjoin any person from using the services of an unlicensed farm labor contractor or to enjoin any person acting as a farm labor contractor in violation of this chapter, or any rule adopted under this chapter, from committing future violations. The court may award to the prevailing party costs and disbursements and a reasonable attorney fee. [1985 c 280 § 12.]

19.30.190 Retaliation against employee prohibited. No farm labor contractor or agricultural employer may discharge or in any other manner discriminate against any employee because:

(1) The employee has made a claim against the farm labor contractor or agricultural employer for compensation for the employee's personal services.

(2) The employee has caused to be instituted any proceedings under or related to RCW 19.30.180.

(3) The employee has testified or is about to testify in any such proceedings.

(4) The employee has discussed or consulted with anyone concerning the employee's rights under this chapter. [1985 c 280 § 13.]

19.30.200 Unlicensed farm labor contractors—Liability for services. Any person who knowingly uses the services of an unlicensed farm labor contractor shall be personally, jointly, and severally liable with the person acting as a farm labor contractor to the same extent and in the same manner as provided in this chapter. In making determinations under this subsection [section], any user may rely upon either the license issued by the director to the farm labor contractor under RCW 19.30.030 or the director's representation that such contractor is licensed as required by this chapter. [1985 c 280 § 14.]

19.30.900 Severability—1955 c 392. If any section, sentence, clause or word of this chapter shall be held unconstitutional, the invalidity of such section, sentence, clause or word shall not affect the validity of any other portion of this chapter, it being the intent of this legislative assembly to enact the remainder of this chapter notwithstanding such part so declared unconstitutional should or may be so declared. [1955 c 392 § 17.]

19.30.901 Severability—1985 c 280. 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 280 § 18.]

19.30.902 Effective date—1985 c 280. This 1985 act shall take effect January 1, 1986. [1985 c 280 § 19.]

**Chapter 19.31
EMPLOYMENT AGENCIES**

Sections

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- 19.31.900 Severability—1969 ex.s. c 228.
- 19.31.910 Effective date—1969 ex.s. c 228.

19.31.010 Short title. This chapter shall be known and cited as "The Employment Agency Act". [1969 ex.s. c 228 § 1.]

19.31.020 Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as hereinafter used in this chapter, shall have the following meanings:

(1) "Employment agency" is synonymous with "agency" and shall mean any business in which any part of the business gross or net income is derived from a fee received from applicants, and in which any of the following activities are engaged in:

- (a) The offering, promising, procuring, or attempting to procure employment for applicants; or
- (b) The giving of information regarding where and from whom employment may be obtained.

In addition the term "employment agency" shall mean and include any person, bureau, employment listing or employment referral service, organization, or school which for profit, by advertisement or otherwise, offers, as one of its main objects or purposes, to procure employment for any person who pays for its services, or which collects tuition, or charges for service of any nature, where the main object of the person paying the same is to secure employment. It also includes any business that provides a resume to an individual and provides that person with a list of names to whom the resume may be sent or provides that person with preaddressed envelopes to be mailed by the individual or by the business itself. The term "employment agency" shall not include labor union organizations, temporary service contractors, proprietary schools, theatrical agencies, farm labor contractors, or the Washington state employment agency.

(2) "Temporary service contractors" shall mean any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part time or temporary help basis to others.

(3) "Theatrical agency" means any person who, for a fee or commission, procures or attempts to procure on behalf of an individual or individuals, employment or engagements for circus, vaudeville, the variety field, the legitimate theater, motion pictures, radio, television, phonograph recordings, transcriptions, opera, concert, ballet, modeling, or other entertainments, exhibitions, or performances.

(4) "Farm labor contractor" means any person, or his agent, who, for a fee, employs workers to render personal services in connection with the production of any farm products, to, for, or under the direction of an employer engaged in the growing, producing, or harvesting of farm

products, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing, producing, or harvesting of farm products or who provides in connection with recruiting, soliciting, supplying, or hiring workers engaged in the growing, producing, or harvesting of farm products, one or more of the following services: Furnishes board, lodging, or transportation for such workers, supervises, times, checks, counts, sizes, or otherwise directs or measures their work; or disburses wage payments to such persons.

(5) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(6) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(7) "Person" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent or employee of any of the foregoing.

(8) "Director" shall mean the director of licensing.

(9) "Resume" means a document of the applicant's employment history that is approved, received, and paid for by the applicant.

(10) "Fee" means anything of value. The term includes money or other valuable consideration or services or the promise of money or other valuable consideration or services, received directly or indirectly by an employment agency from a person seeking employment, in payment for the service. [1990 c 70 § 1; 1979 c 158 § 82; 1977 ex.s. c 51 § 1; 1969 ex.s. c 228 § 2.]

19.31.030 Records. Each employment agency shall keep records of all services rendered employers and applicants. These records shall contain the name and address of the employer by whom the services were solicited; the name and address of the applicant; kind of position ordered by the employer; kind of position accepted by the applicant; probable duration of the employment, if known; rate of wage or salary to be paid the applicant; amount of the employment agency's fee; dates and amounts of refund if any, and reason for such refund; and the contract agreed to between the agency and applicant.

The director shall have authority to demand and to examine, at the employment agency's regular place of business, all books, documents, and records in its possession for inspection. Unless otherwise provided by rules or regulation adopted by the director, such records shall be maintained for a period of three years from the date in which they are made. [1969 ex.s. c 228 § 3.]

19.31.040 Contract between agency and applicant—Contents—Notice. An employment agency shall provide each applicant with a copy of the contract between the applicant and employment agency which shall have printed on it or attached to it a copy of RCW 19.31.170 as now or

hereafter amended. Such contract shall contain the following:

(1) The name, address, and telephone number of the employment agency;

(2) Trade name if any;

(3) The date of the contract;

(4) The name of the applicant;

(5) The amount of the fee to be charged the applicant, or the method of computation of the fee, and the time and method of payments: PROVIDED, HOWEVER, That if the provisions of the contract come within the definition of a "retail installment transaction", as defined in RCW 63.14.010, the contract shall conform to the requirements of chapter 63.14 RCW, as now or hereafter amended;

(6) A notice in eight-point bold face type or larger directly above the space reserved in the contract for the signature of the buyer. The caption, "NOTICE TO APPLICANT—READ BEFORE SIGNING" shall precede the body of the notice and shall be in ten-point bold face type or larger. The notice shall read as follows:

"This is a contract. If you accept employment with any employer through [name of employment agency] you will be liable for the payment of the fee as set out above. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You must be given a copy of this contract at the time you sign it." [1985 c 7 § 83; 1977 ex.s. c 51 § 2; 1969 ex.s. c 228 § 4.]

19.31.050 Approval of contract, fee schedule. Prior to using any contract or fee schedule in the transaction of its business with applicants, each employment agency shall obtain the director's approval for the use of such contract or fee schedule. [1969 ex.s. c 228 § 5.]

19.31.060 Request from employer for interview required—Information to be furnished applicant. No employment agency shall send any applicant on an interview with a prospective employer without having first obtained, either orally or in writing, a bona fide request from such employer for the interview: PROVIDED, HOWEVER, That, it shall be the duty of every employment agency to give to each applicant for employment, orally or in writing, before being sent on an interview, information as to the name and address of the person to whom the applicant is to apply for such employment, the kind of service to be performed, the anticipated rate of wages or compensation, the agency's fee based on such anticipated wages or compensation, whether such employment is permanent or temporary, and the name and address of the natural person authorizing the interviewing of such applicant. [1977 ex.s. c 51 § 3; 1969 ex.s. c 228 § 6.]

19.31.070 Administration of chapter—Rules—Subpoenas—Investigations—Inspections. (1) The director shall administer the provisions of this chapter and shall issue from time to time reasonable rules and regulations for enforcing and carrying out the provisions and purposes of this chapter.

(2) The director shall have power to compel the attendance of witnesses by the issuance of subpoenas, to adminis-

ter oaths, and to take testimony and proofs concerning all matters pertaining to the administration of this chapter.

(3) The director shall have supervisory and investigative authority over all employment agencies. Upon receiving a complaint against any employment agency, the director shall have the right to examine all books, documents, or records in its possession. In addition, the director may examine the office or offices where business is or shall be conducted by such agency. [1969 ex.s. c 228 § 7.]

19.31.080 License required—Penalty. It shall be a misdemeanor for any person to conduct an employment agency business in this state unless he has an employment agency license issued pursuant to the provisions of this chapter. [1969 ex.s. c 228 § 8.]

19.31.090 Bond—Cash deposit—Action on bond or deposit—Procedure—Judgment. (1) Before conducting any business as an employment agency each licensee shall file with the director a surety bond in the sum of two thousand dollars running to the state of Washington, for the benefit of any person injured or damaged as a result of any violation by the licensee or his agent of any of the provisions of this chapter or of any rule or regulation adopted by the director pursuant to RCW 19.31.070(1).

(2) In lieu of the surety bond required by this section the license applicant may file with the director a cash deposit or other negotiable security acceptable to the director: PROVIDED, HOWEVER, If the license applicant has filed a cash deposit, the director shall deposit such funds with the state treasurer. If the license applicant has deposited cash or other negotiable security with the director, the same shall be returned to the licensee at the expiration of one year after the employment agency's license has expired or been revoked, if no legal action has been instituted against the licensee or the surety deposit at the expiration of the year.

(3) Any person having a claim against an employment agency for any violation of the provisions of this chapter or any rule or regulation promulgated thereunder may bring suit upon such bond or deposit in an appropriate court of the county where the office of the employment agency is located or of any county in which jurisdiction of the employment agency may be had. Action upon such bond or deposit shall be commenced by serving and filing of the complaint within one year from the date of expiration of the employment agency license in force at the time the act for which the suit is brought occurred. A copy of the complaint shall be served by registered or certified mail upon the director at the time the suit is started, and the director shall maintain a record, available for public inspection, of all suits so commenced. Such service on the director shall constitute service on the surety and the director shall transmit the complaint or a copy thereof to the surety within five business days after it shall have been received. The surety upon the bond shall not be liable in an aggregate amount in excess of the amount named in the bond, but in case claims pending at any one time exceed the amount of the bond, claims shall be satisfied in the order of judgment rendered. In the event that any final judgment shall impair the liability of the surety upon bond so furnished or the amount of the deposit so that there shall not be in effect a bond undertaking or deposit in

the full amount prescribed in this section, the director shall suspend the license of such employment agency until the bond undertaking or deposit in the required amount, unimpaired by unsatisfied judgment claims, shall have been furnished.

(4) In the event of a final judgment being entered against the deposit or security referred to in subsection (2) of this section, the director shall, upon receipt of a certified copy of the final judgment, order said judgment to be paid from the amount of the deposit or security. [1977 ex.s. c 51 § 4; 1969 ex.s. c 228 § 9.]

19.31.100 Application—Contents—Filing—Qualifications of applicants and licensees—Waiver. (1) Every applicant for an employment agency's license or a renewal thereof shall file with the director a written application stating the name and address of the applicant; the street and number of the building in which the business of the employment agency is to be conducted; the name of the person who is to have the general management of the office; the name under which the business of the office is to be carried on; whether or not the applicant is pecuniarily interested in the business to be carried on under the license; shall be signed by the applicant and sworn to before a notary public; and shall identify anyone holding over twenty percent interest in the agency. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of the corporation, and shall be signed and sworn to by the president and secretary thereof. If the applicant is a partnership, the application shall also state the names and addresses of all partners therein, and shall be signed and sworn to by all of them. The application shall also state whether or not the applicant is, at the time of making the application, or has at any previous time been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(2) The application shall require a certification that no officer or holder of more than twenty percent interest in the business has been convicted of a felony within ten years of the application which directly relates to the business for which the license is sought, or had any judgment entered against such person in any civil action involving fraud, misrepresentation, or conversion.

(3) All applications for employment agency licenses shall be accompanied by a copy of the form of contract and fee schedule to be used between the employment agency and the applicant.

(4) No license to operate an employment agency in this state shall be issued, transferred, renewed, or remain in effect, unless the person who has or is to have the general management of the office has qualified pursuant to this section. The director may, for good cause shown, waive the requirement imposed by this section for a period not to exceed one hundred and twenty days. Persons who have been previously licensed or who have operated to the satisfaction of the director for at least one year prior to September 21, 1977 as a general manager shall be entitled to operate for up to one year from such date before being required to qualify under this section. In order to qualify, such person shall, through testing procedures developed by the director, show that such person has a knowledge of this

law, pertinent labor laws, and laws against discrimination in employment in this state and of the United States. Said examination shall be given at least once each quarter and a fee for such examination shall be established by the director. Nothing in this chapter shall be construed to preclude any one natural person from being designated as the person who is to have the general management of up to three offices operated by any one licensee. [1982 c 227 § 14; 1977 ex.s. c 51 § 5; 1969 ex.s. c 228 § 10.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.31.110 Expiration date of license—Reinstatement. An employment agency license shall expire June 30th. Any such license not renewed may be reinstated if the employment agency can show good cause to the director for renewal of the license and present proof of intent to continue to act as an employment agency: **PROVIDED,** That no license shall be issued upon such application for reinstatement until all fees and penalties previously accrued under this chapter have been paid. [1977 ex.s. c 51 § 6; 1969 ex.s. c 228 § 11.]

19.31.120 Transfer of license. No license granted pursuant to this chapter shall be transferable without the consent of the director. No employment agency shall permit any person not mentioned in the license application to become connected with the business as an owner, member, officer, or director without the consent of the director. Consent may be withheld for any reason for which an original application for a license might have been rejected, if the person in question had been mentioned therein. [1969 ex.s. c 228 § 12.]

19.31.130 Denial, suspension or revocation of license—Grounds. In accordance with the provisions of chapter 34.05 RCW as now or as hereafter amended, the director may by order deny, suspend or revoke the license of any employment agency if he finds that the applicant or licensee:

(1) Was previously the holder of a license issued under this chapter, which was revoked for cause and never reissued by the director, or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(2) Has been found guilty of any felony within the past five years involving moral turpitude, or for any misdemeanor concerning fraud or conversion, or suffering any judgment in any civil action involving wilful fraud, misrepresentation or conversion;

(3) Has made a false statement of a material fact in his application or in any data attached thereto;

(4) Has violated any provisions of this chapter, or failed to comply with any rule or regulation issued by the director pursuant to this chapter. [1969 ex.s. c 228 § 13.]

19.31.140 Fees for licensees. The director shall determine the fees, as provided in RCW 43.24.086, charged to those parties licensed as employment agencies for original applications, renewal per year, branch license, both original and renewal, transfer of license, and approval of amended or new contracts and/or fee schedules. [1985 c 7 § 84; 1975 1st ex.s. c 30 § 92; 1969 ex.s. c 228 § 14.]

19.31.150 Employment condition precedent to charging fee. No employment agency shall charge or accept a fee or other consideration from an applicant without complying with the terms of a written contract as specified in RCW 19.31.040, and then only after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer. [1969 ex.s. c 228 § 15.]

19.31.160 Charging fee or payment contrary to chapter—Return of excess. Any employment agency which collects, receives, or retains a fee or other payment contrary to the provisions of this chapter or to the rules and regulations adopted pursuant to this chapter shall return the excessive portion of the fee within seven days after receiving a demand therefor from the director. [1969 ex.s. c 228 § 16.]

19.31.170 Limitations on fee amounts—Refunds.
(1) If an applicant accepts employment by agreement with an employer and thereafter never reports for work, the gross fee charged to the applicant shall not exceed: (a) Ten percent of what the first month's gross salary or wages would be, if known; or (b) ten percent of the first month's drawing account. If the employment was to have been on a commission basis without any drawing account, then no fee may be charged in the event that the applicant never reports for work.

(2) If an applicant accepts employment on a commission basis without any drawing account, then the gross fee charged such applicant shall be a percentage of commissions actually earned.

(3) If an applicant accepts employment and if within sixty days of his reporting for work the employment is terminated, then the gross fee charged such applicant shall not exceed twenty percent of the gross salary, wages or commission received by him.

(4) If an applicant accepts temporary employment as a domestic, household employee, baby sitter, agricultural worker, or day laborer, then the gross fee charged such applicant shall not be in excess of twenty-five percent of the first full month's gross salary or wages: **PROVIDED,** That where an applicant accepts employment as a domestic or household employee for a period of less than one month, then the gross fee charged such applicant shall not exceed twenty-five percent of the gross salary or wages paid.

(5) Any applicant requesting a refund of a fee paid to an employment agency in accordance with the terms of the approved fee schedule of the employment agency pursuant to this section shall file with the employment agency a form requesting such refund on which shall be set forth information reasonably needed and requested by the employment agency, including but not limited to the following: Circumstances under which employment was terminated, dates of employment, and gross earnings of the applicant.

(6) Refund requests which are not in dispute shall be made by the employment agency within thirty days of receipt. [1977 ex.s. c 51 § 7; 1969 ex.s. c 228 § 17.]

19.31.180 Posting of fee limitation and remedy provisions. Each licensee shall post the following in a conspicuous place in each office in which it conducts business: (1) The substance of RCW 19.31.150 through 19.31.170; and (2) a name and address provided by the director, in a form prescribed by him, of a person to whom complaints concerning possible violation of this chapter may be made. All words required to be posted pursuant to this section shall be printed in ten point bold face type. [1969 ex.s. c 228 § 18.]

19.31.190 Rules of conduct—Complaints. In addition to the other provisions of this chapter the following rules shall govern each and every employment agency:

(1) Every license or a verified copy thereof shall be displayed in a conspicuous place in each office of the employment agency;

(2) No fee shall be solicited or accepted as an application or registration fee by any employment agency solely for the purpose of being registered as an applicant for employment;

(3) No licensee or agent of the licensee shall solicit, persuade, or induce an employee to leave any employment in which the licensee or agent of the licensee has placed the employee; nor shall any licensee or agent of the licensee persuade or induce or solicit any employer to discharge any employee;

(4) No employment agency shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for obtaining work or employment. All advertising by a licensee shall signify that it is an employment agency solicitation;

(5) No licensee shall fail to state in any advertisement, proposal or contract for employment that there is a strike or lockout at the place of proposed employment, if he has knowledge that such condition exists;

(6) No licensee or agent of a licensee shall directly or indirectly split, divide, or share with an employer any fee, charge, or compensation received from any applicant who has obtained employment with such employer or with any other person connected with the business of such employer;

(7) When an applicant is referred to the same employer by two licensees, the fee shall be paid to the licensee who first contacted the applicant concerning the position for that applicant: PROVIDED, That the licensee has given the name of the employer to the applicant and has within five working days arranged an interview with the employer and the applicant was hired as the result of that interview;

(8) No licensee shall require in any manner that a potential employee or an employee of an employer make any contract with any lending agency for the purpose of fulfilling a financial obligation to the licensee;

(9) Any aggrieved person, firm, corporation, or public officer may submit a written complaint to the director charging the holder of an employment agency license with violation of this chapter and/or the rules and regulations adopted pursuant to this chapter. [1977 ex.s. c 51 § 8; 1969 ex.s. c 228 § 19.]

19.31.210 Enforcement. The director may refer such evidence as may be available to him concerning violations

of this chapter or of any rule or regulation adopted hereunder to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose, who may, in their discretion, with or without such a reference, in addition to any other action they might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter: PROVIDED, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, as now or hereafter amended, and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all persons subject to this chapter. [1969 ex.s. c 228 § 21.]

19.31.220 Assurance of discontinuance of violation. In the enforcement of this chapter, the attorney general and/or any said prosecuting attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this chapter. Any such assurance shall be in writing and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. [1969 ex.s. c 228 § 22.]

19.31.230 Civil penalty. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this chapter, shall forfeit and pay a civil penalty of not more than five thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general and/or the prosecuting attorney acting in the name of the state may petition for the recovery of civil penalties. [1969 ex.s. c 228 § 23.]

19.31.240 Service of process outside state. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which conduct has had impact in this state which this chapter reprehends. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185, as now or hereafter amended. [1969 ex.s. c 228 § 24.]

19.31.245 Licensing prerequisite to suit by employment agency—Action against unlicensed employment agency. (1) No employment agency may bring or maintain a cause of action in any court of this state for compensation for, or seeking equitable relief in regard to, services rendered employers and applicants, unless such agency shall allege and prove that at the time of rendering the services in question, or making the contract therefor, it was the holder of a valid license issued under this chapter.

(2) Any person who shall give consideration of any kind to any employment agency for the performance of employment services in this state when said employment agency shall not be the holder of a valid license issued under this chapter shall have a cause of action against the employment agency. Any court having jurisdiction may enter judgment therein for treble the amount of such consideration so paid, plus reasonable attorney's fees and costs.

(3) A person performing the services of an employment agency or employment listing or employment referral service without holding a valid license shall cease operations or immediately apply for and obtain a valid license. If the person continues to operate in violation of this chapter the director or the attorney general has a cause of action in any court having jurisdiction for the return of any consideration paid by any person to the agency. The court may enter judgment in the action for treble the amount of the consideration so paid, plus reasonable attorney's fees and costs. [1990 c 70 § 2; 1977 ex.s. c 51 § 10.]

19.31.250 Chapter provisions exclusive—Authority of political subdivisions not affected. (1) The provisions of this chapter relating to the regulation of private employment agencies shall be exclusive.

(2) This chapter shall not be construed to affect or reduce the authority of any political subdivision of the state of Washington to provide for the licensing of private employment agencies solely for revenue purposes. [1969 ex.s. c 228 § 25.]

19.31.260 Administrative procedure act to govern administration. The administration of this chapter shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW, as now or hereafter amended. [1969 ex.s. c 228 § 26.]

19.31.900 Severability—1969 ex.s. c 228. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1969 ex.s. c 228 § 27.]

19.31.910 Effective date—1969 ex.s. c 228. This act shall become effective July 1, 1969. [1969 ex.s. c 228 § 28.]

Chapter 19.32 FOOD LOCKERS

Sections

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19.32.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services under this chapter shall be performed by the department of health. [1989 1st ex.s. c 9 § 238.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

19.32.010 Declaration of police power. This chapter is in exercise of the police powers of the state for the protection of the safety, health and welfare of the people of the state. It hereby is found and declared that the public welfare requires control and regulation of the operation of refrigerated lockers and of the sale, handling and processing of articles of human food in connection therewith, and the control, inspection and regulation of persons engaged therein, in order to prevent or eliminate unsanitary, unhealthful, fraudulent, and unfair or uneconomic practices and conditions in connection with the refrigerated locker business, which practices and conditions endanger public health, defraud customers, jeopardize the public source of supply and storage facilities of essential food products, and adversely affect an important and growing industry. It is further found and declared that the regulation of the refrigerated locker business, as above outlined, is in the interest of the economic and social well-being and the health and safety of the state and all of its people. [1943 c 117 § 1; Rem. Supp. 1943 § 6294-125.]

19.32.020 Definitions. Except where the context indicates a different meaning, terms used in this chapter shall be defined as follows:

(1) "Refrigerated locker" or "locker" means any place, premises or establishment where facilities for the cold storage and preservation of human food in separate and individual compartments are offered to the public upon a rental or other basis providing compensation to the person offering such services.

(2) "Person" includes any individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaging in the business of operating or owning or offering the services of refrigerated lockers as above defined.

(3) "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. [1982 c 182 § 31; 1943 c 117 § 2; Rem. Supp. 1943 § 6294-126.]

Severability—1982 c 182: See RCW 19.02.901.

19.32.030 Director—Duties. The director of agriculture is hereby empowered to prescribe and to enforce such rules and regulations and to make such definitions, and to prescribe such procedure with regard to hearings, as he may deem necessary to carry into effect the full intent and meaning of this chapter. [1943 c 117 § 7; Rem. Supp. 1943 § 6294-131.]

19.32.040 Licensing required—Application. No person hereafter shall engage within this state in the business

of owning, operating or offering the services of any refrigerated locker or lockers without having obtained a license for each such place of business. Application for such license shall be made through the master license system. Such licenses shall be granted as a matter of right unless conditions exist which are grounds for a cancellation or revocation of a license as hereinafter set forth. [1982 c 182 § 32; 1943 c 117 § 3; Rem. Supp. 1943 § 6294-127.]

Severability—1982 c 182: See RCW 19.02.901.

Master license system

defined: RCW 19.32.020(3).

existing licenses or permits registered under, when: RCW 19.02.810.
to include additional licenses: RCW 19.02.110.

19.32.050 License fees—Expiration—Annual renewal fees. (1) An annual fee of ten dollars shall accompany each application for a refrigerated locker license or renewal of the license. All such license and renewal fees shall be deposited in the state's general fund.

(2) Each such license shall expire on the master license expiration date unless sooner revoked for cause. Renewal may be obtained annually by paying the required annual license fee. Such license fee shall not be transferable to any person nor be applicable to any location other than that for which originally issued. [1982 c 182 § 33; 1967 c 240 § 39; 1943 c 117 § 4; Rem. Supp. 1943 § 6294-128.]

Severability—1982 c 182: See RCW 19.02.901.

Severability—1967 c 240: See note following RCW 43.23.010.

Master license system

existing licenses or permits registered under, when: RCW 19.02.810.
license expiration date: RCW 19.02.090.

19.32.055 Stipulated license fee to replace existent charges. Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing fees and charges for like purposes or intent which may be existent prior to the adoption of this chapter. [1943 c 117 § 15; Rem. Supp. 1943 § 6294-139.]

19.32.060 Revocation or suspension of licenses—Grounds—Notice—Review. (1) The director of agriculture may cancel or suspend any such license if he finds after proper investigation that (a) the licensee has violated any provision of this chapter or of any other law of this state relating to the operation of refrigerated lockers or of the sale of any human food in connection therewith, or any regulation effective under any act the administration of which is in the charge of the department of agriculture, or (b) the licensed refrigerated locker premises or any equipment used therein or in connection therewith is in an unsanitary condition and the licensee has failed or refused to remedy the same within ten days after receipt from the director of agriculture of written notice to do so.

(2) No license shall be revoked or suspended by the director without delivery to the licensee of a written statement of the charge involved and an opportunity to answer such charge within ten days from the date of such notice.

(3) Any order made by the director suspending or revoking any license may be reviewed by certiorari in the superior court of the county in which the licensed premises are located, within ten days from the date notice in writing of the director's order revoking or suspending such license

has been served upon him. [1943 c 117 § 5; Rem. Supp. 1943 § 6294-129. Formerly RCW 19.32.060 through 19.32.080.]

19.32.090 Revocation or suspension of licenses—Witnesses—Evidence. In any proceeding under this chapter the director of agriculture may administer oaths and issue subpoenas, summon witnesses and take testimony of any person within the state of Washington. [1943 c 117 § 10; Rem. Supp. 1943 § 6294-134.]

19.32.100 Equipment—Operation—Controls—Temperatures. Every operator of a refrigerated locker plant shall provide a complete refrigeration system with adequate capacity and accurate and reliable controls for the maintenance of the following uniform temperatures of the various refrigerated rooms if provided, under extreme conditions of outside temperatures and under peak load conditions in the normal operation of the plant. The temperatures of the following rooms shall not exceed:

(1) Chill room, temperatures within two degrees (Fahrenheit) plus or minus of thirty-five degrees (Fahrenheit) with a tolerance of ten degrees (Fahrenheit) after fresh food is put in for chilling;

(2) Sharp freeze room, sharp freeze compartments, temperatures of minus ten degrees (Fahrenheit) or lower, or temperatures of zero degrees (Fahrenheit) or lower when forced air circulation is employed, with a tolerance of ten degrees (Fahrenheit) for either type of installation after fresh food is put in for freezing;

(3) Locker room temperatures of zero degrees (Fahrenheit) with a tolerance of twelve degrees (Fahrenheit) plus. [1943 c 117 § 9; Rem. Supp. 1943 § 6294-133.]

19.32.110 Diseased persons not to be employed—Health certificates. (1) No person afflicted with any contagious or infectious disease shall work or be permitted to work in or about any refrigerated locker, nor in the handling, dealing nor processing of any human food in connection therewith.

(2) No person shall work or be permitted to work in or about any refrigerated locker in the handling, processing or dealing in any human food or any ingredient thereof without holding a certificate from a physician, duly accredited for that purpose by the department of health, certifying that such person has been examined and found free from any contagious or infectious disease. The department of health may fix a maximum fee, not exceeding two dollars which may be charged by a physician for such examination. Such certificate shall be effective for a period of six months and thereafter must be renewed following proper physical examination as aforesaid. Where such certificate is required and provided under municipal ordinance upon examination deemed adequate by the department, certificates issued thereunder shall be sufficient under this chapter.

(3) Any such certificate shall be revoked by the department of health at any time the holder thereof is found, after proper physical examination, to be afflicted with any communicable or infectious disease. Refusal of any person employed in such premises to submit to proper and reasonable physical examination upon written demand by the

department of health or of the director of agriculture shall be cause for revocation of that person's health certificate. [1991 c 3 § 287; 1985 c 213 § 11; 1943 c 117 § 6; Rem. Supp. 1943 § 6294-130. Formerly RCW 19.32.110 through 19.32.140.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

19.32.150 Inspection of lockers and vehicles. The director of agriculture shall cause to be made periodically a thorough inspection of each establishment licensed under this chapter to determine whether or not the premises are constructed, equipped and operated in accordance with the requirements of this chapter and of all other laws of this state applicable to the operation either of refrigerated lockers or of the handling of human food in connection therewith, and of all regulations effective under this chapter relative to such operation. Such inspection shall also be made of each vehicle used by [an] operator of refrigerated lockers or of an establishment handling human food in connection therewith, when such vehicle is used in transporting or distributing human food products to or from refrigerated lockers within this state. [1943 c 117 § 8; Rem. Supp. 1943 § 6294-132.]

19.32.160 Liability for loss of goods. The liability of the owner or operator of refrigerated lockers for loss of goods in lockers or in operator's care shall be limited to negligence of operation or of employees. [1943 c 117 § 12; Rem. Supp. 1943 § 6294-136. FORMER PARTS OF SECTION: (i) 1943 c 117 § 14; Rem. Supp. 1943 § 6294-138, now codified as RCW 19.32.165. (ii) 1943 c 117 § 13, part; Rem. Supp. 1943 § 6294-137, part, now codified in RCW 19.32.170.]

19.32.165 Owners or operators not warehousemen. Persons who own or operate refrigerated locker plants shall not be construed to be warehousemen, nor shall receipts or other instruments issued by such persons in the ordinary conduct of their business be construed to be negotiable warehouse receipts. [1943 c 117 § 14; Rem. Supp. 1943 § 6294-138. Formerly RCW 19.32.160, part.]

19.32.170 Operator's lien—Liability for game law violations. Every operator of a locker shall have a lien upon all the property of every kind in his possession for all lockers' rentals, processing, handling or other charges due. Such lien may be foreclosed under the procedures as provided in chapter 60.10 RCW and RCW 61.12.162.

(1) Locker owners and operators shall not be responsible for liability for violations of game or other laws by renters unless the contents of the locker are under the control of the locker plant operator. [1969 c 82 § 10; 1943 c 117 § 13; Rem. Supp. 1943 § 6294-137. Formerly RCW 19.32.160, part.]

19.32.180 Violations—Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars for the first offense, and not less than two hundred dollars for the second and for each and every subsequent offense, and each day that any violation contin-

ues shall constitute a separate offense. [1943 c 117 § 11; Rem. Supp. 1943 § 6294-135.]

19.32.900 Severability—1943 c 117. If any clause, sentence, paragraph, section or part of this chapter shall, for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction, such judgment or decree shall not affect, impair nor invalidate the remainder of this chapter, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered. [1943 c 117 § 16.]

Chapter 19.36

CONTRACTS AND CREDIT AGREEMENTS REQUIRING WRITINGS (Formerly: Frauds, statute of)

Sections

- 19.36.010 Contracts, etc., void unless in writing.
- 19.36.020 Deeds, etc., in trust for grantor void as to creditors.
- 19.36.100 "Credit agreement" defined.
- 19.36.110 Enforceability of credit agreements—Effect of oral agreements and partial performance.
- 19.36.120 Exempt agreements.
- 19.36.130 Notice required.
- 19.36.140 Notice—Form and contents.
- 19.36.900 Effective date—Application—1990 c 211.

Assignment for benefit of creditors: Chapter 7.08 RCW.

Contracts

by telegraph: RCW 5.52.010.

of minors: Chapters 26.28 and 26.30 RCW.

Conveyances of real property: Chapter 64.04 RCW.

Fraudulent conveyances: Chapter 19.40 RCW.

Leases of real property: RCW 59.04.010.

19.36.010 Contracts, etc., void unless in writing. In the following cases, specified in this section, any agreement, contract and promise shall be void, unless such agreement, contract or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized, that is to say: (1) Every agreement that by its terms is not to be performed in one year from the making thereof; (2) every special promise to answer for the debt, default, or misdoings of another person; (3) every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry; (4) every special promise made by an executor or administrator to answer damages out of his own estate; (5) an agreement authorizing or employing an agent or broker to sell or purchase real estate for compensation or a commission. [1905 c 58 § 1; RRS § 5825. Prior: Code 1881 § 2325; 1863 p 412 § 2; 1860 p 298 § 2; 1854 p 403 § 2.]

19.36.020 Deeds, etc., in trust for grantor void as to creditors. That all deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the existing or subsequent creditors of such person. [Code 1881 § 2324;

RRS § 5824. Prior: 1863 p 412 § 1; 1860 p 298 § 1; 1854 p 403 § 1.]

19.36.100 "Credit agreement" defined. "Credit agreement" means an agreement, promise, or commitment to lend money, to otherwise extend credit, to forbear with respect to the repayment of any debt or the exercise of any remedy, to modify or amend the terms under which the creditor has lent money or otherwise extended credit, to release any guarantor or cosigner [cosigner], or to make any other financial accommodation pertaining to a debt or other extension of credit. [1990 c 211 § 1.]

19.36.110 Enforceability of credit agreements—Effect of oral agreements and partial performance. A credit agreement is not enforceable against the creditor unless the agreement is in writing and signed by the creditor. The rights and obligations of the parties to a credit agreement shall be determined solely from the written agreement, and any prior or contemporaneous oral agreements between the parties are superseded by, merged into, and may not vary the credit agreement. Partial performance of a credit agreement does not remove the agreement from the operation of this section. [1990 c 211 § 3.]

19.36.120 Exempt agreements. RCW 19.36.100 through 19.36.140 and 19.36.900 shall not apply to: (1) A promise, agreement, undertaking, document, or commitment relating to a credit card or charge card; or (2) a loan of money or extension of credit to a natural person that is primarily for personal, family, or household purposes and not primarily for investment, business, agricultural, or commercial purposes. [1990 c 211 § 2.]

19.36.130 Notice required. If a notice complying with RCW 19.36.140, is not given simultaneously with or before a credit agreement is made, RCW 19.36.100 through 19.36.140 and 19.36.900 shall not apply to the credit agreement. Notice, once given to a debtor, shall be effective as to all subsequent credit agreements and effective against the debtor, and its guarantors, successors, and assigns. [1990 c 211 § 4.]

19.36.140 Notice—Form and contents. The creditor shall give notice to the other party on a separate document or incorporated into one or more of the documents relating to a credit agreement. The notice shall be in type that is bold face, capitalized, underlined, or otherwise set out from surrounding written materials so it is conspicuous. The notice shall state substantially the following:

Oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.

[1990 c 211 § 5.]

19.36.900 Effective date—Application—1990 c 211. RCW 19.36.100 through 19.36.140 shall take effect July 1,

1990, and shall apply only to credit agreements entered into on or after July 1, 1990. [1990 c 211 § 6.]

Chapter 19.40

UNIFORM FRAUDULENT TRANSFER ACT

(Formerly: Fraudulent conveyances)

Sections

19.40.011	Definitions.
19.40.021	Insolvency.
19.40.031	Value.
19.40.041	Transfers fraudulent as to present and future creditors.
19.40.051	Transfers fraudulent as to present creditors.
19.40.061	When transfer is made or obligation is incurred.
19.40.071	Remedies of creditors.
19.40.081	Defenses, liability, and protection of transferee.
19.40.091	Extinguishment of cause of action.
19.40.900	Short title.
19.40.901	Captions not law.
19.40.902	Supplementary provisions.
19.40.903	Uniformity of application and construction.

Assignment for benefit of creditors: Chapter 7.08 RCW.

Conveyances of property to qualify for public assistance: RCW 74.08.331 through 74.08.338.

Disposal of property to defraud creditors, etc.: RCW 9.45.080 through 9.45.100.

19.40.011 Definitions. As used in this chapter:

(1) "Affiliate" means:

(i) A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities;

(A) As a fiduciary or agent without sole discretionary power to vote the securities; or

(B) Solely to secure a debt, if the person has not exercised the power to vote;

(ii) A corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(A) As a fiduciary or agent without sole power to vote the securities; or

(B) Solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(iv) A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(i) Property to the extent it is encumbered by a valid lien; or

(ii) Property to the extent it is generally exempt under nonbankruptcy law.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated,

fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person who has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person who is liable on a claim.

(7) "Insider" includes:

(i) If the debtor is an individual:

(A) A relative of the debtor or of a general partner of the debtor;

(B) A partnership in which the debtor is a general partner;

(C) A general partner in a partnership described in subsection (7)(i)(B) of this section; or

(D) A corporation of which the debtor is a director, officer, or person in control;

(ii) If the debtor is a corporation:

(A) A director of the debtor;

(B) An officer of the debtor;

(C) A person in control of the debtor;

(D) A partnership in which the debtor is a general partner;

(E) A general partner in a partnership described in subsection (7)(ii)(D) of this section; or

(F) A relative of a general partner, director, officer, or person in control of the debtor;

(iii) If the debtor is a partnership:

(A) A general partner in the debtor;

(B) A relative of a general partner in, or a general partner of, or a person in control of the debtor;

(C) Another partnership in which the debtor is a general partner;

(D) A general partner in a partnership described in subsection (7)(iii)(C) of this section; or

(E) A person in control of the debtor;

(iv) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(v) A managing agent of the debtor.

(8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) "Property" means anything that may be the subject of ownership.

(11) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings. [1987 c 444 § 1.]

Effective date—1987 c 444: "This act shall take effect July 1, 1988." [1987 c 444 § 16.]

19.40.021 Insolvency. (a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation.

(b) A debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets, at a fair valuation, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset. [1987 c 444 § 2.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.031 Value. (a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of RCW 19.40.041(a)(2) and 19.40.051, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous. [1987 c 444 § 3.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.041 Transfers fraudulent as to present and future creditors. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

(b) In determining actual intent under subsection (a)(1) of this section, consideration may be given, among other factors, to whether:

- (1) The transfer or obligation was to an insider;
- (2) The debtor retained possession or control of the property transferred after the transfer;
- (3) The transfer or obligation was disclosed or concealed;
- (4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (5) The transfer was of substantially all the debtor's assets;
- (6) The debtor absconded;
- (7) The debtor removed or concealed assets;
- (8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor. [1987 c 444 § 4.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.051 Transfers fraudulent as to present creditors. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent. [1987 c 444 § 5.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.061 When transfer is made or obligation is incurred. For the purposes of this chapter:

- (1) A transfer is made:
 - (i) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and
 - (ii) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee;
- (2) If applicable law permits the transfer to be perfected as provided in subsection (1) of this section and the transfer

is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action;

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) A transfer is not made until the debtor has acquired rights in the asset transferred;

(5) An obligation is incurred:

(i) If oral, when it becomes effective between the parties; or

(ii) If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee. [1987 c 444 § 6.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.071 Remedies of creditors. (a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in RCW 19.40.081, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by *chapter 7.12 RCW;

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds. [1987 c 444 § 7.]

***Reviser's note:** Chapter 7.12 RCW was recodified by 1987 c 442 § 1121. See Comparative Table for that chapter in the Table of Disposition of Former RCW Sections, Volume 0.

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.081 Defenses, liability, and protection of transferee. (a) A transfer or obligation is not voidable under RCW 19.40.041(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under RCW 19.40.071(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made; or

(2) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) A lien on or a right to retain any interest in the asset transferred;

(2) Enforcement of any obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under RCW 19.40.041(a)(2) or 19.40.051 if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with Article 9 of Title 62A RCW.

(f) A transfer is not voidable under RCW 19.40.051(b):

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor. [1987 c 444 § 8.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.091 Extinguishment of cause of action. A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

(a) Under RCW 19.40.041(a)(1), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(b) Under RCW 19.40.041(a)(2) or 19.40.051(a), within four years after the transfer was made or the obligation was incurred; or

(c) Under RCW 19.40.051(b), within one year after the transfer was made or the obligation was incurred. [1987 c 444 § 9.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.900 Short title. This chapter may be cited as the uniform fraudulent transfer act. [1987 c 444 § 12.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.901 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1987 c 444 § 13.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.902 Supplementary provisions. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law

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relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions. [1987 c 444 § 10.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.903 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. [1987 c 444 § 11.]

Effective date—1987 c 444: See note following RCW 19.40.011.

Chapter 19.48

HOTELS, LODGING HOUSES, ETC.— RESTAURANTS

Sections

19.48.010 Definitions.

19.48.020 Record of guests—Hotels and trailer camps.

19.48.030 Liability for loss of valuables when safe or vault furnished—Limitation.

19.48.070 Liability for loss of baggage and other property—Limitation—Storage—Disposal.

19.48.110 Obtaining hotel, restaurant, lodging house, ski area, etc., accommodations by fraud—Penalty.

19.48.900 Severability—1929 c 216.

Alcoholic beverage control: Title 66 RCW.

Discrimination: Chapter 49.60 RCW, RCW 9.91.010.

Hotel and restaurant safety regulations: Chapter 70.62 RCW.

Lien of hotels and lodging and boarding houses: Chapter 60.64 RCW.

19.48.010 Definitions. Any building held out to the public to be an inn, hotel or public lodging house or place where sleeping accommodations, whether with or without meals, or the facilities for preparing the same, are furnished for hire to transient guests, in which fifteen or more rooms are used for the accommodation of such guests, shall for the purposes of this chapter and chapter 60.64 RCW, or any amendment thereof, only, be defined to be a hotel, and whenever the word hotel shall occur in this chapter and chapter 60.64 RCW, or any amendment thereof, it shall be construed to mean a hotel as herein described. [1929 c 216 § 1; 1915 c 190 § 1; 1909 c 29 § 1; RRS § 6860. FORMER PART OF SECTION: 1933 c 114 § 1, part; 1929 c 216 § 2, part; 1915 c 190 § 3, part; 1890 p 95 § 1, part; RRS § 6862, part, now codified in RCW 19.48.030.]

Guest defined: RCW 60.64.010.

19.48.020 Record of guests—Hotels and trailer camps. Every hotel and trailer camp shall keep a record of the arrival and departure of its guests in such a manner that the record will be a permanent one for at least one year from the date of departure: PROVIDED, That this requirement shall not apply with respect to guests of tenants in mobile home parks, as defined in RCW 59.20.030. [1979 ex.s. c 186 § 14; 1955 c 138 § 1; 1915 c 190 § 2; RRS § 6861.]

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

19.48.030 Liability for loss of valuables when safe or vault furnished—Limitation. Whenever the proprietor,

keeper, owner, operator, lessee, or manager of any hotel, lodging house or inn shall provide a safe or vault for the safekeeping of any money, bank notes, jewelry, precious stones, ornaments, railroad mileage books or tickets, negotiable securities or other valuable papers, bullion, or other valuable property of small compass belonging to the guests, boarders or lodgers of such hotel, lodging house or inn, and shall notify the guests, boarders or lodgers thereof by posting a notice in three or more public and conspicuous places in the office, elevators, public rooms, elevator lobbies, public corridors, halls or entrances, or in the public parlors of such hotel, lodging house or inn, stating the fact that such safe or vault is provided in which such property may be deposited; and if such guests, boarders or lodgers shall neglect to deliver such property to the person in charge of such office, for deposit in the safe or vault, the proprietor, keeper, owner, operator, lessee or manager, whether individual, partnership or corporation, of such hotel, lodging house or inn shall not be liable for any loss or destruction of any such property, or any damage thereto, sustained by such guests, boarders or lodgers, by negligence of such proprietor, keeper, owner, operator, lessee or manager, or his, her, their or its employees, or by fire, theft, burglary, or any other cause whatsoever; but no proprietor, keeper, owner, operator, lessee or manager of any hotel, lodging house or inn, shall be obliged to receive property on deposit for safekeeping exceeding one thousand dollars in value; and if such guests, boarders or lodgers shall deliver such property to the person in charge of said office for deposit in such safe or vault, said proprietor, keeper, owner, operator, lessee, or manager, shall not be liable for the loss or destruction thereof, or damage thereto, sustained by such guests, boarders or lodgers in any such hotel, lodging house, or inn, exceeding the sum of one thousand dollars, notwithstanding said property may be of greater value, unless by special arrangement in writing with such proprietor, keeper, owner, operator, lessee or manager: PROVIDED, HOWEVER, That in case of such deposit of such property, the proprietor, keeper, owner, operator, lessee or manager of such hotel, lodging house, or inn, shall in no event be liable for loss or destruction thereof, or damage thereto, unless caused by the theft or gross negligence of such proprietor, keeper, owner, operator, lessee, or manager, of his, her, their, or its agents, servants or employees. [1933 c 114 § 1; 1929 c 216 § 2; 1915 c 190 § 3; 1890 p 95 § 1; RRS § 6862. Formerly RCW 19.48.010, part, 19.48.030 through 19.48.060.]

19.48.070 Liability for loss of baggage and other property—Limitation—Storage—Disposal. Except as provided for in RCW 19.48.030, the proprietor, keeper, owner, operator, lessee or manager, whether individual, partnership or corporation, of a hotel, lodging house, or inn, shall not be liable for the loss or destruction of, or damage to any personal property brought or sent into such hotel, lodging house, or inn, by or for any of the guests, boarders or lodgers thereof, unless such loss, destruction or damage is occasioned by the gross negligence of such proprietor, keeper, owner, operator, lessee or manager, or his, her, their, or its agents, servants or employees; but in no event shall such liability exceed the sum of two hundred dollars, unless such proprietor, keeper, owner, operator, lessee, or manager,

shall have contracted in writing with such guest, boarder, or lodger to assume a greater liability: PROVIDED, HOWEVER, That in no event shall liability of the proprietor, keeper, owner, operator, lessee or manager, or his, her, their, or its agents, servants or employees, of a hotel, lodging house, or inn exceed the following: For a guest, boarder or lodger, paying twenty-five cents per day, for lodging, or for any person who is not a guest, boarder or lodger, the liability for loss, destruction or damage, shall not exceed the sum of fifty dollars for a trunk and contents, ten dollars for a suitcase or valise and contents, five dollars for a box, bundle or package, and ten dollars for wearing apparel or miscellaneous effects. For a guest, boarder or lodger, paying fifty cents a day for lodging, the liability for loss, destruction or damage shall not exceed seventy-five dollars for a trunk and contents, twenty dollars for a suitcase or valise and contents, ten dollars for a box, bundle or package and contents, and twenty dollars for wearing apparel and miscellaneous effects. For a guest, boarder or lodger paying more than fifty cents per day for lodging, the liability for loss, destruction or damage shall not exceed one hundred fifty dollars for a trunk and contents, fifty dollars for a suitcase or valise and contents, ten dollars for a box, bundle or package and contents, and fifty dollars for wearing apparel and miscellaneous effects, unless in such case such proprietor, keeper, owner, operator, lessee, or manager of such hotel, lodging house, or inn, shall have consented in writing to assume a greater liability: AND PROVIDED FURTHER, Whenever any person shall suffer his baggage or property to remain in any hotel, lodging house, or inn, after leaving the same as a guest, boarder or lodger, and after the relation of guest, boarder or lodger between such person and the proprietor, keeper, owner, operator, lessee, or manager of such hotel, lodging house, or inn, has ceased, or shall forward or deliver the same to such hotel, lodging house, or inn, before, or without, becoming a guest, boarder, or lodger thereof, and the same shall be received into such hotel, lodging house, or inn, the liability of such proprietor, keeper, owner, operator, lessee, or manager thereof shall in no event exceed the sum of one hundred dollars, and such proprietor, keeper, owner, operator, lessee, or manager, may at his, her, their or its option, hold such baggage or property at the risk of such owner thereof; and when any baggage or property has been kept or stored by such hotel, lodging house, or inn, for six months after such relation of guest, boarder or lodger has ceased, or when such relation does not exist, after six months from the receipt of such baggage or property in such hotel, lodging house, or inn, such proprietor, keeper, owner, operator, lessee, or manager, may, if he, she, they or it so desires, sell the same at public auction in the manner now or hereinafter provided by law for the sale of property to satisfy a hotel keeper's lien, and from the proceeds of such sale pay or reimburse himself the expenses incurred for advertisement and sale, as well as any storage that may have accrued, and any other amounts owing by such person to said hotel, lodging house, or inn: PROVIDED, That when any such baggage or property is received, kept or stored therein after such relation does not exist, such proprietor, keeper, owner, operator, lessee, or manager, may, if he, she, or it, so desires, deliver the same at any time to a storage or warehouse company for storage, and in such event all responsibility or liability of such hotel, lodging house, or inn, for such

baggage or property, or for storage charges thereon, shall thereupon cease and terminate. [1929 c 216 § 3; 1917 c 57 § 1; 1915 c 190 § 4; RRS § 6863. Formerly RCW 19.48.070 through 19.48.100.]

19.48.110 Obtaining hotel, restaurant, lodging house, ski area, etc., accommodations by fraud—Penalty.

Any person who shall wilfully obtain food, money, credit, use of ski area facilities, lodging or accommodation at any hotel, inn, restaurant, commercial ski area, boarding house or lodging house, without paying therefor, with intent to defraud the proprietor, owner, operator or keeper thereof; or who obtains food, money, credit, use of ski area facilities, lodging or accommodation at such hotel, inn, restaurant, commercial ski area, boarding house or lodging house, by the use of any false pretense; or who, after obtaining food, money, credit, use of ski area facilities, lodging, or accommodation at such hotel, inn, restaurant, commercial ski area, boarding house, or lodging house, removes or causes to be removed from such hotel, inn, restaurant, commercial ski area, boarding house or lodging house, his or her baggage, without the permission or consent of the proprietor, manager or authorized employee thereof, before paying for such food, money, credit, use of ski area facilities, lodging or accommodation, shall be guilty of a gross misdemeanor: PROVIDED, That if the aggregate amount of food, money, use of ski area facilities, lodging or accommodation, or credit so obtained is seventy-five dollars or more such person shall be guilty of a felony. Proof that food, money, credit, use of ski area facilities, lodging or accommodation were obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, or that the person refused or neglected to pay for such food, money, credit, use of ski area facilities, lodging or accommodation on demand, or that he or she gave in payment for such food, money, credit, use of ski area facilities, lodging or accommodation, negotiable paper on which payment was refused, or that he or she absconded, or departed from, or left, the premises without paying for such food, money, credit, use of ski area facilities, lodging or accommodation, or that he or she removed, or attempted to remove, or caused to be removed, or caused to be attempted to be removed his or her property or baggage, shall be prima facie evidence of the fraudulent intent hereinbefore mentioned. [1985 c 129 § 2; 1974 ex.s. c 21 § 1; 1929 c 216 § 6; 1915 c 190 § 7; 1890 p 96 § 2; RRS § 6866. Formerly RCW 19.48.110, 19.48.120.]

Legislative findings—1985 c 129: "The legislature finds that commercial ski areas, which contribute significantly to the economic well-being of the state, suffer substantial financial losses from the fraudulent use of their facilities by persons who obtain services without paying for them. It is therefore the intent of the legislature that the law that protects hotels, inns, and restaurants from such fraud be extended to also protect commercial ski areas." [1985 c 129 § 1.]

Leaving restaurant or hotel or motel without paying: RCW 4.24.230.

19.48.900 Severability—1929 c 216. In the event that any section or any part of any section of this act, or this act as it applies to any persons or under any circumstances, should be adjudged invalid, such adjudication shall not affect or impair the validity of the remainder of this act, or the act as it applies to other persons, and under other circumstances. [1929 c 216 § 7.]

**Chapter 19.52
INTEREST—USURY**

Sections

- 19.52.005 Declaration of policy.
- 19.52.010 Rate in absence of agreement—Application to consumer leases.
- 19.52.020 Highest rate permissible—Setup charges.
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- 19.52.900 Application—Construction—1981 c 78.

Interest

rates on pledged property: RCW 19.60.060.

rates on warrants: Chapter 39.56 RCW.

Retail installment sales of goods and services: Chapter 63.14 RCW.

19.52.005 Declaration of policy. RCW 19.52.005, 19.52.020, 19.52.030, 19.52.032, 19.52.034, and 19.52.036 are enacted in order to protect the residents of this state from debts bearing burdensome interest rates; and in order to better effect the policy of this state to use this state's policies and courts to govern the affairs of our residents and the state; and in recognition of the duty to protect our citizens from oppression generally. [1967 ex.s. c 23 § 2.]

Severability—1967 ex.s. c 23: "If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby." [1967 ex.s. c 23 § 8.]

Savings—1967 ex.s. c 23: "The provisions of this 1967 amendatory act shall not apply to transactions entered into prior to the effective date hereof." [1967 ex.s. c 23 § 9.]

19.52.010 Rate in absence of agreement—Application to consumer leases. (1) Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of twelve percent per annum where no different rate is agreed to in writing between the parties: PROVIDED-

ED, That with regard to any transaction heretofore or hereafter entered into subject to this section, if an agreement in writing between the parties evidencing such transaction provides for the payment of money at the end of an agreed period of time or in installments over an agreed period of time, then such agreement shall constitute a writing for purposes of this section and satisfy the requirements thereof. The discounting of commercial paper, where the borrower makes himself liable as maker, guarantor, or indorser, shall be considered as a loan for the purposes of this chapter.

(2) A lease shall not be considered a loan or forbearance for the purposes of this chapter if:

(a) It constitutes a "consumer lease" as defined in RCW 63.10.020;

(b) It constitutes a lease-purchase agreement under chapter 63.19 RCW; or

(c) It would constitute such "consumer lease" but for the fact that:

(i) The lessee was not a natural person;

(ii) The lease was not primarily for personal, family, or household purposes; or

(iii) The total contractual obligation exceeded twenty-five thousand dollars. [1992 c 134 § 13. Prior: 1983 c 309 § 1; 1983 c 158 § 6; 1981 c 80 § 1; 1899 c 80 § 1; RRS § 7299; prior: 1895 c 136 § 1; 1893 c 20 § 1; Code 1881 § 2368; 1863 p 433 § 1; 1854 p 380 § 1.]

Short title—Severability—1992 c 134: See RCW 63.19.900 and 63.19.901.

Severability—1983 c 158: See RCW 63.10.900.

19.52.020 Highest rate permissible—Setup charges.

(1) Any rate of interest shall be legal so long as the rate of interest does not exceed the higher of: (a) Twelve percent per annum; or (b) four percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the later of (i) the establishment of the interest rate by written agreement of the parties to the contract, or (ii) any adjustment in the interest rate in the case of a written agreement permitting an adjustment in the interest rate. No person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater interest for the loan or forbearance of any money, goods, or things in action.

(2)(a) In any loan of money in which the funds advanced do not exceed the sum of five hundred dollars, a setup charge may be charged and collected by the lender, and such setup charge shall not be considered interest hereunder.

(b) The setup charge shall not exceed four percent of the amount of funds advanced, or fifteen dollars, whichever is the lesser, except that on loans of under one hundred dollars a minimum not exceeding four dollars may be so charged.

(3) Any loan made pursuant to a commitment to lend at an interest rate permitted at the time the commitment is made shall not be usurious. Credit extended pursuant to an open-end credit agreement upon which interest is computed on the basis of a balance or balances outstanding during a

billing cycle shall not be usurious if on any one day during the billing cycle the rate at which interest is charged for the billing cycle is not usurious. [1989 c 14 § 3; 1985 c 224 § 1; 1981 c 78 § 1; 1967 ex.s. c 23 § 4; 1899 c 80 § 2; RRS § 7300. Prior: 1895 c 136 § 2; 1893 c 20 § 3; Code 1881 § 2369; 1863 p 433 § 2; 1854 p 380 § 2.]

Effective date—1985 c 224: "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 July 1, 1985." [1985 c 224 § 2.]

Severability—1981 c 78: "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 78 § 7.]

Severability—Savings—1967 ex.s. c 23: See notes following RCW 19.52.005.

Interest on judgments: RCW 4.56.110.

19.52.025 Highest rate permissible—Computation—Publication in the Washington State Register. Each month the state treasurer shall compute the highest rate of interest permissible under RCW 19.52.020(1) for the succeeding calendar month. The treasurer shall file this rate with the state code reviser for publication in the next available issue of the Washington State Register in compliance with RCW 34.08.020(8). [1986 c 60 § 1.]

19.52.030 Usury—Penalty upon suit on contract—Costs and attorneys' fees. (1) If a greater rate of interest than is allowed by statute shall be contracted for or received or reserved, the contract shall be usurious, but shall not, therefore, be void. If in any action on such contract proof be made that greater rate of interest has been directly or indirectly contracted for or taken or reserved, the creditor shall only be entitled to the principal, less the amount of interest accruing thereon at the rate contracted for; and if interest shall have been paid, the creditor shall only be entitled to the principal less twice the amount of the interest paid, and less the amount of all accrued and unpaid interest; and the debtor shall be entitled to costs and reasonable attorneys' fees plus the amount by which the amount the debtor has paid under the contract exceeds the amount to which the creditor is entitled: PROVIDED, That the debtor may not commence an action on the contract to apply the provisions of this section if a loan or forbearance is made to a corporation engaged in a trade or business for the purposes of carrying on said trade or business unless there is also, in connection with such loan or forbearance, the creation of liability on the part of a natural person or that person's property for an amount in excess of the principal plus interest allowed pursuant to RCW 19.52.020. The reduction in principal shall be applied to diminish pro rata each future installment of principal payable under the terms of the contract.

(2) The acts and dealings of an agent in loaning money shall bind the principal, and in all cases where there is usurious interest contracted for by the transaction of any agent the principal shall be held thereby to the same extent as though the principal had acted in person. Where the same person acts as agent of the borrower and lender, that person shall be deemed the agent of the lender for the purposes of this chapter. If the agent of both the borrower and lender,

or of the lender only, transacts a usurious loan for a commission or fee, such agent shall be liable to the principal for the amount of the commission or fee received or reserved by the agent, and liable to the lender for the loss suffered by the lender as a result of the application of this chapter. [1989 c 14 § 7; 1967 ex.s. c 23 § 5; 1899 c 80 § 7; RRS § 7304. Prior: 1895 c 136 § 5; 1893 c 20 § 3. Formerly RCW 19.52.030 through 19.52.050.]

Severability—Savings—1967 ex.s. c 23: See notes following RCW 19.52.005.

19.52.032 Declaratory judgment action to establish usury—Time limitations for commencing. The debtor, if a natural person, or the creditor may bring an action for declaratory judgment to establish whether a loan or forbearance contract is or was usurious, and such an action shall be considered an action on the contract for the purposes of applying the provisions of RCW 19.52.030. Such an action shall be brought against the current creditor or debtor on the contract or, if the loan or debt has been fully repaid, by the debtor against the creditor to whom the debtor was last indebted on the contract. No such an action shall be commenced after six months following the date the final payment becomes due, whether by acceleration or otherwise, nor after six months following the date the principal is fully paid, whichever first occurs. If the debtor commences such an action and fails to establish usury, and if the court finds the action was frivolously commenced, the defendant or defendants may, in the court's discretion, recover reasonable attorney's fees from the debtor. [1967 ex.s. c 23 § 6.]

Severability—Savings—1967 ex.s. c 23: See notes following RCW 19.52.005.

19.52.034 Application of chapter 19.52 RCW to loan or forbearance made outside state. Whenever a loan or forbearance is made outside Washington state to a person then residing in this state the usury laws found in chapter 19.52 RCW, as now or hereafter amended, shall be applicable in all courts of this state to the same extent such usury laws would be applicable if the loan or forbearance was made in this state. [1967 ex.s. c 23 § 3.]

Severability—Savings—1967 ex.s. c 23: See notes following RCW 19.52.005.

19.52.036 Application of consumer protection act. Entering into or transacting a usurious contract is hereby declared to be an unfair act or practice in the conduct of commerce for the purpose of the application of the consumer protection act found in chapter 19.86 RCW. [1967 ex.s. c 23 § 7.]

Severability—Savings—1967 ex.s. c 23: See notes following RCW 19.52.005.

19.52.060 Interest on charges in excess of published rates. Any corporation, partnership or individual who furnishes the public any goods, wares, merchandise, pledge, security, insurance or transportation of which the price, rate or tariff is by law required to be published, shall, when any price, rate or tariff is charged in excess of the existing and established price, rate or tariff, refund to the person, partnership or corporation so overcharge, or to the assignee of such

claim, the amount of such overcharge, and on failure so to do, the claim for such overcharge shall bear interest at the rate of eight percent per annum until paid. [1907 c 187 § 1; RRS § 5841.]

19.52.080 Defense of usury or maintaining action thereon prohibited if transaction primarily agricultural, commercial, investment, or business—Exception. Profit and nonprofit corporations, Massachusetts trusts, associations, trusts, general partnerships, joint ventures, limited partnerships, and governments and governmental subdivisions, agencies, or instrumentalities may not plead the defense of usury nor maintain any action thereon or therefor, and persons may not plead the defense of usury nor maintain any action thereon or therefor if the transaction was primarily for agricultural, commercial, investment, or business purposes: PROVIDED, HOWEVER, That this section shall not apply to a consumer transaction of any amount.

Consumer transactions, as used in this section, shall mean transactions primarily for personal, family, or household purposes. [1981 c 78 § 2; 1975 1st ex.s. c 180 § 1; 1970 ex.s. c 97 § 2; 1969 ex.s. c 142 § 1.]

Severability—1981 c 78: See note following RCW 19.52.020.

19.52.090 Defense of usury or maintaining action thereon prohibited for certain types of transactions after May 1, 1980, and prior to March 1, 1981. No person may plead the defense of usury or maintain any action thereon or therefor for the interest charged on the unpaid balance of a contract for the sale and purchase of personal property which was not purchased primarily for personal, family or household use or real property if the purchase was made after May 1, 1980 and prior to March 1, 1981. [1981 c 78 § 9.]

Severability—1981 c 78: See note following RCW 19.52.020.

19.52.100 Chapter not applicable to retail installment transactions. This chapter shall not apply to a retail installment transaction, as defined by RCW 63.14.010, whether or not it is construed to be a loan or forbearance of any money, goods, or things in action. [1981 c 78 § 3.]

Severability—1981 c 78: See note following RCW 19.52.020.

19.52.110 Limitations in chapter not applicable to interest charged by broker-dealers—When. The interest charged by any broker-dealer registered under chapter 21.20 RCW and under the federal securities and exchange act of 1934, as amended, shall not be subject to the limitations imposed by this chapter if the underlying loans (1) may be paid in full at the option of the borrower and (2) are subject to the credit regulations of the board of governors of the federal reserve system, or its successor. [1981 c 79 § 1.]

19.52.115 Lender credit card agreements subject to provisions of chapter 19.52 RCW. See RCW 63.14.165.

19.52.120 Sales contract providing for deferred payment of purchase price not subject to chapter. A sales contract for goods or services providing for the deferred payment of the purchase price shall not be subject to this chapter, regardless of who seeks to enforce the

contract, notwithstanding the existence or occurrence of any one or more of the following events:

(1) That the seller may have arranged to sell, pledge, indorse, negotiate, assign, or transfer the obligations thereof to any person, including a financing organization, prior to or subsequent to or concurrently with the making of the sales transaction;

(2) That the amount of the finance charge, however denominated, is determined by reference to charts, computations or information supplied by such person;

(3) That the form or forms of instruments used to evidence the sales transaction have been supplied or prepared by such person;

(4) That the credit standing of the purchaser is or may have been evaluated by such person;

(5) That the sales transaction and the execution of any instrument evidencing the same is negotiated in the presence or with the assistance of a representative of such person;

(6) That the instrument or instruments used to evidence the sales transaction are pledged, indorsed, negotiated, assigned, or transferred by the seller to such person;

(7) That there is an underlying agreement between the seller and such person concerning the pledging, indorsing, negotiation, assigning, or transferring of sales contracts; or

(8) That the financing organization or its affiliates also provide franchising, financing, or other services to the seller-assignor. [1981 c 77 § 7.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

19.52.130 Charge made by assignee of retail installment contract or charge agreement to seller-assignor not limited by chapter—No agreement between credit card issuing bank and retailer shall prohibit discounts for cash payment. (1) Nothing contained in this chapter shall be deemed to limit any charge made by an assignee of a retail installment contract or charge agreement to the seller-assignor upon the sale, transfer, assignment, or discount of the contract or agreement, notwithstanding retention by the assignee of recourse rights and notwithstanding duties retained by the assignee to service delinquencies, perform service or warranty agreements regarding the property which is the subject matter of the assigned or discounted contracts or charge agreements, or to do or perform any other duty with respect to the account or contract assigned or the subject matter of such account or contract.

(2) No agreement between a credit card issuing bank and retailer shall prohibit the retailer from granting general discounts for the payment of cash, not in excess of the percentage allowed by Regulation Z, the Federal Truth in Lending Act. [1981 c 77 § 8.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

19.52.140 Chapter not applicable to interest, penalties, or costs on delinquent property taxes. This chapter does not apply in respect to interest, penalties, or costs imposed on delinquent property taxes under chapter 84.64 RCW. [1981 c 322 § 8.]

19.52.150 Defense or action of usury not applicable to consumer leases. See RCW 63.10.060.

19.52.160 Chapter not applicable to mobile homes. This chapter shall not apply to the financing of mobile homes which meets the definition of real property contained in RCW 84.04.090, and which financing is insured by a federal instrumentality. [1985 c 395 § 6.]

19.52.170 Chapter not applicable to certain loans from tax-qualified retirement plan. This chapter does not apply to any loan permitted under applicable federal law and regulations from a tax-qualified retirement plan to a person then a participant or a beneficiary under the plan.

This section affects loans being made, negotiated, renegotiated, extended, renewed, or revised on or after April 20, 1989. [1989 c 138 § 1.]

19.52.900 Application—Construction—1981 c 78. Chapter 78, Laws of 1981 shall apply only to loans or forbearances or transactions which are entered into after May 8, 1981, or to existing loans or forbearances, contracts or agreements which were not primarily for personal, family, or household use to which there is an addition to the principal amount of the credit outstanding after May 8, 1981: PROVIDED, HOWEVER, That nothing in chapter 78, Laws of 1981 shall be construed as implying that agricultural or investment purposes are not already included within the meaning of "commercial or business purposes" as used in RCW 19.52.080 as in effect prior to May 8, 1981. [1989 c 8 § 2; 1981 c 78 § 10.]

Severability—1981 c 78: See note following RCW 19.52.020.

Chapter 19.56

UNSOLICITED GOODS

Sections

19.56.010 Newspaper mailed without authority is gift.

19.56.020 Unsolicited goods or services as gifts.

19.56.030 Violation—Application of consumer protection act.

Advertising, crimes relating to: Chapter 9.04 RCW.

Libel and slander: Chapter 9.58 RCW.

19.56.010 Newspaper mailed without authority is gift. Whenever any person, company or corporation owning or controlling any newspaper or periodical of any kind, or whenever any editor or proprietor of any such newspaper or periodical shall mail or send any such newspaper or periodical to any person or persons in this state without first receiving an order for said newspaper or periodical from such person or persons to whom said newspaper or periodical is mailed or sent, [it] shall be deemed to be a gift, and no debt or obligation shall accrue against such person or persons, whether said newspaper or periodical is received by the person or persons to whom it is sent or not. [1890 p 460 § 1; RRS § 5842.]

19.56.020 Unsolicited goods or services as gifts. If unsolicited goods or services are provided to a person, the person has a right to accept the goods or services as a gift

only, and is not bound to return the goods or services. Goods or services are not considered to have been solicited unless the recipient specifically requested, in an affirmative manner, the receipt of the goods or services according to the terms under which they are being offered. Goods or services are not considered to have been requested if a person fails to respond to an invitation to purchase the goods or services and the goods or services are provided notwithstanding. If the unsolicited goods or services are either addressed to or intended for the recipient, the recipient may use them or dispose of them in any manner without any obligation to the provider, and in any action for goods or services sold and delivered, or in any action for the return of the goods, it is a complete defense that the goods or services were provided voluntarily and that the defendant did not affirmatively order or request the goods or services, either orally or in writing. [1992 c 43 § 1; 1967 c 57 § 1.]

19.56.030 Violation—Application of consumer protection act. Violation of RCW 19.56.020 is a matter affecting the public interest for the purpose of applying chapter 19.86 RCW. Failure to comply with this chapter is not reasonable in relation to the development and preservation of business. A violation of RCW 19.56.020 constitutes an unfair or deceptive act or practice in trade or commerce for the purposes of applying chapter 19.86 RCW. [1992 c 43 § 2.]

Chapter 19.58

MOTION PICTURE FAIR COMPETITION ACT

Sections

19.58.010	Purpose.
19.58.020	Definitions.
19.58.030	Blind bidding or blind selling prohibited—Trade screening required—Notice.
19.58.040	Solicitation of bids.
19.58.050	Violation—Civil suit—Attorneys' fees.
19.58.900	Short title.
19.58.905	Severability—1979 ex.s. c 29.

19.58.010 Purpose. The purpose of this chapter is to establish fair and open procedures for bidding and negotiation for the right to exhibit motion pictures in the state in order to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution and exhibition within the state; to promote fair and effective competition in that business; and to insure that exhibitors have the opportunity to view a motion picture and know its contents before committing themselves to exhibiting the motion picture in their communities. [1979 ex.s. c 29 § 1.]

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

(1) "Bid" means a written or oral offer or proposal to buy made by an exhibitor to a distributor in response to an invitation to bid for the license or right to exhibit a motion picture, the license stating the terms under which the exhibitor agrees to exhibit the motion picture.

(2) "Blind bidding" means the exhibitor's bidding or negotiating for, or the exhibitor's offering or agreeing to, terms for the license or right to exhibit a feature motion picture at any time either before the feature motion picture has been trade screened within the state or before the feature motion picture has been otherwise made available for viewing within the state by all exhibitors.

(3) "Blind selling" means the practice whereby a distributor licenses a feature motion picture before the exhibitor is afforded an opportunity to view the feature motion picture by trade screening.

(4) "Buying" or "selling" of the right to exhibit a feature motion picture means the licensing of a theater to show the feature motion picture for a certain number of days for a certain price.

(5) "Distributor" means a person engaged in the business of distributing or supplying more than one feature motion picture per year to exhibitors by rental, sale, licensing, or other agreement.

(6) "Exhibit" or "exhibition" means playing or showing a feature motion picture to the public for an admission charge.

(7) "Exhibitor" means a person in the business of operating one or more theaters in which motion pictures are exhibited to the public.

(8) "Feature motion picture" means a motion picture exceeding sixty minutes in duration.

(9) "Invitation to bid" means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid or negotiate for the license or right to exhibit a feature motion picture.

(10) "Licensing agreement" means a contract, agreement, understanding, or condition between a distributor and an exhibitor relating to the licensing or exhibition of a feature motion picture by the exhibitor.

(11) "Person" means one or more individuals, firms, partnerships, associations, societies, trusts, organizations, or corporations.

(12) "Run" means the continuous exhibition of a feature motion picture in a defined geographic area for a specified period of time. A "first run" is the first exhibition of the feature motion picture in the defined area; a "second run" is the second exhibition; and "subsequent runs" are subsequent exhibitions after the second run. "Exclusive run" is a run limited to a single theater in a defined geographic area and a "nonexclusive run" is a run in more than one theater in a defined geographic area.

(13) "Theater" means an establishment in which feature motion pictures are regularly exhibited to the public for an admission charge.

(14) "Trade screening" means the exhibition of a feature motion picture, prior to its release for public exhibition by a distributor, in the largest city within the state, which is open to all exhibitors from whom the distributor intends to solicit bids or with whom the distributor intends to negotiate for the license or right to exhibit the feature motion picture. [1979 ex.s. c 29 § 2.]

19.58.030 Blind bidding or blind selling prohibited—Trade screening required—Notice. (1) The buying or

selling of the right to exhibit a feature motion picture by blind bidding or blind selling is prohibited within the state.

(2) No bids may be returnable, no negotiations for the exhibition or licensing of a motion picture may take place, and no license agreement or any of its terms may be agreed upon, for the exhibition of a feature motion picture within the state before the feature motion picture has either been trade screened or otherwise made available for viewing by all exhibitors within the state.

(3) A distributor shall provide reasonable and uniform notice of the trade screening of feature motion pictures to those exhibitors within the state from whom bids will be solicited or with whom negotiations will be conducted for the license or right to exhibit the feature motion picture.

(4) A purported waiver of the prohibition in this chapter against blind bidding or blind selling is void and unenforceable. [1979 ex.s. c 29 § 3.]

19.58.040 Solicitation of bids. If bids are solicited from exhibitors for the licensing of a feature motion picture within the state, then:

(1) The invitation to bid shall specify: (a) Whether the run for which the bid is being solicited is a first, second, or subsequent run; whether the run is an exclusive or nonexclusive run; and, the geographic area for the run; (b) the names of all exhibitors who are being solicited; (c) the date and hour the invitation to bid expires; and (d) the time, date, and location, including the address, where the bids will be opened, which shall be within the state.

(2) All bids shall be submitted in writing and shall be opened at the same time and in the presence of those exhibitors, or their agents, who submitted bids and who attend the bid opening.

(3) Immediately upon being opened, the bids shall be subject to examination by the exhibitors, or their agents, who submitted bids, and who are present at the opening. Within ten business days after the bids are opened, the distributor shall notify each exhibitor who submitted a bid either the name of the winning bidder or the fact that none of the bids were acceptable.

(4) Once bids are solicited, the distributor shall license the feature motion picture only by bidding and may solicit rebids if none of the submitted bids are acceptable. [1979 ex.s. c 29 § 4.]

19.58.050 Violation—Civil suit—Attorneys' fees. Any person aggrieved by a violation of this chapter may bring a civil action in superior court to enjoin further violations or to recover the actual damages sustained, or both, together with the costs of the suit. In any such action, the court shall award reasonable attorneys' fees to the prevailing party. [1979 ex.s. c 29 § 5.]

19.58.900 Short title. This chapter may be known and cited as the Washington motion picture fair competition act. [1979 ex.s. c 29 § 6.]

19.58.905 Severability—1979 ex.s. c 29. 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 29 § 8.]

Chapter 19.60

PAWNBROKERS AND SECOND-HAND DEALERS

Sections

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19.60.085	Exemptions.
19.60.900	Severability—1984 c 10.
19.60.901	Effective date—1984 c 10.

Larceny—Receiving stolen property: RCW 9A.56.140 through 9A.56.170.

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

(1) Melted metals means metals derived from metal junk or precious metals that have been reduced to a melted state from other than ore or ingots which are produced from ore that has not previously been processed.

(2) Metal junk means any metal that has previously been milled, shaped, stamped, or forged and that is no longer useful in its original form, except precious metals.

(3) Nonmetal junk means any nonmetal, commonly discarded item that is worn out, or has outlasted its usefulness as intended in its original form except nonmetal junk does not include an item made in a former period which has enhanced value because of its age.

(4) Pawnbroker means every person engaged, in whole or in part, in the business of loaning money on the security of pledges of personal property, or deposits or conditional sales of personal property, or the purchase or sale of personal property.

(5) Precious metals means gold, silver, and platinum.

(6) Second-hand dealer means every person engaged in whole or in part in the business of purchasing, selling, trading, consignment selling, or otherwise transferring for value, second-hand property including metal junk, melted metals, precious metals, whether or not the person maintains a fixed place of business within the state. Second-hand dealer also includes persons or entities conducting business at flea markets or swap meets, more than three times per year.

(7) Second-hand property means any item of personal property offered for sale which is not new, including metals in any form, except postage stamps, coins that are legal tender, bullion in the form of fabricated hallmarked bars, used books, and clothing of a resale value of seventy-five dollars or less, except furs.

(8) Transaction means a pledge, or the purchase of, or consignment of, or the trade of any item of personal property by a pawnbroker or a second-hand dealer from a member of the general public.

(9) Term of the loan as defined in this chapter shall be set for a period of thirty days to include the date of the loan. [1991 c 323 § 1; 1985 c 70 § 1; 1984 c 10 § 1; 1981 c 279 § 3; 1909 c 249 § 235; RRS § 2487. FORMER PARTS OF SECTION: (i) 1909 c 249 § 236; RRS § 2488, now codified as RCW 19.60.015. (ii) 1939 c 89 § 1; RRS § 2488-1, now codified as RCW 19.60.065.]

19.60.014 Fixed place of business required. No person may operate as a pawnbroker unless the person maintains a fixed place of business within the state. [1984 c 10 § 4.]

19.60.020 Duty to record information. (1) Every pawnbroker and second-hand dealer doing business in this state shall maintain wherever that business is conducted a record in which shall be legibly written in the English language, at the time of each transaction the following information:

(a) The signature of the person with whom the transaction is made;

(b) The date of the transaction;

(c) The name of the person or employee or the identification number of the person or employee conducting the transaction, as required by the applicable chief of police or the county's chief law enforcement officer;

(d) The name, date of birth, sex, height, weight, race, and address and telephone number of the person with whom the transaction is made;

(e) A complete description of the property pledged, bought, or consigned, including the brand name, serial number, model number or name, any initials or engraving, size, pattern, and color or stone or stones, and in the case of firearms, the caliber, barrel length, type of action, and whether it is a pistol, rifle, or shotgun;

(f) The price paid or the amount loaned;

(g) The type and identifying number of identification used by the person with whom the transaction was made, which shall consist of a valid drivers license or identification card issued by any state or two pieces of identification issued by a governmental agency, one of which shall be descriptive of the person identified. At all times, one piece of current government issued picture identification will be required; and

(h) The nature of the transaction, a number identifying the transaction, the store identification as designated by the applicable law enforcement agency, or the name and address of the business and the name of the person or employee, conducting the transaction, and the location of the property.

(2) This record shall at all times during the ordinary hours of business, or at reasonable times if ordinary hours of business are not kept, be open to the inspection of any commissioned law enforcement officer of the state or any of its political subdivisions, and shall be maintained wherever that business is conducted for three years following the date of the transaction. [1991 c 323 § 2; 1984 c 10 § 3; 1909 c 249 § 229; RRS § 2481.]

19.60.040 Report to chief law enforcement officer.

(1) Upon request, every pawnbroker and second-hand dealer doing business in the state shall furnish a full, true, and correct transcript of the record of all transactions conducted on the preceding day. These transactions shall be recorded on such forms as may be provided and in such format as may be required by the chief of police or the county's chief law enforcement officer within a specified time not less than twenty-four hours. This information may be transmitted to the applicable law enforcement agency electronically, by facsimile transmission, or by modem or similar device, or by delivery of computer disk subject to the requirements of, and approval by, the chief of police or the county's chief law enforcement officer.

(2) If a pawnbroker or second-hand dealer has good cause to believe that any property in his or her possession has been previously lost or stolen, the pawnbroker or second-hand dealer shall promptly report that fact to the applicable chief of police or the county's chief law enforcement officer, together with the name of the owner, if known, and the date when, and the name of the person from whom it was received. [1991 c 323 § 3; 1984 c 10 § 6; 1909 c 249 § 231; RRS § 2483.]

19.60.045 Duties upon notification that property is reported stolen. Following notification from a law enforcement agency that an item of property has been reported as stolen, the pawnbroker or second-hand dealer shall hold that property intact and safe from alteration, damage, or commingling. The pawnbroker or second-hand dealer shall place an identifying tag or other suitable identification upon the property so held. Property held shall not be released for one hundred twenty days from the date of police notification unless released by written consent of the applicable law enforcement agency or by order of a court of competent jurisdiction. In cases where the applicable law enforcement agency has placed a verbal hold on an item, that agency must then give written notice within ten business days. If such written notice is not received within that period of time, then the hold order will cease. The pawnbroker or second-hand dealer shall give a twenty-day written notice before the expiration of the one hundred twenty-day holding period to the applicable law enforcement agency about the stolen property. If notice is not given within twenty days, then the hold on the property shall continue for an additional one hundred twenty days. The applicable law enforcement agency may renew the holding period for additional one hundred twenty-day periods as necessary. After the receipt of notification from a pawnbroker or second-hand dealer, if an additional holding period is required, the applicable law enforcement agency shall give the pawnbroker or second-hand dealer written notice, prior to the expiration of the existing hold order. A law enforcement agency shall not place on hold any item of personal property unless that agency reasonably suspects that the item of personal property is a lost or stolen item. Any hold that is placed on an item will be removed as soon as practicable after the item on hold is determined not to be stolen or lost. [1991 c 323 § 4; 1984 c 10 § 5.]

Receiving stolen property: RCW 9A.56.140 through 9A.56.170.

19.60.050 Retention of property by pawnbrokers—Inspection. Property bought or received in pledge by any pawnbroker shall not be removed from that place of business, except when redeemed by, or returned to the owner, within thirty days after the receipt of the property. Property shall at all times during the ordinary hours of business be open to inspection to any commissioned law enforcement officer of the state or any of its political subdivisions. [1991 c 323 § 5; 1984 c 10 § 8; 1909 c 249 § 232; RRS § 2484.]
Restoration of stolen property: RCW 9.54.130.

19.60.055 Retention of property by second-hand dealers—Inspection. (1) Property bought or received on consignment by any second-hand dealer with a permanent place of business in the state shall not be removed from that place of business except consigned property returned to the owner, within thirty days after the receipt of the property. Property shall at all times during the ordinary hours of business be open to inspection to any commissioned law enforcement officer of the state or any of its political subdivisions.

(2) Property bought or received on consignment by any second-hand dealer without a permanent place of business in the state, shall be held within the city or county in which the property was received, except consigned property returned to the owner, within thirty days after receipt of the property. The property shall be available within the appropriate jurisdiction for inspection at reasonable times by any commissioned law enforcement officer of the state or any of its political subdivisions. [1991 c 323 § 6; 1984 c 10 § 7.]

19.60.060 Rates of interest and other fees—Sale of pledged property. All pawnbrokers are authorized to charge and receive interest and other fees at the following rates for money on the security of personal property actually received in pledge:

(1) The interest shall not exceed:

(a) For an amount loaned up to \$ 9.99 - interest at \$1.00 for each thirty-day period to include the loan date.

(b) For an amount loaned from \$10.00 to \$19.99 - interest at the rate of \$1.25 for each thirty-day period to include the loan date.

(c) For an amount loaned from \$20.00 to \$24.99 - interest at the rate of \$1.50 for each thirty-day period to include the loan date.

(d) For an amount loaned from \$25.00 to \$34.99 - interest at the rate of \$1.75 for each thirty-day period to include the loan date.

(e) For an amount loaned from \$35.00 to \$39.99 - interest at the rate of \$2.00 for each thirty-day period to include the loan date.

(f) For an amount loaned from \$40.00 to \$49.99 - interest at the rate of \$2.25 for each thirty-day period to include the loan date.

(g) For the amount loaned from \$50.00 to \$59.99 - interest at the rate of \$2.50 for each thirty-day period to include the loan date.

(h) For the amount loaned from \$60.00 to \$69.99 - interest at the rate of \$2.75 for each thirty-day period to include the loan date.

(i) For the amount loaned from \$70.00 to \$79.99 - interest at the rate of \$3.00 for each thirty-day period to include the loan date.

(j) For the amount loaned from \$80.00 to \$89.99 - interest at the rate of \$3.25 for each thirty-day period to include the loan date.

(k) For the amount loaned from \$90.00 to \$99.99 - interest at the rate of \$3.50 for each thirty-day period to include the loan date.

(l) For the amount loaned from \$100.00 or more - interest at the rate of three percent for each thirty-day period to include the loan date.

(2) The fee for the preparation of loan documents, pledges, or reports required under the laws of the United States of America, the state of Washington, or the counties, cities, towns, or other political subdivisions thereof, shall not exceed:

(a) For the amount loaned up to \$4.99 - the sum of \$.50;

(b) For the amount loaned from \$5.00 to \$9.99 - the sum of \$2.00;

(c) For the amount loaned from \$10.00 to \$14.99 - the sum of \$3.00;

(d) For the amount loaned from \$15.00 to \$19.99 - the sum of \$3.50.

(e) For the amount loaned from \$20.00 to \$24.99 - the sum of \$4.00.

(f) For the amount loaned from \$25.00 to \$29.99 - the sum of \$4.50.

(g) For the amount loaned from \$30.00 to \$34.99 - the sum of \$5.00.

(h) For the amount loaned from \$35.00 to \$39.99 - the sum of \$5.50.

(i) For the amount loaned from \$40.00 to \$44.99 - the sum of \$6.00.

(j) For the amount loaned from \$45.00 to \$49.99 - the sum of \$6.50.

(k) For the amount loaned from \$50.00 to \$54.99 - the sum of \$7.00.

(l) For the amount loaned from \$55.00 to \$59.99 - the sum of \$7.50.

(m) For the amount loaned from \$60.00 to \$64.99 - the sum of \$8.00.

(n) For the amount loaned from \$65.00 to \$69.99 - the sum of \$8.50.

(o) For the amount loaned from \$70.00 to \$74.99 - the sum of \$9.00.

(p) For the amount loaned from \$75.00 to \$79.99 - the sum of \$9.50.

(q) For the amount loaned from \$80.00 to \$84.99 - the sum of \$10.00.

(r) For the amount loaned from \$85.00 to \$89.99 - the sum of \$10.50.

(s) For the amount loaned from \$90.00 to \$94.99 - the sum of \$11.00.

(t) For the amount loaned from \$95.00 to \$99.99 - the sum of \$11.50.

(u) For the amount loaned from \$100.00 to \$104.99 - the sum of \$12.00.

(v) For the amount loaned from \$105.00 to \$109.99 - the sum of \$12.25.

(w) For the amount loaned from \$110.00 to \$114.99 - the sum of \$12.75.

(x) For the amount loaned from \$115.00 to \$119.99 - the sum of \$13.25.

(y) For the amount loaned from \$120.00 to \$124.99 - the sum of \$13.50.

(z) For the amount loaned from \$125.00 to \$129.99 - the sum of \$13.75.

(aa) For the amount loaned from \$130.00 to \$149.99 - the sum of \$14.50.

(bb) For the amount loaned from \$150.00 to \$174.99 - the sum of \$14.75.

(cc) For the amount loaned from \$175.00 to \$199.99 - the sum of \$15.00.

(dd) For the amount loaned from \$200.00 to \$224.99 - the sum of \$16.00.

(ee) For the amount loaned from \$225.00 to \$249.99 - the sum of \$17.00.

(ff) For the amount loaned from \$250.00 to \$274.99 - the sum of \$18.00.

(gg) For the amount loaned from \$275.00 to \$299.99 - the sum of \$19.00.

(hh) For the amount loaned from \$300.00 to \$324.99 - the sum of \$20.00.

(ii) For the amount loaned from \$325.00 to \$349.99 - the sum of \$21.00.

(jj) For the amount loaned from \$350.00 to \$374.99 - the sum of \$22.00.

(kk) For the amount loaned from \$375.00 to \$399.99 - the sum of \$23.00.

(ll) For the amount loaned from \$400.00 to \$424.99 - the sum of \$24.00.

(mm) For the amount loaned from \$425.00 to \$449.99 - the sum of \$25.00.

(nn) For the amount loaned from \$450.00 to \$474.99 - the sum of \$26.00.

(oo) For the amount loaned from \$475.00 to \$499.99 - the sum of \$27.00.

(pp) For the amount loaned from \$500.00 to \$524.99 - the sum of \$28.00.

(qq) For the amount loaned from \$525.00 to \$549.99 - the sum of \$29.00.

(rr) For the amount loaned from \$550.00 to \$599.99 - the sum of \$30.00.

(ss) For the amount loaned from \$600.00 to \$699.99 - the sum of \$35.00.

(tt) For the amount loaned from \$700.00 to \$799.99 - the sum of \$40.00.

(uu) For the amount loaned from \$800.00 to \$899.99 - the sum of \$40.00.

(vv) For the amount loaned from \$900.00 to \$999.99 - the sum of \$50.00.

(ww) For the amount loaned from \$1000.00 to \$1499.99 - the sum of \$55.00.

(xx) For the amount loaned from \$1500.00 to \$1999.99 - the sum of \$60.00.

(yy) For the amount loaned from \$2000.00 to \$2499.99 - the sum of \$65.00.

(zz) For the amount loaned from \$2500.00 to \$2999.99 - the sum of \$70.00.

(aaa) For the amount loaned from \$3000.00 to \$3499.99 - the sum of \$75.00.

(bbb) For the amount loaned from \$3500.00 to \$3999.99 - the sum of \$80.00.

(ccc) For the amount loaned from \$4000.00 to \$4499.99 - the sum of \$85.00.

(ddd) For the amount loaned from \$4500.00 or more - the sum of \$90.00.

(3) Fees under subsection (2) of this section may be charged one time only during the term of the loan.

A copy of this section, set in twelve point type or larger, shall be posted prominently in each premises subject to this chapter. [1991 c 323 § 7; 1984 c 10 § 9; 1973 1st ex.s. c 91 § 1; 1909 c 249 § 234; RRS § 2486.]

Interest—Usury: Chapter 19.52 RCW.

19.60.061 Pawnbrokers—Sale of pledged property limited—Written document required for transactions.

(1) A pawnbroker shall not sell any property received in pledge, until both the term of the loan and a grace period of a minimum of sixty days has expired. However, if a pledged article is not redeemed within the ninety-day period of both the term of the loan and the grace period, the pawnbroker shall have all rights, title, and interest of that item of personal property. The pawnbroker shall not be required to account to the pledgor for the proceeds received from the disposition of that item. Any provision of law relating to the foreclosures and the subsequent sale of forfeited pledged items, shall not be applicable to any pledge as defined under this chapter, the title to which is transferred in accordance with this section.

(2) Every transaction entered into by a pawnbroker shall be evidenced by a written document, a copy of which shall be furnished to the pledgor. The document shall set forth the term of the loan, the date on which the loan is due and payable, and shall inform the pledgor of the pledgor's right to redeem the pledge within sixty days after the expiration of the loan term. [1991 c 323 § 8; 1984 c 10 § 10.]

19.60.062 Attorney fees and costs in action to recover possession or determine title or ownership. By either party, in an action brought by an owner to recover goods in the possession of a pawnbroker or second-hand dealer, or an action brought by a pawnbroker or second-hand dealer against an owner, or a person claiming ownership, to determine title or ownership of any item, the prevailing party is entitled to reasonable attorney's fees and costs. [1991 c 323 § 9; 1984 c 10 § 11; 1979 ex.s. c 41 § 1.]

19.60.066 Prohibited acts—Penalty. It is a gross misdemeanor under chapter 9A.20 RCW for:

(1) Any person to remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of personal property that was purchased, consigned, or received in pledge. In addition an item shall not be accepted for pledge or a second-hand purchase where the manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of personal property has been removed, altered, or obliterated;

(2) Any person to knowingly make, cause, or allow to be made any false entry or misstatement of any material

matter in any book, record, or writing required to be kept under this chapter;

(3) Any pawnbroker or second-hand dealer to receive any property from any person under the age of eighteen years, any person under the influence of intoxicating liquor or drugs, or any person known to the pawnbroker or second-hand dealer as having been convicted of burglary, robbery, theft, or possession of or receiving stolen property within the past ten years whether the person is acting in his or her own behalf or as the agent of another;

(4) Any pawnbroker to engage in the business of cashing or selling checks, drafts, money orders, or other commercial paper serving the same purpose unless the pawnbroker complies with the provisions of chapter 31.45 RCW; or

(5) Any person to violate knowingly any other provision of this chapter. [1991 c 355 § 21; 1991 c 323 § 10; 1984 c 10 § 12.]

Reviser's note: This section was amended by 1991 c 323 § 10 and by 1991 c 355 § 21, 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, implementation—1991 c 355: See RCW 31.45.900.

19.60.068 Resale agreement to avoid interest and fee restrictions prohibited. A purchase of personal property shall not be made on the condition of selling it back at a stipulated time and price greater than the purchase price, for the purpose of avoiding the interest and fee restrictions of this chapter. [1991 c 323 § 11.]

19.60.075 Regulation by political subdivisions. The regulation of pawnbrokers and second-hand dealers under this chapter is not intended to restrict political subdivisions from enacting ordinances or codes requiring the licensing of pawnbrokers and second-hand dealers or from enacting ordinances or codes which are more restrictive than the provisions of this chapter. [1984 c 10 § 13.]

19.60.085 Exemptions. The provisions of this chapter do not apply to transactions conducted by the following:

(1) Motor vehicle dealers licensed under chapter 46.70 RCW;

(2) Motor vehicle wreckers or hulk haulers licensed under chapter 46.79 or 46.80 RCW;

(3) Persons giving an allowance for the trade-in or exchange of second-hand property on the purchase of other merchandise of the same kind of greater value; and

(4) Persons in the business of buying or selling empty food and beverage containers or metal or nonmetal junk. [1985 c 70 § 2; 1984 c 10 § 2.]

19.60.900 Severability—1984 c 10. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 10 § 15.]

19.60.901 Effective date—1984 c 10. 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 thirty days after it is signed by the governor and filed with the secretary of state. [1984 c 10 § 16.]

Reviser's note: The effective date of this act [1984 c 10] was March 22, 1984.

Chapter 19.64

RADIO BROADCASTING

Sections

- 19.64.010 Liability of owner or operator limited.
19.64.020 Speaker or sponsor liability not limited.
19.64.900 Saving—1943 c 229.

Libel and slander: Chapter 9.58 RCW.

Radio broadcasting rights as to horse races: RCW 67.16.110.

19.64.010 Liability of owner or operator limited.

Where the owner, licensee, or operator of a radio or television broadcasting station, or the agents or employees thereof, has required a person speaking over said station to submit a written copy of his script prior to such broadcast and has cut such speaker off the air as soon as reasonably possible in the event such speaker deviates from such written script, said owner, licensee, or operator, or the agents or employees thereof, shall not be liable for any damages, for any defamatory statement published or uttered by such person in or as a part of such radio or television broadcast unless such defamatory statements are contained in said written script. [1943 c 229 § 1; Rem. Supp. 1943 § 998-1.]

19.64.020 Speaker or sponsor liability not limited.

Nothing contained shall be construed as limiting the liability of any speaker or his sponsor or sponsors for defamatory statements made by such speaker in or as a part of any such broadcast. [1943 c 229 § 2; Rem. Supp. 1943 § 998-2.]

19.64.900 Saving—1943 c 229. This chapter shall not be applicable to or affect any cause of action existing at the time this chapter becomes effective. [1943 c 229 § 3.]

Chapter 19.68

REBATING BY PRACTITIONERS OF HEALING PROFESSIONS

Sections

- 19.68.010 Rebating prohibited—Penalty.
19.68.020 Deemed unprofessional conduct.
19.68.030 License may be revoked or suspended.
19.68.040 Declaration of intent.

Hearing aid fitter-dispensers: RCW 18.35.110.

Physicians, surgeons, dentists, oculists, optometrists, osteopaths, chiropractors, drugless healers, etc.: Title 18 RCW.

19.68.010 Rebating prohibited—Penalty. It shall be unlawful for any person, firm, corporation or association, whether organized as a cooperative, or for profit or non-profit, to pay, or offer to pay or allow, directly or indirectly, to any person licensed by the state of Washington to engage in the practice of medicine and surgery, drugless treatment in any form, dentistry, or pharmacy and it shall be unlawful for

such person to request, receive or allow, directly or indirectly, a rebate, refund, commission, unearned discount or profit by means of a credit or other valuable consideration in connection with the referral of patients to any person, firm, corporation or association, or in connection with the furnishings of medical, surgical or dental care, diagnosis, treatment or service, on the sale, rental, furnishing or supplying of clinical laboratory supplies or services of any kind, drugs, medication, or medical supplies, or any other goods, services or supplies prescribed for medical diagnosis, care or treatment: PROVIDED, That ownership of a financial interest in any firm, corporation or association which furnishes any kind of clinical laboratory or other services prescribed for medical, surgical, or dental diagnosis shall not be prohibited under this section where the referring practitioner affirmatively discloses to the patient in writing, the fact that such practitioner has a financial interest in such firm, corporation, or association.

Any person violating the provisions of this section is guilty of a misdemeanor. [1973 1st ex.s. c 26 § 1; 1965 ex.s. c 58 § 1. Prior: 1949 c 204 § 1; Rem. Supp. 1949 § 10185-14.]

19.68.020 Deemed unprofessional conduct. The acceptance directly or indirectly by any person so licensed of any rebate, refund, commission, unearned discount, or profit by means of a credit or other valuable consideration whether in the form of money or otherwise, as compensation for referring patients to any person, firm, corporation or association as set forth in RCW 19.68.030, constitutes unprofessional conduct. [1965 ex.s. c 58 § 2; 1949 c 204 § 2; Rem. Supp. 1949 § 10185-15.]

19.68.030 License may be revoked or suspended. The license of any person so licensed may be revoked or suspended if he has directly or indirectly requested, received or participated in the division, transference, assignment, rebate, splitting or refunding of a fee for, or has directly or indirectly requested, received or profited by means of a credit or other valuable consideration as a commission, discount or gratuity in connection with the furnishing of medical, surgical or dental care, diagnosis or treatment or service, including x-ray examination and treatment, or for or in connection with the sale, rental, supplying or furnishing of clinical laboratory service or supplies, x-ray services or supplies, inhalation therapy service or equipment, ambulance service, hospital or medical supplies, physiotherapy or other therapeutic service or equipment, artificial limbs, teeth or eyes, orthopedic or surgical appliances or supplies, optical appliances, supplies or equipment, devices for aid of hearing, drugs, medication or medical supplies or any other goods, services or supplies prescribed for medical diagnosis, care or treatment, except payment, not to exceed thirty-three and one-third percent of any fee received for x-ray examination, diagnosis or treatment, to any hospital furnishing facilities for such examination, diagnosis or treatment. [1965 ex.s. c 58 § 3. Prior: 1949 c 204 § 3; Rem. Supp. 1949 § 10185-16.]

19.68.040 Declaration of intent. It is the intent of this article [chapter], and this article [chapter] shall be so

construed, that persons so licensed shall only be authorized by law to charge or receive compensation for professional services rendered if such services are actually rendered by the licensee and not otherwise: PROVIDED, HOWEVER, That it is not intended to prohibit two or more licensees who practice their profession as copartners to charge or collect compensation for any professional services by any member of the firm, or to prohibit a licensee who employs another licensee to charge or collect compensation for professional services rendered by the employee licensee. [1949 c 204 § 4; Rem. Supp. 1949 § 10185-17.]

Chapter 19.70

RIFLES AND SHOTGUNS

Sections

- 19.70.010 Out-of-state purchasing authorized.
19.70.020 Purchasing by nonresidents authorized.

Firearms and dangerous weapons: Chapter 9.41 RCW.

19.70.010 Out-of-state purchasing authorized. Residents of Washington may purchase rifles and shotguns in a state other than Washington: PROVIDED, That such residents conform to the applicable provisions of the federal Gun Control Act of 1968, Title IV, Pub. L. 90-351 as administered by the United States secretary of the treasury: AND PROVIDED FURTHER, That such residents are eligible to purchase or possess such weapons in Washington and in the state in which such purchase is made. [1970 ex.s. c 74 § 1.]

19.70.020 Purchasing by nonresidents authorized. Residents of a state other than Washington may purchase rifles and shotguns in Washington: PROVIDED, That such residents conform to the applicable provisions of the federal Gun Control Act of 1968, Title IV, Pub. L. 90-351 as administered by the United States secretary of the treasury: AND PROVIDED FURTHER, That such residents are eligible to purchase or possess such weapons in Washington and in the state in which such persons reside. [1970 ex.s. c 74 § 2.]

Chapter 19.72

SURETYSHIP

Sections

- 19.72.001 Definitions.
19.72.020 Individual sureties—Eligibility.
19.72.030 Individual sureties—Number—Qualification.
19.72.040 Individual sureties—Examination—Approval.
19.72.060 Corporate surety.
19.72.070 Subrogation of surety.
19.72.080 Contribution among sureties.
19.72.090 Default by surety—Indemnity.
19.72.100 Notice to creditor to institute action.
19.72.101 Failure of creditor to proceed—Discharge of surety.
19.72.107 Surety bond—Liability limited.
19.72.109 Release from official's, executor's, licensee's, etc., bond—
Definitions.
19.72.110 Release from official's, executor's, licensee's, etc., bond—
Notice, service, proof.
19.72.130 Release from official's, executor's, licensee's, etc., bond—
Effective date—Failure to give new bond, effect.

- 19.72.140 Suretyship—Raising issue as defendant.
 19.72.141 Suretyship—Order to exhaust principal's property.
 19.72.150 Heirs, etc., bound—Exception.
 19.72.160 Assets—Safekeeping agreements—Joint control of deposits.
 19.72.170 Bonds not to fail for want of form or substance.
 19.72.180 Successive recoveries on bond—Limitation.
 19.72.900 Application.

Bail and appearance bonds: Chapter 10.19 RCW.

Bond of executor or administrator: Chapter 11.28 RCW.

Corporate

seals, effect of absence from instrument: RCW 64.04.105.

surety: Chapter 48.28 RCW.

Official bonds, in general: Chapter 42.08 RCW.

19.72.001 Definitions. See RCW 19.72.109.

19.72.020 Individual sureties—Eligibility. Whenever any bond or recognizance is required, or permitted, by law to be made, given or filed, conditioned upon the doing or not doing of anything specified therein and to be signed by one or more persons as sureties, each of such sureties shall be a resident of this state; but no attorney at law, sheriff, clerk of any court of record, or other officer of such court, shall be permitted to become such surety. [1927 c 162 § 1; RRS § 958-1.]

19.72.030 Individual sureties—Number—Qualification. Each of such sureties shall have separate property worth the amount specified in the bond or recognizance, over and above all debts and liabilities, and exclusive of property exempt from execution, unless the other spouse joins in the execution of the bond, in which case they must have community property of such required value; but in case such bond or recognizance is given in any action or proceeding commenced or pending in any court the judge, on justification, may allow more than two sureties to justify, severally, in amounts less than the amount specified, if the whole justification is equivalent to that of two sufficient sureties. [1987 c 202 § 185; 1973 1st ex.s. c 154 § 22; 1927 c 162 § 2; RRS § 958-2.]

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

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

19.72.040 Individual sureties—Examination—Approval. In case such bond or recognizance is given in any action or proceeding commenced or pending in any court, the judge or clerk of any court of record or district court, or any party to the action or proceeding for the security or protection of which such bond or recognizance is made may, upon notice, require any of such sureties to attend before the judge at a time and place specified and to be examined under oath touching the surety's qualifications both as to residence and property as such surety, in such manner as the judge, in the judge's discretion, may think proper. If the party demanding the examination require it, the examination shall be reduced to writing and subscribed by the surety. If the judge find[s] the surety possesses the requisite qualifications and property, the judge shall endorse the allowance thereof on the bond or recognizance, and cause it to be filed as provided by law, otherwise it shall be

of no effect. [1987 c 202 § 186; 1927 c 162 § 3; RRS § 958-3. Formerly RCW 19.72.040, 19.72.050.]

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

19.72.060 Corporate surety. See surety insurance: Chapter 48.28 RCW.

19.72.070 Subrogation of surety. When any defendant, surety in a judgment or special bail or replevin or surety in a delivery bond or replevin bond, or any person being surety in any bond whatever, has been or shall be compelled to pay any judgment or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, or when any sheriff or other officer or other surety upon his official bond shall be compelled to pay any judgment or any part thereof by reason of any default of such officer, except for failing to pay over money collected, or for wasting property levied upon, the judgment shall not be discharged by such payment, but shall remain in force for the use of the bail, surety, officer or other person making such payment, and after the plaintiff is paid, so much of the judgment as remains unsatisfied may be prosecuted to execution for his use. [Code 1881 § 648; RRS § 978. Prior: 1877 p 134 § 651; 1869 p 151 § 588; 1854 p 211 § 430.]

19.72.080 Contribution among sureties. Any one of several judgment defendants, and any one of several replevin bail having paid and satisfied the plaintiff, shall have the remedy provided in RCW 19.72.070 against the codefendants and cosureties to collect of them the ratable proportion each is equitably bound to pay. [Code 1881 § 649; RRS § 979. Prior: 1877 p 135 § 652; 1869 p 151 § 589; 1854 p 211 § 431.]

19.72.090 Default by surety—Indemnity. No surety or his representative shall confess judgment or suffer judgment by default in any case where he is notified that there is a valid defense, if the principal will enter himself defendant to the action and tender to the surety or his representatives good security to indemnify him, to be approved by the court. [Code 1881 § 650; RRS § 980. Prior: 1877 p 135 § 653; 1869 p 151 § 590; 1854 p 211 § 432.]

19.72.100 Notice to creditor to institute action. Any person bound as surety upon any contract in writing for the payment of money or the performance of any act, when the right of action has accrued, may require by notice in writing the creditor or obligee forthwith to institute an action upon the contract. [Code 1881 § 644; RRS § 974. Prior: 1877 p 134 § 647; 1869 p 150 § 584; 1854 p 210 § 426. FORMER PART OF SECTION: Code 1881 § 645; RRS § 975, now codified as RCW 19.72.101.]

19.72.101 Failure of creditor to proceed—Discharge of surety. If the creditor or obligee shall not proceed within a reasonable time to bring his action upon such contract, and prosecute the same to judgment and execution, the surety shall be discharged from all liability thereon. [Code 1881 §

645; RRS § 975. Prior: 1877 p 134 § 648; 1869 p 150 § 585; 1854 p 210 § 427. Formerly RCW 19.72.100, part.]

19.72.107 Surety bond—Liability limited. (1) Except under RCW 19.72.109, surety bond means any form of surety insurance as defined in RCW 48.11.080. A surety bond may not provide any other type of insurance coverage defined in chapter 48.11 RCW. Language in any statute, ordinance, contract, or surety bond to the contrary is void.

(2) A surety bond shall not be liable for damages based upon or arising out of any:

(a) Tortious injury, including death, to:

(i) Any person; or

(ii) Any real or personal property; or

(b) Failure to have any or adequate insurance coverage, even if liability under (a) or (b) of this subsection is imposed on the surety's principal or the surety by contract, surety bond, strict liability, ordinance, statute, or common law. [1992 c 115 § 1.]

19.72.109 Release from official's, executor's, licensee's, etc., bond—Definitions. Unless otherwise required by the context, words as used in RCW 19.72.110, and 19.72.130 shall mean:

(1) "Bond" shall mean and include any bond, undertaking or writing executed by a principal and surety, required by law from the principal as an official or employee of the state, or any county, municipal corporation or taxing district, or as guardian, executor, administrator, receiver or trustee, or as a licensee or permittee as a condition to the right to receive, hold or exercise any license, permit or franchise;

(2) "Surety" shall mean and include any person, firm or corporation that has executed as surety any bond. [1937 c 145 § 1; RRS § 9942. Formerly RCW 19.72.010.] [SLC-RO-17.]

19.72.110 Release from official's, executor's, licensee's, etc., bond—Notice, service, proof. Any surety upon any bond described in RCW 19.72.109 desiring to be released from subsequent liability and responsibility on any such bond shall serve upon the principal of such bond a written notice that on and after a certain date to be fixed in the notice, which shall be not less than ten days from the date of the service of the notice, the surety will withdraw as surety from such bond and shall serve a copy of such notice upon the official with whom such bond is filed not less than ten days prior to the date fixed in the notice as the date of termination of liability. If such principal is an individual and resides within the state of Washington, or is a corporation doing business in the state of Washington, such notice shall be personally served upon such individual, or if the principal is a firm or a corporation, such notice shall be served personally upon any person upon whom personal service of summons may be made under the existing laws of the state of Washington. If the principal is an individual and is not a resident of the state of Washington, or cannot be found therein, or if the principal is a foreign corporation, such notice shall be mailed by registered mail to the last known address of such principal, if any, which fact shall be shown by affidavit filed with the notice of withdrawal as hereinafter provided, and a copy of such notice shall be published once

a week for two consecutive weeks in a newspaper of general circulation in the county of the residence of the official with whom such bond is filed. The date of the last publication of notice shall be not less than twenty days from the date stated therein as the date upon which the surety will withdraw from the bond. Proof of such service or publication shall be made by affidavit and filed with the official with whom the bond is filed at least ten days before the date fixed in the notice of withdrawal. [1937 c 145 § 2; RRS § 9943. Formerly RCW 19.72.110 and 19.72.120.] [SLC-RO-17.]

19.72.130 Release from official's, executor's, licensee's, etc., bond—Effective date—Failure to give new bond, effect. On and after the date fixed in the notice as the termination date the surety shall be released from subsequent liability on such bond; and, unless before the date fixed in such notice as the termination date by the surety, a new bond shall be filed with sufficient and satisfactory surety as required by law under which the bond was originally furnished and filed, the office, position or trust in the case of a public office, guardian, executor, administrator, receiver or trustee shall become vacant and a successor shall be appointed as provided by law; and in case of a license, certificate, permit or franchise, the same shall become null and void: PROVIDED, HOWEVER, That no surety shall be released on the bond of any guardian, executor, administrator, receiver, or trustee until such fiduciary shall have furnished a new bond with surety approved by the court, or until his successor has been appointed and has qualified and taken over the fiduciary assets. Said notice of withdrawal shall be final and not subject to cancellation by said surety and said license, certificate, permit or franchise can only be continued upon filing a new bond as above provided. [1937 c 145 § 3; RRS § 9944.] [SLC-RO-17.]

19.72.140 Suretyship—Raising issue as defendant. When any action is brought against two or more defendants upon a contract, any one or more of the defendants being surety for the others, the surety may, upon a written complaint to the court, cause the question of suretyship to be tried and determined upon the issues made by the parties at the trial of the cause, or at any time before or after the trial, or at a subsequent term, but such proceedings shall not affect the proceedings of the plaintiff. [Code 1881 § 646; RRS § 976. Prior: 1877 p 134 § 649; 1869 p 150 § 586; 1854 p 210 § 428. FORMER PART OF SECTION: Code 1881 § 647; RRS § 977, now codified as RCW 19.72.141.]

19.72.141 Suretyship—Order to exhaust principal's property. If the finding upon such issue be in favor of the surety, the court shall make an order directing the sheriff to levy the execution upon, and first exhaust the property of the principal before a levy shall be made upon the property of the surety, and the clerk shall indorse a memorandum of the order upon the execution. [Code 1881 § 647; RRS § 977. Prior: 1877 p 134 § 650; 1869 p 151 § 587; 1854 p 211 § 429. Formerly RCW 19.72.140, part.]

19.72.150 Heirs, etc., bound—Exception. The provisions of RCW 19.72.070 through 19.72.101, 19.72.140, 19.72.141 shall extend to heirs, executors, and administrators

of deceased persons, but the provisions of RCW 19.72.101 shall not operate against persons under legal disabilities. [Code 1881 § 651; RRS § 981. Prior: 1877 p 135 § 654; 1869 p 151 § 591; 1854 p 211 § 433.]

19.72.160 Assets—Safekeeping agreements—Joint control of deposits. It shall be lawful for any party of whom a bond, undertaking or other obligation is required, to agree with his surety or sureties for the deposit of any or all moneys and assets for which he and his surety or sureties are or may be held responsible, with a bank, savings bank, savings and loan association, safe deposit or trust company, authorized by law to do business as such, or with other depository approved by the court or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such surety or sureties, or an order of court, or a judge thereof made on such notice to such surety or sureties as such court or judge may direct: PROVIDED, HOWEVER, That such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of said bond. [1953 c 46 § 1.]

19.72.170 Bonds not to fail for want of form or substance. No bond required by law, and intended as such bond, shall be void for want of form or substance, 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. [Code 1881 § 749; 1854 p 219 § 489; RRS § 777. Formerly RCW 10.19.120, part.] [SLC-RO-10.]

19.72.180 Successive recoveries on bond—Limitation. In the event of the breach of the condition of any bond described in RCW 19.72.109, successive recoveries may be made thereon by any of the obligees thereof: PROVIDED, HOWEVER, That the total amount of all such recoveries, whether by one or more of such obligees, shall not exceed, in the aggregate, the penal sum specified in such bond. [1959 c 113 § 1.]

19.72.900 Application. This chapter applies to all sureties, regardless of whether the sureties are compensated or uncompensated. [1992 c 115 § 2.]

Chapter 19.76

BEVERAGE BOTTLES, ETC.—LABELING—REFILLING

Sections

- 19.76.100 Labels on bottles, etc.—Filing—Publication.
- 19.76.110 Refilling bottles, etc.—Forbidden.
- 19.76.120 Refilling bottles, etc.—Possession as evidence.

Trademark registration: Chapter 19.77 RCW.

19.76.100 Labels on bottles, etc.—Filing—Publication. All persons engaged in the manufacture, bottling or selling of ale, porter, lager beer, soda, mineral water, or other beverages in casks, kegs, bottles or boxes, with their names or other marks of ownership stamped or marked thereon, may file in the office of the secretary of state a description of names or marks so used by them, and publish the same in a newspaper of general circulation in the county, printed in the English language, once a week for six successive weeks, in counties where the articles are manufactured, bottled or sold. [1985 c 469 § 11; 1981 c 302 § 1; 1897 c 38 § 1; RRS § 11546.]

Severability—1981 c 302: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 302 § 40.]

Alcoholic beverage control: Title 66 RCW.

Labeling of spirits, etc.: RCW 66.28.100 through 66.28.120.

19.76.110 Refilling bottles, etc.—Forbidden. It is hereby declared to be unlawful for any person or persons hereafter, without the written consent of the owner or owners thereof, to fill with ale, porter, lager beer or soda, mineral water or other beverages, for sale or to be furnished to customers, any such casks, barrels, kegs, bottles or boxes so marked or stamped, or to sell, dispose of, buy or traffic in, or wantonly destroy any such cask, barrel, keg, bottle or box so marked, stamped, by the owner or owners thereof, after such owner or owners shall have complied with the provisions of RCW 19.76.100. Any person or persons who shall violate any of the provisions of RCW 19.76.100 through 19.76.120 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined five dollars for each and every cask, barrel, keg, or box, and fifty cents for each and every bottle so by him, her or them filled, bought, sold, used, trafficked in or wantonly destroyed, together with costs of suit for first offense, and ten dollars for each and every cask, barrel, keg and box and one dollar for each and every bottle so filled, bought, sold, used, trafficked in, or wantonly destroyed, together with the costs of suit for each subsequent offense. [1897 c 38 § 2; RRS § 11547.]

Crimes relating to brands and marks: Chapter 9.16 RCW.

19.76.120 Refilling bottles, etc.—Possession as evidence. The using by any person other than the rightful owner thereof, without such written permission, of any such cask, barrel, keg, bottle or box, for the sale therein of ale, porter, lager beer, soda, mineral waters or other beverages, or to be furnished to customers, or the buying, selling or trafficking in any such barrel, keg, bottle or box, by any person other than the owner, without such written permission, or the fact that any junk dealer or dealers in casks, barrels, kegs, bottles or boxes, shall have in his or her possession any such cask, barrel, keg, bottle or box so marked or stamped and registered as aforesaid, without such written permission, shall and is hereby declared to be prima facie evidence that such use, buying, selling, trafficking in or possession is unlawful within the meaning of RCW 19.76.100 through 19.76.120. [1897 c 38 § 3; RRS § 11548.]

Chapter 19.77

TRADEMARK REGISTRATION

Sections

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19.77.920	Severability—1955 c 211.
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19.77.940	Prospective application—1989 c 72.

Crimes relating to trademarks: Chapter 9.16 RCW.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

19.77.010 Definitions. As used in this chapter:

(1) "Applicant" means the person filing an application for registration of a trademark under this chapter, his legal representatives, successors, or assigns of record with the secretary of state;

(2) The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive;

(3) A "counterfeit" is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark;

(4) "Dilution" means the material reduction of the distinctive quality of a famous mark through use of a mark by another person, regardless of the presence or absence of (a) competition between the users of the mark, or (b) likelihood of confusion, mistake, or deception arising from that use;

(5) "Person" means any individual, firm, partnership, corporation, association, union, or other organization;

(6) "Registered mark" means a trademark registered under this chapter;

(7) "Registrant" means the person to whom the registration of a trademark under this chapter is issued, his legal representatives, successors, or assigns of record with the secretary of state;

(8) "Trademark" or "mark" means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others, and any word, name, symbol, or device, or any combination thereof, and any title, designation, slogan, character name, and distinctive feature of radio or television programs used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others;

(9) A trademark shall be deemed to be "used" in this state when it is placed in any manner on the goods or their containers, or on tabs or labels affixed thereto, or displayed in connection with such goods, and such goods are sold or otherwise distributed in this state, or when it is used or displayed in the sale or advertising of services rendered in this state;

(10) "Trade name" shall have the same definition as under RCW 19.80.005(1);

(11) A mark shall be deemed to be "abandoned":

(a) When its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie abandonment; or

(b) When any course of conduct of the registrant, including acts of omission as well as commission, causes the mark to lose its significance as an indication of origin. Purchaser motivation shall not be a test for determining abandonment under this subsection. [1989 c 72 § 1; 1955 c 211 § 1.]

Effective date—1955 c 211: "This act shall be in force and take effect on September 1, 1955." [1955 c 211 § 19.]

19.77.020 Registration of certain trademarks prohibited. A trademark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(1) Consists of or comprises immoral, deceptive, or scandalous matter; or

(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute; or

(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

(4) Consists of or comprises the name, portrait, or signature identifying a particular living individual who has not consented in writing to its registration; or

(5) Consists of a mark which,
(a) when applied to the goods or services of the applicant is merely descriptive or deceptively misdescriptive of them, or

(b) when applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or

(c) is primarily merely a surname: PROVIDED, That nothing in this subsection shall prevent the registration of a trademark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as prima facie evidence that the trademark has become distinctive, as used on or in connection with the applicant's goods or services, proof of substantially exclusive and continuous use thereof as a trademark by the applicant in this state or elsewhere in the United States for the five years next preceding the date of the filing of the application for registration; or

(6) Consists of or comprises a trademark which so resembles a trademark registered in this state, or a trademark or trade name used in this state by another prior to the date of the applicant's or applicant's predecessor's first use in this

state and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

A trade name is not registrable under this chapter. However, if a trade name also functions as a trademark, it is registrable as a trademark.

The secretary of state shall make a determination of registerability by considering the application record and the marks previously registered and subsisting under this chapter. [1989 c 72 § 2; 1955 c 211 § 2.]

19.77.030 Application for registration. Subject to the limitations set forth in this chapter, any person who has adopted and is using a trademark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that trademark setting forth, but not limited to, the following information:

(1) The name and business address of the applicant, and, if the applicant is a corporation, its state of incorporation;

(2) The particular goods or services in connection with which the trademark is used and the class in which such goods or services fall;

(3) The manner in which the trademark is placed on or affixed to the goods or containers, or displayed in connection with such goods, or used in connection with the sale or advertising of the services;

(4) The date when the trademark was first used with such goods or services anywhere and the date when it was first used with such goods or services in this state by the applicant or his predecessor in business;

(5) A statement that the trademark is presently in use in this state by the applicant;

(6) A statement that the applicant believes himself to be the owner of the trademark and believes that no other person has the right to use such trademark in connection with the same or similar goods or services in this state either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, to cause confusion or mistake or to deceive; and

(7) Such additional information or documents as the secretary of state may reasonably require.

A single application for registration of a trademark may specify all goods or services in a single class for which the trademark is actually being used, but may not specify goods or services in different classes.

The application shall be signed by the applicant individual, or by a member of the applicant firm, or by an officer of the applicant corporation, association, union or other organization.

The application shall be accompanied by three specimens or facsimiles of the trademark for at least one of the goods or services for which its registration is requested, and a filing fee of fifty dollars payable to the secretary of state. [1989 c 72 § 3; 1982 c 35 § 181; 1955 c 211 § 3.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

19.77.040 Certificate of registration—Issuance—Contents—Admissibility in evidence. Upon compliance by

the applicant with the requirements of this chapter, the secretary of state shall issue a certificate of registration and deliver it to the applicant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state, and it shall show the registrant's name and business address and, if the registrant is a corporation, its state of incorporation, the date claimed for the first use of the trademark anywhere, the date claimed for the first use of the trademark in this state, the particular goods or services for which the trademark is used, the class in which such goods and services fall, a reproduction of the trademark, the registration date and the term of the registration.

Any certificate of registration issued by the secretary of state under the provisions hereof or a copy thereof duly certified by the secretary of state shall be admissible in any action or judicial proceeding in any court of this state as prima facie evidence of:

(1) The validity of the registration of the trademark;

(2) The registrant's ownership of the trademark; and

(3) The registrant's exclusive right to use the trademark in this state in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated in the certificate.

Registration of a trademark under this chapter shall be constructive notice of the registrant's claim of ownership of the trademark throughout this state. [1989 c 72 § 4; 1955 c 211 § 4.]

19.77.050 Duration of certificate—Renewal.

Registration of a trademark hereunder shall be effective for a term of ten years from the date of registration. Upon application filed within six months prior to the expiration of such term, on a form to be furnished by the secretary of state requiring all the allegations of an application for original registration, the registration may be renewed for successive terms of ten years as to the goods or services for which the trademark is still in use in this state. A renewal fee of fifty dollars, payable to the secretary of state, shall accompany each application for renewal of the registration.

The secretary of state shall notify registrants of trademarks hereunder or their agents for service of record with the secretary of state of the necessity of renewal within the year, but not less than six months, next preceding the expiration of the unexpired original or renewed term by writing to the last known address of the registrants or their agents according to the files of the secretary of state. Neither the secretary of state's failure to notify a registrant nor the registrant's nonreceipt of a notice under this section shall extend the term of a registration or excuse the registrant's failure to renew a registration. [1989 c 72 § 5; 1982 c 35 § 182; 1955 c 211 § 5.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

19.77.060 Assignment of trademark, registration, or application. Any trademark and its registration or application for registration hereunder shall be assignable with the good will of the business in which the trademark is used, or with that part of the good will of the business connected with the use of and symbolized by the trademark. An assignment by an instrument in writing duly executed and

acknowledged, or the designation of a legal representative, successor, or agent for service shall be recorded by the secretary of state on request when accompanied by a fee of ten dollars payable to the secretary of state. On request, upon recording of the assignment and payment of a further fee of five dollars, the secretary of state shall issue in the name of the assignee a new certificate for the remainder of the unexpired original or renewal term of the registration. An assignment of any registration or application for registration under this chapter shall be void as against any subsequent purchaser for a valuable consideration without notice, unless it is recorded with the secretary of state within three months after the date thereof or prior to such subsequent purchase. [1982 c 35 § 183; 1955 c 211 § 6.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

19.77.070 Secretary of state to keep records. The secretary of state shall keep for public examination a record of all trademarks registered or renewed under this chapter, and the records specified in RCW 19.77.060. [1955 c 211 § 7.]

19.77.080 Secretary of state must cancel certain registrations. The secretary of state shall cancel from the register:

- (1) Any registration concerning which the secretary of state shall receive a voluntary written request for cancellation thereof from the registrant;
- (2) All expired registrations not renewed under this chapter;
- (3) Any registration concerning which a court of competent jurisdiction has rendered a final judgment against the registrant, which has become unappealable, canceling the registration or finding that:
 - (a) The registered trademark has been abandoned;
 - (b) The registrant under this chapter or under a prior act is not the owner of the trademark;
 - (c) The registration was granted contrary to the provisions of this chapter;
 - (d) The registration was obtained fraudulently;
 - (e) The registered trademark has become incapable of serving as a trademark; or
 - (f) The registered trademark is so similar to a trademark registered by another person in the United States patent and trademark office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned, as to be likely to cause confusion or mistake or to deceive: PROVIDED, That such finding was made on petition of such other person and that should the registrant prove that he or she is the owner of a concurrent registration of the trademark in the United States patent and trademark office covering an area including this state, the registration hereunder shall not be canceled. [1989 c 72 § 6; 1955 c 211 § 8.]

19.77.090 Actions relating to registration—Service on secretary of state—Fees. The secretary of state shall be the agent for service of process in any action relating to the registration of any registrant who is at the time of such service a nonresident or a foreign firm, corporation, associa-

tion, union, or other organization without a resident of this state designated as the registrant's agent for service of record with the secretary of state, or who cannot be found in this state, and service of process, pleadings and papers in such action made upon the secretary of state shall be held as due and sufficient process upon the registrant. The secretary of state shall charge and collect a fee of twenty-five dollars at the time of any service of process upon the secretary of state under this section. The fee may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action. The fee shall be deposited in the secretary of state's revolving fund. [1982 c 35 § 184; 1955 c 211 § 9.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

19.77.110 Classification of goods. The International Classification of Goods and Services to Which Trademarks Are Applied, as adopted in accordance with the Nice Agreement of 1957, as amended, shall be used for the convenient administration of this chapter. Such classification shall not be deemed to limit or extend the applicant's or registrant's rights. The short titles of such classifications are as follows:

- (1) Chemicals.
- (2) Paints.
- (3) Cosmetics and cleaning preparation.
- (4) Lubricants and fuels.
- (5) Pharmaceuticals.
- (6) Metal goods.
- (7) Machinery.
- (8) Hand tools.
- (9) Electrical and scientific apparatus.
- (10) Medical apparatus.
- (11) Environmental control apparatus.
- (12) Vehicles.
- (13) Firearms.
- (14) Jewelry.
- (15) Musical instruments.
- (16) Paper goods and printed matter.
- (17) Rubber goods.
- (18) Leather goods.
- (19) Nonmetallic building materials.
- (20) Furniture and articles not otherwise classified.
- (21) Housewares and glass.
- (22) Cordage and fibers.
- (23) Yarns and threads.
- (24) Fabrics.
- (25) Clothing.
- (26) Fancy goods.
- (27) Floor coverings.
- (28) Toys and sporting goods.
- (29) Meats and processed foods.
- (30) Staple foods.
- (31) Natural agricultural products.
- (32) Light beverages.
- (33) Wines and spirits.
- (34) Smokers' articles.
- (35) Advertising and business.
- (36) Insurance and financial.
- (37) Construction and repair.
- (38) Communication.

- (39) Transportation and storage.
- (40) Material treatment.
- (41) Education and entertainment.
- (42) Miscellaneous. [1989 c 72 § 7; 1955 c 211 § 11.]

19.77.130 Fraudulent registration—Financial liability. Any person who shall for himself, or on behalf of any other person, procure the registration of any trademark by the secretary of state under the provisions of this chapter, by knowingly making any false or fraudulent representation or declaration, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction, together with costs of such action including reasonable attorneys' fees. [1989 c 72 § 8; 1955 c 211 § 13.]

19.77.140 Trademark imitation. (1) Subject to the provisions of RCW 19.77.900 any person who shall:

(a) Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a trademark registered under this chapter in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive; or

(b) Reproduce, counterfeit, copy or colorably imitate any such trademark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution of goods or services in this state on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive

shall be liable to a civil action by the registrant for any or all of the remedies provided in RCW 19.77.150, except that under (b) of this subsection the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion or mistake, or to deceive.

(2) In determining whether, under this chapter, there is a likelihood of confusion, mistake, or deception between marks when used in association with goods or services, the court shall consider all relevant factors, including, but not limited to the following:

(a) The similarity or dissimilarity of the marks in their entireties to appearance, sound, meaning, connotation, and commercial impression;

(b) The similarity or dissimilarity of the goods or services and nature of the goods and services;

(c) The similarity or dissimilarity of trade channels;

(d) The conditions under which sales are made and buyers to whom sales are made;

(e) The fame of the marks;

(f) The number and nature of similar marks in use on similar goods or services;

(g) The nature and extent of any actual confusion;

(h) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion;

(i) The variety of goods or services on which each of the marks is or is not used;

(j) The nature and extent of potential confusion, i.e., whether de minimis or substantial;

(k) Any other established fact probative of the effect of use. [1989 c 72 § 9; 1955 c 211 § 14.]

19.77.150 Remedies of registrants. Any registrant may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or colorable imitations of a trademark registered under this chapter, and any court of competent jurisdiction may grant an injunction to restrain such manufacture, use, display, or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such registrant all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display, or sale; and such court may also order that any such counterfeits or colorable imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the registrant, to be destroyed. In exceptional cases the court may award to the prevailing party the costs of the suit including reasonable attorneys' fees.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state. [1989 c 72 § 11; 1955 c 211 § 15.]

19.77.160 Injunctive relief for owners of famous marks. The owner of a famous mark shall be entitled, subject to the principles of equity, to an injunction against another person's use in this state of a mark, commencing after the mark becomes famous, which causes dilution of the distinctive quality of the mark, and to obtain such other relief as is provided in this section. In determining whether a mark is famous and has distinctive quality, a court shall consider all relevant factors, including, but not limited to the following:

(1) Whether the mark is inherently distinctive or has become distinctive through substantially exclusive and continuous use;

(2) Whether the duration and extent of use of the mark are substantial;

(3) Whether the duration and extent of advertising and publicity of the mark are substantial;

(4) Whether the geographical extent of the trading area in which the mark is used is substantial;

(5) Whether the mark has substantial renown in its and in the other person's trading areas and channels of trade; and

(6) Whether substantial use of the same or similar marks is being made by third parties.

The owner shall be entitled only to injunctive relief in an action brought under this section, unless the subsequent user willfully intended to trade on the registrant's reputation or to cause dilution of the owner's mark. If such willful intent is proven, the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity. [1989 c 72 § 10.]

19.77.900 Common law rights preserved prior to registration. Nothing herein shall adversely affect the rights or the enforcement of rights in trademarks acquired in good

faith at common law prior to registration under this chapter; however, during any period subsequent to July 23, 1989, when the registration of a mark under this chapter is in force and the registrant has not abandoned the trademark, no common law rights as against the registrant may be acquired. [1989 c 72 § 12; 1955 c 211 § 16.]

19.77.910 Saving—1955 c 211. As to any pending suit, proceeding or appeal, and for that purpose only, the repeal of prior acts shall be deemed not to be effective until final determination. [1955 c 211 § 17.]

19.77.920 Severability—1955 c 211. If any provision of this chapter is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions. [1955 c 211 § 20.]

19.77.930 Construction—1989 c 72. It is the intent of the legislature that, in construing this chapter, the courts be guided by the interpretation given by the federal courts to the federal trademark act of 1946, as amended, 15 U.S.C., Sec. 1051, et seq. [1989 c 72 § 13.]

19.77.940 Prospective application—1989 c 72. *This act applies prospectively only and not retroactively. The rights and obligations of *this act shall accrue upon July 23, 1989, to all prior trademark registrations then in effect, and the provisions of *this act shall not apply to any cause of action arising prior to July 23, 1989. [1989 c 72 § 14.]

*Reviser's note: "This act" consists of the enactment of RCW 19.77.160, 19.77.930, and 19.77.940, the 1989 c 72 amendments to RCW 19.77.010, 19.77.020, 19.77.030, 19.77.040, 19.77.050, 19.77.080, 19.77.110, 19.77.130, 19.77.140, 19.77.150, and 19.77.900, and the repeal of RCW 19.77.100 and 19.77.120.

Chapter 19.80 TRADE NAMES

Sections

19.80.001	Purposes.
19.80.005	Definitions.
19.80.010	Registration required.
19.80.025	Changes in registration—Filing amendment.
19.80.040	Failure to file.
19.80.045	Rules—Fees.
19.80.065	RCW 42.17.260(5) inapplicable.
19.80.075	Collection and deposit of fees.
19.80.900	Severability—1984 c 130.

19.80.001 Purposes. The purposes of this chapter are:
(1) To require each person who is conducting business in the state of Washington under a trade name to disclose the true and real name of each person conducting that business, and
(2) to provide a central registry of businesses operating under a trade name in the state of Washington. [1984 c 130 § 1.]

Effective date—1984 c 130: "Sections 1 through 11 of this act shall take effect on October 1, 1984. The director of licensing is authorized to immediately take such steps as are necessary to insure that this act is implemented on its effective date." [1984 c 130 § 12.]

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

(1) "Trade name" means a word or name, or any combination of a word or name, used by a person to identify the person's business which:

(a) Is not, or does not include, the true and real name of all persons conducting the business; or

(b) Includes words which suggest additional parties of interest such as "company," "and sons," or "and associates."

(2) "Business" means an occupation, profession, or employment engaged in for the purpose of seeking a profit.

(3) "Executed" by a person means that a document signed by such person is signed by that person under penalties of perjury and in an official and authorized capacity on behalf of the person submitting the document to the department of licensing.

(4) "Person" means any individual, partnership, or corporation conducting or having an interest in a business in the state.

(5) "True and real name" means:

(a) The surname of an individual coupled with one or more of the individual's other names, one or more of the individual's initials, or any combination;

(b) The designation or appellation by which an individual is best known and called in the business community where that individual transacts business, if this is used as that individual's legal signature;

(c) The registered corporate name of a domestic corporation as filed with the secretary of state;

(d) The registered corporate name of a foreign corporation authorized to do business within the state of Washington as filed with the secretary of state;

(e) The registered partnership name of a domestic limited partnership as filed with the secretary of state;

(f) The registered partnership name of a foreign limited partnership as filed with the secretary of state; or

(g) The name of a general partnership which includes in its name the true and real names, as defined in (a) through (f) of this subsection, of each general partner as required in RCW 19.80.010. [1984 c 130 § 2.]

Effective date—1984 c 130: See note following RCW 19.80.001.

19.80.010 Registration required. Each person or persons who shall carry on, conduct, or transact business in this state under any trade name shall register that trade name with the department of licensing as set forth in this section:

(1) Sole proprietorship or general partnership: The registration shall set forth the true and real name or names of each person conducting the same, together with the post office address or addresses of each such person and the name of the general partnership, if applicable.

(2) Foreign or domestic limited partnership: The registration shall set forth the limited partnership name as filed with the office of the secretary of state.

(3) Foreign or domestic corporation: The registration shall set forth the corporate name as filed with the office of the secretary of state.

(4) The registration shall be executed by:

(a) The sole proprietor of a sole proprietorship;

(b) A general partner of a domestic or foreign general or limited partnership; or

(c) An officer of a domestic or foreign corporation. [1984 c 130 § 3; 1979 ex.s. c 22 § 1; 1907 c 145 § 1; RRS § 9976.]

Effective date—1984 c 130: See note following RCW 19.80.001.

Adoption of rules—1979 ex.s. c 22: "The director of the department of licensing shall promulgate such rules and regulations as are necessary to implement the transfer of duties and of records required by section 1 of this 1979 act. Such rules shall provide for transfer of existing certificates from the counties to the department, set fees for filing of certificates and amendments, and set fees for obtaining copies thereof." [1979 ex.s. c 22 § 3.] "Section 1 of this 1979 act" consists of the 1979 ex.s. c 22 amendment to RCW 19.80.010.

Effective date—1979 ex.s. c 22: "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 July 1, 1979." [1979 ex.s. c 22 § 4.]

19.80.025 Changes in registration—Filing amendment. (1) An executed amendment shall be filed with the department of licensing when a change occurs in:

(a) The true and real name of a person conducting a business with a trade name registered under this chapter; or

(b) Any mailing address set forth on the registration or any subsequently filed amendment.

(2) A notice of cancellation shall be filed with the department when use of a trade name is discontinued.

(3) A notice of cancellation, together with a new registration, shall be filed before conducting or transacting any business when:

(a) An addition, deletion, or any change of person or persons conducting business under the registered trade name occurs; or

(b) There is a change in the wording or spelling of the trade name since initial registration or renewal. [1984 c 130 § 5.]

Effective date—1984 c 130: See note following RCW 19.80.001.

19.80.040 Failure to file. No person or persons carrying on, conducting, or transacting business under any trade name shall be entitled to maintain any suit in any of the courts of this state until such person or persons have properly completed the registration as provided for in RCW 19.80.010. Failure to complete this registration shall not impair the validity of any contract or act of such person or persons and shall not prevent such person or persons from defending any suit in any court of this state. [1984 c 130 § 7; 1907 c 145 § 5; RRS § 9980. Formerly RCW 19.80.040 and 19.80.050.]

Effective date—1984 c 130: See note following RCW 19.80.001.

19.80.045 Rules—Fees. The director of licensing shall adopt rules as necessary to administer this chapter. The rules may include but are not limited to specifying forms and setting fees for trade name registrations, amendments, searches, renewals, and copies of registration documents. Fees shall not exceed the actual cost of administering this chapter. [1984 c 130 § 6.]

Effective date—1984 c 130: See note following RCW 19.80.001.

19.80.065 *RCW 42.17.260(5) inapplicable. *RCW 42.17.260(5) does not apply to registrations made under this chapter. [1984 c 130 § 8.]

***Reviser's note:** RCW 42.17.260 was amended by 1989 c 175 § 36, and the previous subsection (5) was renumbered as subsection (6). RCW 42.17.260 was subsequently amended by 1992 c 139 § 3, and the previous subsection (5) is now subsection (7).

Effective date—1984 c 130: See note following RCW 19.80.001.

19.80.075 Collection and deposit of fees. All fees collected by the department of licensing under this chapter shall be deposited with the state treasurer and credited to the master license fund, except for trade name registration fees collected from June 1, 1992, to June 30, 1992, which shall be deposited in the general fund. Beginning July 1, 1992, trade name registration fees shall be deposited in the master license fund. [1992 c 107 § 6; 1984 c 130 § 9.]

Effective dates—1992 c 107: See note following RCW 19.02.020.

Effective date—1984 c 130: See note following RCW 19.80.001.

19.80.900 Severability—1984 c 130. 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 130 § 11.]

Effective date—1984 c 130: See note following RCW 19.80.001.

Chapter 19.83

TRADING STAMP LICENSES

Sections

19.83.010 License required to use or furnish trading stamps, coupons, or similar devices.

19.83.020 Issuance of license—Fee.

19.83.030 Furnishing or selling trading stamps, coupons, or similar devices geographically limited.

19.83.040 Coupons or similar devices—Exemptions.

19.83.050 Penalty.

Trading stamps and premiums, general provision: Chapter 19.84 RCW.

19.83.010 License required to use or furnish trading stamps, coupons, or similar devices. Every person who uses, or furnishes, or sells to any other person for use, in, with, or for the sale of any goods, any trading stamps, coupons, tickets, certificates, cards or other similar devices which entitle the purchaser to procure any goods free of charge or for less than the retail market price thereof, upon the production of any number of such trading stamps, coupons, tickets, certificates, cards, or other similar devices, shall before so furnishing, selling, or using the same obtain a separate license from the auditor of each county wherein such furnishing or selling or using shall take place for each and every store or place of business in that county, owned or conducted by such person from which such furnishing or selling, or in which such using shall take place. [1913 c 134 § 1; RRS § 8359. Formerly RCW 36.91.010.]

19.83.020 Issuance of license—Fee. In order to obtain such license the person applying therefor shall pay to the county treasurer of the county for which the license is sought the sum of six thousand dollars, and upon such

payment being made to the county treasurer he shall issue his receipt therefor which shall be presented to the auditor of the county, who shall upon the presentation thereof issue to the person making such payment a license to furnish or sell, or a license to use, for one year, trading stamps, coupons, tickets, certificates, cards, or other similar devices. Such license shall contain the name of the licensee, the date of its issue, the date of its expiration, the city or town in which and the location at which the same shall be used, and the license shall be used at no place other than that mentioned therein. [1913 c 134 § 2; RRS § 8360. Formerly RCW 36.91.020.]

19.83.030 Furnishing or selling trading stamps, coupons, or similar devices geographically limited. No person shall furnish or sell to another for use, in, with, or for the sale of any goods, any trading stamps, coupons, tickets, certificates, cards, or other similar devices to be used in any county, city or town in this state other than that in which such furnishing or selling shall take place. [1957 c 221 § 2. Prior: 1939 c 31 § 1, part; 1913 c 134 § 3, part; RRS § 8361, part. Formerly RCW 36.91.030.]

19.83.040 Coupons or similar devices—Exemptions.

(1) Nothing in this chapter, or in any other statute or ordinance of this state, shall apply to:

(a) The issuance and direct redemption by a manufacturer of a premium coupon, certificate, or similar device; or prevent him from issuing and directly redeeming such premium coupon, certificate, or similar device, which, however, shall not be issued, circulated, or distributed by retail vendors except when contained in or attached to an original package;

(b) The publication by, or distribution through, newspapers or other publications of coupons, certificates, or similar devices; or

(c) A coupon, certificate, or similar device which is within, attached to, or a part of a package or container as packaged by the original manufacturer and which is to be redeemed by another manufacturer, if:

(i) The coupon, certificate, or similar device clearly states the names and addresses of both the issuing manufacturer and the redeeming manufacturer; and

(ii) The issuing manufacturer is responsible for redemption of the coupon, certificate, or similar device if the redeeming manufacturer fails to do so.

(2) The term "manufacturer," as used in this section, means any vendor of an article of merchandise which is put up by or for him in an original package and which is sold under his or its trade name, brand, or mark. [1983 c 40 § 1; 1972 ex.s. c 104 § 1; 1957 c 221 § 3. Prior: 1939 c 31 § 1, part; 1913 c 134 § 3, part; RRS § 8361, part. Formerly RCW 36.91.040.]

Severability—1983 c 40: "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." [1983 c 40 § 2.]

19.83.050 Penalty. Any person violating any of the provisions of this chapter shall be guilty of a gross misde-

meanor. [1913 c 134 § 4; RRS § 8362. Formerly RCW 36.91.050.]

Chapter 19.84

TRADING STAMPS AND PREMIUMS

Sections

19.84.010	Redeemable cash value to be printed on face.
19.84.020	Must redeem at cash value.
19.84.030	Distributor liable.
19.84.040	Criminal penalty.

Trading stamp licenses: Chapter 19.83 RCW.

19.84.010 Redeemable cash value to be printed on face. No person shall sell or issue any stamps, trading stamp, cash discount stamp, check, ticket, coupon or other similar device, which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, unless each of said stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices shall have legibly printed or written upon the face thereof the redeemable value thereof in cents. [1907 c 253 § 1; RRS § 5837.]

19.84.020 Must redeem at cash value. Any person who shall sell or issue to any person engaged in any trade, business or profession, any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device which will entitle the holder thereof, on presentation thereof either singly or in definite number, to receive either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, shall, upon presentation, redeem the same either in goods, wares or merchandise, or in cash, good and lawful money of the United States, at the option of the holder thereof, and any number of such stamps, trading stamps, cash discount stamps, checks, tickets, coupons, or other similar devices shall be redeemed as hereinbefore set forth, at the value in cents printed upon the face thereof, and it shall not be necessary for the holder thereof to have any stipulated number of the same before demand for redemption may be made, but they shall be redeemed in any number, when presented, at the value in cents printed upon the face thereof, as hereinbefore provided. [1907 c 253 § 2; RRS § 5838.]

19.84.030 Distributor liable. Any person engaged in any trade, business or profession who shall distribute, deliver or present to any person dealing with him, in consideration of any article or thing purchased, any stamp, trading stamp, cash discount stamp, check, ticket, coupon or other similar device, which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the person issuing or selling the same, as set forth in RCW 19.84.020, or indirectly through any other person, shall, upon the refusal or failure of the said person issuing or selling same to redeem the same, as set forth in RCW 19.84.020, be liable to the holder thereof for the face value thereof, and shall upon presentation redeem the same, either in goods, wares or merchandise, or in cash, good and

lawful money of the United States of America, at the option of the holder thereof, and in such case any number of such stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices, shall be redeemed as hereinbefore set forth, at the value in cents printed upon the face thereof, and it shall not be necessary for the holder thereof to have any stipulated number of the same before demand for redemption may be made, but they shall be redeemed in any number, when presented, at the value in cents printed upon the face thereof, as hereinbefore provided. [1907 c 253 § 3; RRS § 5839.]

19.84.040 Criminal penalty. Any person, firm or corporation who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense. [1907 c 253 § 4; RRS § 5840.]

Chapter 19.85

REGULATORY FAIRNESS ACT

Sections

19.85.010	Legislative declaration, intent—Short title.
19.85.020	Definitions.
19.85.030	Agency adoption of rules—Small business economic impact statement.
19.85.040	Small business economic impact statement—Purpose—Contents.
19.85.050	Agency plan for review of business rules—Scope—Factors applicable to review—Annual list.
19.85.060	Small business economic impact statement—When not required.
19.85.070	Small business economic impact statement—Notice of proposed rule.
19.85.080	Committee to comment on possible rule making—Appointment.
19.85.900	Severability—1982 c 6.

Rules coordinator duties regarding business: RCW 43.17.310.

19.85.010 Legislative declaration, intent—Short title. The legislature finds that small businesses in the state of Washington have in the past been subjected to rules adopted by agencies, departments, and instrumentalities of the state government which have placed a proportionately higher burden on the small business community in Washington state. The legislature also finds that such proportionately higher burdens placed on small businesses have reduced competition, reduced employment, reduced new employment opportunities, reduced innovation, and threatened the very existence of some small businesses. Therefore, it is the intent of the legislature that rules affecting the business community shall not place proportionately higher burdens on small businesses. The legislature therefore enacts this Regulatory Fairness Act to minimize such proportionately higher impacts of rules on small businesses in the future. [1982 c 6 § 1.]

19.85.020 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply through this chapter.

(1) "Small business" has the meaning given in RCW 43.31.025(4).

(2) "Small business economic impact statement" means a statement meeting the requirements of RCW 19.85.040 prepared by a state agency pursuant to RCW 19.85.030.

(3) "Industry" means all of the businesses in this state in any one three-digit standard industrial classification as published by the United States department of commerce. [1989 c 374 § 1; 1982 c 6 § 2.]

19.85.030 Agency adoption of rules—Small business economic impact statement. In the adoption of any rule pursuant to RCW 34.05.320 that will have an economic impact on more than twenty percent of all industries, or more than ten percent of any one industry, the adopting agency:

(1) Shall reduce the economic impact of the rule on small business by doing one or more of the following when it is legal and feasible in meeting the stated objective of the statutes which are the basis of the proposed rule:

(a) Establish differing compliance or reporting requirements or timetables for small businesses;

(b) Clarify, consolidate, or simplify the compliance and reporting requirements under the rule for small businesses;

(c) Establish performance rather than design standards;

(d) Exempt small businesses from any or all requirements of the rule;

(2) Shall prepare a small business economic impact statement in accordance with RCW 19.85.040 and file such statement with the code reviser along with the notice required under RCW 34.05.320;

(3) May request assistance from the business assistance center in the preparation of the small business economic impact statement. [1989 c 374 § 2; 1989 c 175 § 72; 1982 c 6 § 3.]

Reviser's note: This section was amended by 1989 c 175 § 72 and by 1989 c 374 § 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).

Effective date—1989 c 175: See note following RCW 34.05.010.

Publication of small business economic impact statement in Washington State Register: RCW 34.08.020.

19.85.040 Small business economic impact statement—Purpose—Contents. A small business economic impact statement must include a brief description of the reporting, recordkeeping, and other compliance requirements of the rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements. A small business economic impact statement shall analyze, based on existing data, the costs of compliance for businesses required to comply with the provisions of a rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, and increased administrative costs, and compare to the greatest extent possible the cost of compliance for small business with the cost of compliance for the ten percent of firms which are the largest businesses required to comply with the proposed new or amendatory rules. The small business economic impact statement shall use one or more of the following as a basis for comparing costs:

(1) Cost per employee;

(2) Cost per hour of labor;

(3) Cost per one hundred dollars of sales;

(4) Any combination of (1), (2), or (3). [1989 c 374 § 3; 1989 c 175 § 73; 1982 c 6 § 4.]

Reviser's note: This section was amended by 1989 c 175 § 73 and by 1989 c 374 § 3, 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.

Publication in Washington State Register: RCW 34.08.020.

19.85.050 Agency plan for review of business rules—Scope—Factors applicable to review—Annual list.

(1) Within one year after June 10, 1982, each agency shall publish and deliver to the office of financial management and to all persons who make requests of the agency for a copy of a plan to periodically review all rules then in effect and which have been issued by the agency which have an economic impact on more than twenty percent of all industries or ten percent of the businesses in any one industry. Such plan may be amended by the agency at any time by publishing a revision to the review plan and delivering such revised plan to the office of financial management and to all persons who make requests of the agency for the plan. The purpose of the review is to determine whether such rules should be continued without change or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize the economic impact on small businesses as described by this chapter. The plan shall provide for the review of all such agency rules in effect on June 10, 1982, within ten years of that date.

(2) In reviewing rules to minimize any significant economic impact of the rule on small businesses as described by this chapter, and in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments received concerning the rule from the public;
- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates, or conflicts with other state or federal rules, and, to the extent feasible, with local governmental rules; and
- (e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule.

(3) Each year each agency shall publish a list of rules which are to be reviewed pursuant to this section during the next twelve months and deliver a copy of the list to the office of financial management and all persons who make requests of the agency for the list. The list shall include a brief description of the legal basis for each rule as described by RCW 34.05.360, and shall invite public comment upon the rule. [1989 c 175 § 74; 1982 c 6 § 5.]

Effective date—1989 c 175: See note following RCW 34.05.010.

19.85.060 Small business economic impact statement—When not required. An agency is not required to prepare a small business economic impact statement if the agency files a statement that:

(1) The rule is being adopted solely for the purpose of conformity or compliance, or both, with federal law or regulations; or

(2) The rule will have a minor or negligible economic impact. The business assistance center shall develop guidelines for determining whether a proposed rule will have minor or negligible impacts. The business assistance center may review a proposed rule that indicates that there is only a minor or negligible economic impact to determine if the agency's finding is within the guidelines developed by the business assistance center. The business assistance center is authorized to advise the joint administrative rules review committee on disputes involving agency determinations under this section. [1989 c 374 § 5.]

19.85.070 Small business economic impact statement—Notice of proposed rule. When any rule is proposed for which a small business economic impact statement is required, the adopting agency shall provide notice to small businesses of the proposed rule through any of the following:

- (1) Direct notification of known interested small businesses or trade organizations affected by the proposed rule; or
- (2) Providing information of the proposed rule making to publications likely to be obtained by small businesses of the types affected by the proposed rule. [1992 c 197 § 1.]

19.85.080 Committee to comment on possible rule making—Appointment. When feasible, the adopting agency may appoint a committee, as provided in RCW 34.05.310, to comment on the subject of the possible rule making before the publication of notice of proposed rule adoption under RCW 34.05.320. [1992 c 197 § 2.]

19.85.900 Severability—1982 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. [1982 c 6 § 11.]

Chapter 19.86

UNFAIR BUSINESS PRACTICES—CONSUMER PROTECTION

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Violation of timeshare regulation constitutes unfair practice under chapter 19.86 RCW: RCW 64.36.170.

Weatherization of leased or rented residences: RCW 70.164.060.

19.86.010 Definitions. As used in this chapter:

(1) "Person" shall include, where applicable, natural persons, corporations, trusts, unincorporated associations and partnerships.

(2) "Trade" and "commerce" shall include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.

(3) "Assets" shall include any property, tangible or intangible, real, personal, or mixed, and wherever situate, and any other thing of value. [1961 c 216 § 1.]

19.86.020 Unfair competition, practices, declared unlawful. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. [1961 c 216 § 2.]
Hearing aid dispensing, advertising, etc.—Application: RCW 18.35.180.

19.86.023 Violation of RCW 15.86.030 constitutes violation of RCW 19.86.020. Any violation of RCW 15.86.030 shall also constitute a violation under RCW 19.86.020. [1985 c 247 § 7.]

19.86.030 Contracts, combinations, conspiracies in restraint of trade declared unlawful. Every contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is hereby declared unlawful. [1961 c 216 § 3.]
Monopolies and trusts prohibited: State Constitution Art. 12 § 22.

19.86.040 Monopolies and attempted monopolies declared unlawful. It shall be unlawful for any person to monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of trade or commerce. [1961 c 216 § 4.]

19.86.050 Transactions and agreements not to use or deal in commodities or services of competitor declared unlawful when lessens competition. It shall be unlawful for any person to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for

such sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce. [1961 c 216 § 5.]

19.86.060 Acquisition of corporate stock by another corporation to lessen competition declared unlawful—Exceptions—Judicial order to divest. It shall be unlawful for any corporation to acquire, directly or indirectly, the whole or any part of the stock or assets of another corporation where the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

In addition to any other remedy provided by this chapter, the superior court may order any corporation to divest itself of the stock or assets held contrary to this section, in the manner and within the time fixed by said order. [1961 c 216 § 6.]

19.86.070 Labor not an article of commerce—Chapter not to affect mutual, nonprofit organizations. The labor of a human being is not a commodity or article of commerce. Nothing contained in this chapter shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof. [1961 c 216 § 7.]

Labor regulations: Title 49 RCW.

19.86.080 Attorney general may restrain prohibited acts—Costs—Restoration of property. The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful; and the prevailing party may, in the discretion of the court, recover the costs of said action including a reasonable attorney's fee.

The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any act herein prohibited or declared to be unlawful. [1970 ex.s. c 26 § 1; 1961 c 216 § 8.]

19.86.090 Civil action for damages—Treble damages authorized—Action by governmental entities. Any person who is injured in his or her business or property by a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or any person so injured because he or she refuses to accede to a proposal for an arrangement

which, if consummated, would be in violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, may bring a civil action in the superior court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee, and the court may in its discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained: PROVIDED, That such increased damage award for violation of RCW 19.86.020 may not exceed ten thousand dollars: PROVIDED FURTHER, That such person may bring a civil action in the district court to recover his or her actual damages, except for damages which exceed the amount specified in RCW 3.66.020, and the costs of the suit, including reasonable attorney's fees. The district court may, in its discretion, increase the award of damages to an amount not more than three times the actual damages sustained, but such increased damage award shall not exceed the amount specified in RCW 3.66.020. For the purpose of this section "person" shall include the counties, municipalities, and all political subdivisions of this state.

Whenever the state of Washington is injured by reason of a violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, it may sue therefor in the superior court to recover the actual damages sustained by it and to recover the costs of the suit including a reasonable attorney's fee. [1987 c 202 § 187; 1983 c 288 § 3; 1970 ex.s. c 26 § 2; 1961 c 216 § 9.]

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

Short title—Purposes—1983 c 288: "This act may be cited as the antitrust/consumer protection improvements act. Its purposes are to strengthen public and private enforcement of the unfair business practices-consumer protection act, chapter 19.86 RCW, and to repeal the unfair practices act, chapter 19.90 RCW, in order to eliminate a statute which is unnecessary in light of the provisions and remedies of chapter 19.86 RCW. In repealing chapter 19.90 RCW, it is the intent of the legislature that chapter 19.86 RCW should continue to provide appropriate remedies for predatory pricing and other pricing practices which constitute violations of federal antitrust law." [1983 c 288 § 1.] For codification of 1983 c 288, see Codification Tables, Volume 0.

19.86.095 Request for injunctive relief—Appellate proceeding—Service on the attorney general. In any proceeding in which there is a request for injunctive relief under RCW 19.86.090, the attorney general shall be served with a copy of the initial pleading alleging a violation of this chapter. In any appellate proceeding in which an issue is presented concerning a provision of this chapter, the attorney general shall, within the time provided for filing the brief with the appellate court, be served with a copy of the brief of the party presenting such issue. [1983 c 288 § 5.]

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

19.86.100 Assurance of discontinuance of prohibited act—Approval of court—Not considered admission. In the enforcement of this chapter, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in

which the alleged violator resides or has his principal place of business, or in Thurston county.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose; however, proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter. [1970 ex.s. c 26 § 3; 1961 c 216 § 10.]

19.86.110 Demand to produce documentary materials for inspection, answer written interrogatories, or give oral testimony—Contents—Service—Unauthorized disclosure—Return—Modification, vacation—Use—Penalty. (1) Whenever the attorney general believes that any person (a) may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate, which he believes to be relevant to the subject matter of an investigation of a possible violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or federal statutes dealing with the same or similar matters that the attorney general is authorized to enforce, or (b) may have knowledge of any information which the attorney general believes relevant to the subject matter of such an investigation, he may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person, a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of such demands pertaining to such documentary material or information: **PROVIDED**, That this section shall not be applicable to criminal prosecutions.

(2) Each such demand shall:

(a) State the statute and section or sections thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) If the demand is for the production of documentary material, describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

(c) Prescribe a return date within which the documentary material is to be produced, the answers to written interrogatories are to be made, or a date, time, and place at which oral testimony is to be taken; and

(d) Identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying, to whom answers to written interrogatories are to be made, or who are to conduct the examination for oral testimony.

(3) No such demand shall:

(a) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum, a request for answers to written interrogatories, or a request for deposition upon oral examination issued by a court of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such person is not a natural person, to any officer or managing agent of the person to be served; or

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if said person has no place of business in this state, to his principal office or place of business.

(5)(a) Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the attorney general;

(b) Written interrogatories in a demand served under this section shall be answered in the same manner as provided in the civil rules for superior court;

(c) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the same manner as provided in the civil rules for superior court for the taking of depositions. In the course of the deposition, the assistant attorney general conducting the examination may exclude from the place where the examination is held all persons other than the person being examined, the person's counsel, and the officer before whom the testimony is to be taken;

(d) Any person compelled to appear pursuant to a demand for oral testimony under this section may be accompanied by counsel;

(e) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the county within which the person resides, is found, or transacts business, or in such other place as may be agreed upon between the person served and the attorney general.

(6) If, after prior court approval, a civil investigative demand specifically prohibits disclosure of the existence or content of the demand, unless otherwise ordered by a superior court for good cause shown, it shall be a misdemeanor for any person if not a bank, trust company, mutual savings bank, credit union, or savings and loan association organized under the laws of the United States or of any one of the United States to disclose to any other person the existence or content of the demand, except for disclosure to counsel for the recipient of the demand or unless otherwise required by law.

(7) No documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, other than an authorized employee of the attorney general, without the consent of the person who produced such material, answered written interrogatories, or gave oral testimony, except as otherwise provided in this section: **PROVIDED**, That, under such reasonable terms and conditions as the attorney general shall prescribe, the copies of such documentary material, answers

to written interrogatories, or transcripts of oral testimony shall be available for inspection and copying by the person who produced such material, answered written interrogatories, or gave oral testimony, or any duly authorized representative of such person. The attorney general or any assistant attorney general may use such copies of documentary material, answers to written interrogatories, or transcripts of oral testimony as he determines necessary in the enforcement of this chapter, including presentation before any court: PROVIDED, That any such material, answers to written interrogatories, or transcripts of oral testimony which contain trade secrets shall not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing such material, answers to written interrogatories, or oral testimony.

(8) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued pursuant to subsection (1), stating good cause, may be filed in the superior court for Thurston county, or in such other county where the parties reside. A petition, by the person on whom the demand is served, stating good cause, to require the attorney general or any person to perform any duty imposed by the provisions of this section, and all other petitions in connection with a demand, may be filed in the superior court for Thurston county, or in the county where the parties reside. The court shall have jurisdiction to impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

(9) Whenever any person fails to comply with any civil investigative demand for documentary material, answers to written interrogatories, or oral testimony duly served upon him under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general may file, in the trial court of general jurisdiction of the county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county such petition shall be filed in the county in which such person maintains his principal place of business, or in such other county as may be agreed upon by the parties to such petition. Whenever any petition is filed in the trial court of general jurisdiction of any county under this section, such court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry into effect the provisions of this section, and may impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions. [1990 c 199 § 1; 1987 c 152 § 1; 1982 c 137 § 1; 1970 ex.s. c 26 § 4; 1961 c 216 § 11.]

Rules of court: See Superior Court Civil Rules.

19.86.120 Limitation of actions—Tolling. Any action to enforce a claim for damages under RCW 19.86.090 shall be forever barred unless commenced within four years after the cause of action accrues: PROVIDED, That whenever any action is brought by the attorney general for a violation of RCW 19.86.020, 19.86.030, 19.86.040,

19.86.050, or 19.86.060, except actions for the recovery of a civil penalty for violation of an injunction or actions under RCW 19.86.090, the running of the foregoing statute of limitations, with respect to every private right of action for damages under RCW 19.86.090 which is based in whole or part on any matter complained of in said action by the attorney general, shall be suspended during the pendency thereof. [1970 ex.s. c 26 § 5; 1961 c 216 § 12.]

Action to enforce claim for civil damages under chapter 19.86 RCW must be commenced within six years. Unfair motor vehicles business practices act: RCW 46.70.220.

Limitation of actions: Chapter 4.16 RCW.

19.86.130 Final judgment to restrain is prima facie evidence in civil action—Exceptions. A final judgment or decree rendered in any action brought under RCW 19.86.080 by the state of Washington to the effect that a defendant has violated RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060 shall be prima facie evidence against such defendant in any action brought by any party against such defendant under RCW 19.86.090 as to all matters which said judgment or decree would be an estoppel as between the parties thereto: PROVIDED, That this section shall not apply to consent judgments or decrees where the court makes no finding of illegality. [1970 ex.s. c 26 § 6; 1961 c 216 § 13.]

19.86.140 Civil penalties. Every person who shall violate the terms of any injunction issued as in this chapter provided, shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

Every person, other than a corporation, who violates RCW 19.86.030 or 19.86.040 shall pay a civil penalty of not more than one hundred thousand dollars. Every corporation which violates RCW 19.86.030 or 19.86.040 shall pay a civil penalty of not more than five hundred thousand dollars.

Every person who violates RCW 19.86.020 shall forfeit and pay a civil penalty of not more than two thousand dollars for each violation: PROVIDED, That nothing in this paragraph shall apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer or distributor of any newspaper, magazine, billboard or other advertising medium who publishes, prints or distributes, advertising in good faith without knowledge of its false, deceptive or misleading character.

For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties.

With respect to violations of RCW 19.86.030 and 19.86.040, the attorney general, acting in the name of the state, may seek recovery of such penalties in a civil action. [1983 c 288 § 2; 1970 ex.s. c 26 § 7; 1961 c 216 § 14.]

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

19.86.145 Penalties—Animals used in biomedical research. Any violation of RCW 9.08.070 or 16.52.220 constitutes an unfair or deceptive practice in violation of this chapter. The relief available under this chapter for violations

of RCW 9.08.070 or 16.52.220 by a research institution shall be limited to only monetary penalties in an amount not to exceed two thousand five hundred dollars. [1989 c 359 § 4.]

19.86.150 Dissolution, forfeiture of corporate franchise for violations. Upon petition by the attorney general, the court may, in its discretion, order the dissolution, or suspension or forfeiture of franchise, of any corporation which shall violate RCW 19.86.030 or 19.86.040 or the terms of any injunction issued as in this chapter provided. [1961 c 216 § 15.]

19.86.160 Personal service of process outside state. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185. [1961 c 216 § 16.]

19.86.170 Exempted actions or transactions—Stipulated penalties and remedies are exclusive. Nothing in this chapter shall apply to actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state, the Washington utilities and transportation commission, the federal power commission or actions or transactions permitted by any other regulatory body or officer acting under statutory authority of this state or the United States: PROVIDED, HOWEVER, That actions and transactions prohibited or regulated under the laws administered by the insurance commissioner shall be subject to the provisions of RCW 19.86.020 and all sections of chapter 216, Laws of 1961 and chapter 19.86 RCW which provide for the implementation and enforcement of RCW 19.86.020 except that nothing required or permitted to be done pursuant to Title 48 RCW shall be construed to be a violation of RCW 19.86.020: PROVIDED, FURTHER, That actions or transactions specifically permitted within the statutory authority granted to any regulatory board or commission established within Title 18 RCW shall not be construed to be a violation of chapter 19.86 RCW: PROVIDED, FURTHER, That this chapter shall apply to actions and transactions in connection with the disposition of human remains.

RCW 9A.20.010(2) shall not be applicable to the terms of this chapter and no penalty or remedy shall result from a violation of this chapter except as expressly provided herein. [1977 c 49 § 1; 1974 ex.s. c 158 § 1; 1967 c 147 § 1; 1961 c 216 § 17.]

Radio communications: RCW 80.04.530.

Telecommunications: RCW 80.36.360.

19.86.900 Severability—1961 c 216. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1961 c 216 § 18.]

19.86.910 Short title. This act shall be known and designated as the "Consumer Protection Act." [1961 c 216 § 19.]

19.86.920 Purpose—Interpretation—Liberal construction—Saving—1985 c 401; 1983 c 288; 1983 c 3; 1961 c 216. The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition. It is the intent of the legislature that, in construing this act, the courts be guided by final decisions of the federal courts and final orders of the federal trade commission interpreting the various federal statutes dealing with the same or similar matters and that in deciding whether conduct restrains or monopolizes trade or commerce or may substantially lessen competition, determination of the relevant market or effective area of competition shall not be limited by the boundaries of the state of Washington. To this end this act shall be liberally construed that its beneficial purposes may be served.

It is, however, the intent of the legislature that this act shall not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest, nor be construed to authorize those acts or practices which unreasonably restrain trade or are unreasonable per se. [1985 c 401 § 1; 1983 c 288 § 4; 1983 c 3 § 25; 1961 c 216 § 20.]

Reviser's note: "This act" originally appears in 1961 c 216.

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

Chapter 19.91

UNFAIR CIGARETTE SALES BELOW COST ACT

Sections

19.91.300 Cigarettes—Sales below cost prohibited.

19.91.300 Cigarettes—Sales below cost prohibited. No person licensed to sell cigarettes under chapter 82.24 RCW may sell cigarettes below the actual price paid. Violations of this section constitute unfair or deceptive acts or practices under the consumer protection act, chapter 19.86 RCW. [1986 c 321 § 13.]

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

Chapter 19.92

WEIGHTS AND MEASURES—BREAD AND HOPS

Sections

19.92.100 Bread—Standard loaves.
19.92.110 Bread—Open top or "hearth" loaves—Exceptions.
19.92.120 Bread—"Pullman" loaves.
19.92.240 Hops—Bale—Tare.

Weighting commodities transported for sale: Chapter 15.80 RCW.

19.92.100 Bread—Standard loaves. No person shall manufacture for sale, sell or offer or expose for sale, any bread except in the following weights, which shall be the net weights twelve hours after baking: "standard small loaf", which shall weigh not less than fifteen ounces and not more than seventeen ounces; "standard large loaf", which shall weigh not less than twenty-two and one-half ounces and not more than twenty-five and one-half ounces; "standard partial loaf", which shall weigh not less than eight ounces and not more than twelve ounces; or multiples of the foregoing weights for the "standard small loaf" and "standard large loaf": PROVIDED, That variations at the rate of one ounce over and one ounce under the foregoing, per "standard small loaf", or one and one-half ounce over or under per "standard large loaf", or any multiple of the foregoing variations per each multiple type loaf, in the above specified unit weights are permitted in individual loaves, but the average weight of not less than twelve loaves of any one kind of loaf shall not be less than the weight hereinabove prescribed. It shall be unlawful to sell or expose for sale bread in a loaf of such form that it has the appearance and size of a loaf of greater weight. [1983 c 89 § 1; 1955 c 61 § 1; 1937 c 214 § 1; 1927 c 194 § 10; RRS § 11626.]

19.92.110 Bread—Open top or "hearth" loaves—Exceptions. "Open top" or "hearth" means bread baked in pans or forms the top or top and sides of which are not enclosed.

"Open top" or "hearth bread" shall be baked in pans or forms the length and width of which shall not exceed the following:

"Standard small loaf", length, nine inches, width, four and one-half inches;

"Standard large loaf", length, twelve and one-quarter inches, width, four and one-half inches.

This section does not apply to standard partial loaves of bread or odd-shaped, ethnic, or specialty loaves of bread or to the equipment used to bake such loaves of bread. [1983 c 89 § 2; 1955 c 61 § 3. Prior: (i) 1937 c 214 § 2, part; RRS § 11626-1, part. (ii) 1937 c 214 § 3; RRS § 11626-2.]

19.92.120 Bread—"Pullman" loaves. "Pullman bread" means bread baked in pans all six sides of which are enclosed.

"Pullman bread" shall be baked in pans the length and cubic content of which shall not exceed the following:

"Standard small Pullman loaf", length, nine inches; cubic content, one hundred forty-four cubic inches;

"Standard large Pullman loaf", length, thirteen inches; cubic content, two hundred and eight cubic inches;

"Standard large multiple Pullman loaf 'a'", length, sixteen inches; cubic content, two hundred fifty-six cubic inches;

"Standard large multiple Pullman loaf 'b'", length, twenty inches; cubic content, four hundred five cubic inches. [1955 c 61 § 4. Prior: (i) 1937 c 214 § 2, part; RRS § 11626-1, part. (ii) 1937 c 214 § 4; RRS § 11626-3.]

19.92.240 Hops—Bale—Tare. The amount of tare to be deducted from the gross weight of each bale of hops grown and hereafter sold in this state is hereby fixed at five

pounds per bale. Five yards of baling cloth is the maximum quantity to be used in making the bale, and the standard weight of each yard of baling cloth is hereby fixed at from twenty-four to thirty ounces. The standard weight for a bale of hops is hereby fixed at from one hundred and seventy-five to two hundred and ten pounds. Any vendor of hops using heavier sacking than that specified in this section, or using any extraneous matter in the baling thereof, shall have the same deducted as additional tare. [1890 p 522 § 1. No RRS.]

Chapter 19.94

WEIGHTS AND MEASURES—1969 ACT

Sections

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19.94.005 Findings. The legislature finds:

(1) The accuracy of weighing and measuring instruments and devices used in commerce in the state of Washington affects every consumer throughout the state and is of vital importance to the public interest.

(2) Fair weights and measures are equally important to business and the consumer.

(3) A continuing study of this state's weights and measures program is necessary to ensure that the program provides proper enforcement and oversight to safeguard consumers, business, and interstate commerce.

(4) This chapter safeguards the consuming public and ensures that businesses receive proper compensation for the commodities they deliver. [1992 c 237 § 1.]

Intent—1992 c 237: "Until such time as the study in section 38, chapter 237, Laws of 1992, is completed, it is the intent of the legislature that consumer protection activities of the department of agriculture weights and measures program be funded by the general fund and that device inspection related activities be funded on a fee-for-service basis." [1992 c 237 § 2.]

19.94.010 Definitions—Director may prescribe by rule. (1) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter and to any rules adopted pursuant to this chapter.

(a) "City" means a first class city with a population of over fifty thousand persons.

(b) "City sealer" means the person duly authorized by a city to enforce and administer the weights and measures program within such city and any duly appointed deputy sealer acting under the instructions and at the direction of the city sealer.

(c) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of an auxiliary shipping container enclosing packages that individually conform to the requirements of this chapter. An individual item or lot of any commodity not in packaged form, but on which there is marked a selling price based on established price per unit of weight or of measure, shall be construed to be a commodity in package form.

(d) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by persons, or used by persons for the purpose of personal care or in the performance of services ordinarily rendered in or about a household or in connection with personal possessions.

(e) "Cord" means the measurement of wood intended for fuel or pulp purposes that is contained in a space of one hundred twenty-eight cubic feet, when the wood is ranked and well stowed.

(f) "Department" means the department of agriculture of the state of Washington.

(g) "Director" means the director of the department or duly authorized representative acting under the instructions and at the direction of the director.

(h) "Fish" means any waterbreathing animal, including shellfish, such as, but not limited to, lobster, clam, crab, or other mollusca that is prepared, processed, sold, or intended for sale.

(i) "Net weight" means the weight of a commodity excluding any materials, substances, or items not considered to be part of such commodity. Materials, substances, or items not considered to be part of a commodity shall include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, and coupons.

(j) "Nonconsumer package" or "package of nonconsumer commodity" means a commodity in package form other than a consumer package and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(k) "Meat" means and shall include all animal flesh, carcasses, or parts of animals, and shall also include fish, shellfish, game, poultry, and meat food products of every kind and character, whether fresh, frozen, cooked, cured, or processed.

(l) "Official seal of approval" means the uniform seal or certificate issued by the director or city sealer which indicates that a weights and measures standard or a weighing or measuring instrument or device conforms with the specifications, tolerances, and other technical requirements adopted in RCW 19.94.195.

(m) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

(n) "Poultry" means all fowl, domestic or wild, that is prepared, processed, sold, or intended or offered for sale.

(o) "Service agent" means a person who for hire, award, commission, or any other payment of any kind, installs, inspects, checks, adjusts, repairs, reconditions, or systematically standardizes the graduations of a weighing or measuring instrument or device.

(p) "Ton" means a unit of two thousand pounds avoirdupois weight.

(q) "Weighing or measuring instrument or device" means any equipment or apparatus used commercially to establish the size, quantity, capacity, count, extent, area, heaviness, or measurement of quantities, things, produce, or articles for distribution or consumption, that are purchased, offered or submitted for sale, hire, or award on the basis of weight, measure or count, including any accessory attached to or used in connection with a weighing or measuring instrument or device when such accessory is so designed or installed that its operation affects, or may effect, the accuracy or indication of the device. This definition shall be

strictly limited to those weighing or measuring instruments or devices governed by Handbook 44 as adopted under RCW 19.94.195.

(r) "Weight" means net weight as defined in this section.

(s) "Weights and measures" means the recognized standards or units of measure used to indicate the size, quantity, capacity, count, extent, area, heaviness, or measurement of any consumable commodity.

(t) "Weights and measures standard" means any object used by the director, a city sealer, or a service agent that under specified conditions defines or represents a recognized weight or measure during the inspection, adjustment, testing, or systematic standardization of the graduations of any weighing or measuring instrument or device.

(2) The director shall prescribe by rule other definitions as may be necessary for the implementation of this chapter. [1992 c 237 § 3; 1969 c 67 § 1.]

19.94.150 Standards recognized. The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in this state. The definitions of basic units of weight and measure and weights and measures equivalents, as published by the national institute of standards and technology or any successor organization, are recognized and shall govern weighing or measuring instruments or devices used in commercial activities and other transactions involving weights and measures within this state. [1992 c 237 § 4; 1991 sp.s. c 23 § 4; 1969 c 67 § 15.]

Legislative findings—1991 sp.s. c 23: "The legislature finds:

(1) Accurate weights and measures are essential for the efficient operation of commerce in Washington, and weights and measures are important to both consumers and businesses.

(2) Legislation to expand the weights and measures program and fund the program with license fees on weights and measures devices has been considered.

(3) Additional information is necessary before further action can be taken." [1991 sp.s. c 23 § 1.]

Intent—1991 sp.s. c 23: "It is the intent of the legislature to fund the current weights and measures program only through the first year of the 1991-93 fiscal biennium, and to base funding of the program for the second year of the biennium and ensuing biennia upon the recommendations of the study performed under section 3, chapter 23, Laws of 1991 1st sp. sess." [1991 sp.s. c 23 § 2.]

19.94.160 State standards. Weights and measures standards that are in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by the state for use as state weights and measures standards, shall, when the same shall have been certified as such by the national institute of standards and technology or any successor organization, be the state standards of weight and measure. The state weights and measures standards shall be kept in a place designated by the director and shall not be removed from such designated place except for repairs or for certification. These state weights and measures standards shall be submitted at least once every ten years to the national institute of standards and technology or any successor organization for certification. [1992 c 237 § 5; 1991 sp.s. c 23 § 5; 1969 c 67 § 16.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.165 Inspection and testing—Seals of approval—Schedule. (1) Unless otherwise provided by the department, all weighing or measuring instruments or devices used for commercial purposes within this state shall be inspected and tested for accuracy by the director or city sealer at least once every two years and, if found to be correct, the director or city sealer shall issue an official seal of approval for each such instrument or device.

(2) Beginning fiscal year 1993, the schedule of inspection and testing shall be staggered so as one-half of the weighing or measuring instruments or devices under the jurisdiction of the inspecting and testing authority are approved in odd fiscal years and the remaining one-half are inspected and tested in even fiscal years.

(3) The department may provide, as needed, uniform, official seals of approval to city sealers for the purposes expressed in this section. [1992 c 237 § 6.]

19.94.175 Inspection and testing—Fees. (1) The department shall establish reasonable, biennial inspection and testing fees for each type or class of weighing or measuring instrument or device required to be inspected and tested under this chapter. These inspection and testing fees shall be equitably prorated within each such type or class and shall be limited to those amounts necessary for the department to cover, to the extent possible, the direct costs associated with the inspection and testing of each type or class of weighing or measuring instrument or device.

(2) Prior to the establishment and each amendment of the fees authorized under this chapter, a weights and measures fee task force shall be convened under the direction of the department. The task force shall be composed of a representative from the department who shall serve as chair and one representative from each of the following: City sealers, service agents, service stations, grocery stores, retailers, food processors/dealers, oil heat dealers, the agricultural community, and liquid propane dealers. The task force shall recommend the appropriate level of fees to be assessed by the department pursuant to subsection (1) of this section, based upon the level necessary to cover the direct costs of administering and enforcing the provisions of this chapter and to the extent possible be consistent with fees reasonably and customarily charged in the private sector for similar services.

(3) The fees authorized under this chapter may be billed only after the director or a city sealer has issued an official seal of approval for a weighing or measuring instrument or device or a weight or measure standard.

(4) All fees shall become due and payable thirty days after billing by the department or a city sealer. A late penalty of one and one-half percent per month may be assessed on the unpaid balance more than thirty days in arrears.

(5) Fees upon weighing or measuring instruments or devices within the jurisdiction of the city that are collected under this section by city sealers shall be deposited into the general fund, or other account, of the city as directed by the governing body of the city. On the thirtieth day of each month, city sealers shall, pursuant to procedures established

and upon forms provided by the director, remit to the department for administrative costs ten percent of the total fees collected.

(6) With the exception of subsection (7) of this section, no person shall be required to pay more than the established inspection and testing fee adopted under this section for any weighing or measuring instrument or device in any two-year period when the same has been found to be correct.

(7) Whenever a special request is made by the owner for the inspection and testing of a weighing or measuring instrument or device, the fee prescribed by the director for such a weighing or measuring instrument or device shall be paid by the owner. [1992 c 237 § 7.]

19.94.185 Weights and measures account. All moneys collected under this chapter shall be placed in the weights and measures account hereby established in the state treasury. Moneys deposited in this account may be spent only following appropriation by law and shall be used solely for the purposes of weighing or measuring instrument or device inspection and testing. [1992 c 237 § 8.]

19.94.190 Enforcement—Rules. (1) The director and duly appointed city sealers shall enforce the provisions of this chapter. The director shall adopt rules for enforcing and carrying out the purposes of this chapter including but not limited to the following:

(a) Establishing state standards of weight, measure, or count, and reasonable standards of fill for any commodity in package form;

(b) The establishment of technical and reporting procedures to be followed, any necessary report and record forms, and marks of rejection to be used by the director and city sealers in the discharge of their official duties as required by this chapter;

(c) The establishment of technical test procedures, reporting procedures, and any necessary record and reporting forms to be used by service agents when installing, repairing, inspecting, or standardizing the graduations of any weighing or measuring instruments or devices;

(d) The establishment of fee payment and reporting procedures and any necessary report and record forms to be used by city sealers when remitting the percentage of total fees collected as required under this chapter;

(e) The establishment of exemptions from the sealing or marking inspection and testing requirements of RCW 19.94.250 with respect to weighing or measuring instruments or devices of such character or size that such sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question;

(f) The establishment of exemptions from the inspection and testing requirements of RCW 19.94.165 with respect to classes of weighing or measuring instruments or devices found to be of such character that periodic inspection and testing is unnecessary to ensure continued accuracy; and

(g) The establishment of inspection and approval techniques, if any, to be used with respect to classes of weighing or measuring instruments or devices that are designed specifically to be used commercially only once and then discarded, or are uniformly mass-produced by means of a mold or die and are not individually adjustable.

(2) These rules shall also include specifications and tolerances for the acceptable range of accuracy required of weighing or measuring instruments or devices and shall be designed to eliminate from use, without prejudice to weighing or measuring instruments or devices that conform as closely as practicable to official specifications and tolerances, those (a) that are of such construction that they are faulty, that is, that are not reasonably permanent in their adjustment or will not repeat their indications correctly, or (b) that facilitate the perpetration of fraud. [1992 c 237 § 9; 1991 sp.s. c 23 § 6; 1989 c 354 § 36; 1977 ex.s. c 26 § 5; 1969 c 67 § 19.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

Severability—1989 c 354: See note following RCW 15.32.010.

19.94.195 Specifications, tolerances, technical requirements—Adoption—Hearing—Notice. (1) The department shall adopt the specifications, tolerances, and other technical requirements for commercial weighing or measuring instruments or devices, together with amendments thereto, as recommended by the most recent edition of Handbook 44 published by the national institute of standards and technology or any successor organization as the specifications, tolerances, and other technical requirements for commercial weighing or measuring instruments or devices commercially used in this state.

(2)(a) To promote uniformity, any supplements or amendments to Handbook 44 or any similar subsequent publication of the national institute of standards and technology or any successor organization shall be deemed to have been adopted under this section.

(b) The director may, however, within thirty days of the publication or effective date of Handbook 44 or any supplements, amendments, or similar publications give public notice that a hearing will be held to determine if such publications should not be applicable under this section. Any such hearing shall be conducted under chapter 34.05 RCW. [1992 c 237 § 10.]

19.94.205 Correct and incorrect—Instruments, devices, weights, measures—When deemed. For the purposes of this chapter, weighing or measuring instruments or devices and weights and measures standards shall be deemed to be "correct" when they conform to all applicable requirements of this chapter or the requirements of any rule adopted by the department under the authority granted in this chapter; all other weighing or measuring instruments or devices and weights and measures standards shall be deemed to be "incorrect." [1992 c 237 § 11.]

19.94.216 Department inspection—Cities—Agencies, institutions—Classes—Seal of approval—Rules—Fees. The department shall:

(1) Biennially inspect and test the weights and measures standards of any city for which the appointment of a city sealer is provided by this chapter and shall issue an official seal of approval for same when found to be correct. The department shall, by rule, establish a reasonable fee for such inspection and testing services performed by the department's metrology laboratory.

(2) Biennially inspect, test, and, if found to be correct, issue an official seal of approval for any weighing or measuring instrument or device used in an agency or institution to which moneys are appropriated by the legislature or of the federal government and shall report any findings in writing to the executive officer of the agency or institution concerned. The department shall collect a reasonable fee, to be set by rule, for testing any such weighing or measuring instrument or device.

(3) Inspect, test, and, if found to be correct, issue a seal of approval for classes of weighing or measuring instruments or devices found to be few in number, highly complex, and of such character that differential inspection and testing frequency is necessary including, but not limited to, railroad track scales and grain elevator scales. The department shall develop rules regarding the inspection and testing procedures to be used for such weighing or measuring instruments or devices which shall include requirements for the provision, maintenance, and transport of any weight or measure standard necessary for inspection and testing at no expense to the state. The department may collect a reasonable fee, to be set by rule, for inspecting and testing any such weighing and measuring instruments or devices. This fee shall not be unduly burdensome and shall cover, to the extent possible, the direct costs of performing such service. [1992 c 237 § 12.]

19.94.220 Investigations. In promoting the general objective of ensuring accuracy of weighing or measuring instruments or devices and the proper representation of weights and measures in commercial transactions, the director or a city sealer shall, upon his or her own initiative and as he or she deems appropriate and advisable, investigate complaints made concerning violations of the provisions of this chapter. [1992 c 237 § 13; 1991 sp.s. c 23 § 8; 1969 c 67 § 22.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.230 Inspections and tests to determine conformity to law—Off sale order—Marks, tags, stamps.

(1) The director or a city sealer may, from time to time, inspect and test packages or amounts of commodities kept, offered, exposed for sale, sold, or in the process of delivery to determine whether the same contain the amounts represented and whether they are kept, offered, exposed for sale or sold in accordance with law. When such packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered, or exposed for sale or sold in violation of law, the director or city sealer may order them off sale and may mark, tag, or stamp them in a manner prescribed by the department.

(2) In carrying out the provisions of this section, the director or city sealer may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of a result obtained on a sample selected from and representative of such lot.

(3) No person shall (a) sell, keep, offer, or expose for sale any package or amount of commodity that has been ordered off sale as provided in this section unless and until such package or amount of commodity has been brought into

full compliance with legal requirements or (b) dispose of any package or amount of commodity that has been ordered off sale and that has not been brought into compliance with legal requirements in any manner except with the specific written approval of the director or city sealer who issued such off sale order. [1992 c 237 § 14; 1969 c 67 § 23.]

19.94.240 Stop-use, stop-removal, and removal orders. (1) The director or a city sealer shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to weighing or measuring devices being, or susceptible of being, commercially used within this state.

(2) The director or a city sealer shall also have the power to issue stop-removal orders and removal orders with respect to packages or amounts of commodities kept, offered, exposed for sale, sold, or in process of delivery.

(3) The director or a city sealer shall issue such orders whenever in the course of his or her enforcement of the provisions of this chapter or rules adopted hereunder he or she deems it necessary or expedient to issue such orders.

(4) No person shall use, remove from the premises specified, or fail to remove from any premises specified any weighing or measuring instrument or device, commodity in packaged form, or amount of commodity contrary to the terms of a stop-use order, stop-removal order or removal order, issued under the authority of this section. [1992 c 237 § 15; 1991 sp.s. c 23 § 9; 1969 c 67 § 24.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.250 Inspection of instrument or device to determine if correct—Rejection or seizure—Confiscation or destruction.

(1) The director or a city sealer shall, from time to time, inspect any weighing or measuring instrument or device, except those weighing or measuring instruments or devices exempted under the authority of RCW 19.94.190, to determine if it is correct. If the director or a city sealer discovers upon inspection that a weighing or measuring instrument or device is "incorrect," but in his or her best judgment is susceptible of satisfactory repair, he or she shall reject and mark or tag as rejected any such weighing or measuring instrument or device.

(2) The director or a city sealer may reject or seize any weighing or measuring instrument or device found to be incorrect that, in his or her best judgment, is not susceptible of satisfactory repair.

(3) Weighing or measuring instruments or devices that have been rejected under subsection (1) of this section may be confiscated and may be destroyed by the director or a city sealer if not corrected as required by RCW 19.94.255 or if used or disposed of contrary to the requirements of that section. [1992 c 237 § 16; 1991 sp.s. c 23 § 10; 1969 c 67 § 25.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.255 Correction of rejected weights and measures.

(1) Weighing or measuring instruments or devices that have been rejected under the authority of the director or a city sealer shall remain subject to the control of

the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section.

(2) The owner of any weighing or measuring instrument or device that has been marked or tagged as rejected by the director or a city sealer shall cause the same to be made correct within thirty days or such longer period as may be authorized by the rejecting authority. In lieu of correction, the owner of such weighing and measuring instrument or device may dispose of the same, but only in the manner specifically authorized by the rejecting authority.

(3) Weighing and measuring instruments or devices that have been rejected shall not again be used commercially until they have been officially reexamined and, if found to be correct, had an official seal of approval placed upon or issued for such weighing or measuring instrument or device by the rejecting authority. [1992 c 237 § 17; 1991 sp.s. c 23 § 14; 1969 c 67 § 33. Formerly RCW 19.94.330.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.260 Rejection—Seizure for use as evidence—Entry of premises—Search warrant. (1) With respect to the enforcement of this chapter and any other acts dealing with weights and measures that he or she is, or may be empowered to enforce, the director or a city sealer may reject or seize for use as evidence incorrect weighing or measuring instruments or devices or packages of commodities to be used, retained, offered, exposed for sale, or sold in violation of the law.

(2) In the performance of his or her official duties conferred under this chapter, the director or a city sealer is authorized at reasonable times during the normal business hours of the person using a weighing or measuring instrument or device to enter into or upon any structure or premises where such weighing or measuring instrument or device is used or kept for commercial purposes. If the director or a city sealer is denied access to any premises or establishment where such access was sought for the purposes set forth in this chapter, the director or a city sealer may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises or establishment for such purposes. The court may, upon such application, issue the search warrant for the purposes requested. [1992 c 237 § 18; 1991 sp.s. c 23 § 11; 1969 c 67 § 26.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.265 Grievances—Procedure—Notice—Hearing—Rules. (1) Any person aggrieved by any official action of the department or a city sealer conferred under this chapter, including but not limited to, "stop-use orders," "stop-removal orders," "removal orders," "condemnation," or "off sale order" may within thirty days after an order is given or any action is taken, petition the director for a hearing to determine the matter. Such proceedings and any appeal therefrom shall be taken in accordance with the administrative procedure act, chapter 34.05 RCW.

(2) The director shall give due notice and hold a hearing within ten days after the confiscation or seizure of any weighing or measuring instrument or device or commodity

under RCW 19.94.250 or the seizure of any weighing or measuring instrument or device for evidence under RCW 19.94.260. This hearing shall be for the purposes of determining whether any such weighing or measuring instrument or device or commodity was properly confiscated or seized, to determine whether or not such weighing or measuring instrument or device or commodity was used for, or is in, violation of any provision of this chapter or to determine the disposition to be made of such weighing or measuring instrument or device or commodity. Such proceedings and any appeal therefrom shall be taken in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) The department may by rule establish procedures for the administration of this section. [1992 c 237 § 19.]

19.94.280 City sealers and deputies—Appointment, removal—Adoption of fees—Record, report. (1) There may be a city sealer in every city and such deputies as may be required by ordinance of each such city to administer and enforce the provisions of this chapter.

(2) Each city electing to have a city sealer shall adopt rules for the appointment and removal of the city sealer and any deputies required by local ordinance. The rules for appointment of a city sealer and any deputies must include provisions for the advice and consent of the local governing body of such city and, as necessary, any provisions for local civil service laws and regulations.

(3) A city sealer shall adopt the fee amounts established by the director pursuant to *RCW 19.94.165. No city shall adopt or charge an inspection, testing, or licensing fee or any other fee upon a weighing or measuring instrument or device that is in excess of the fee amount adopted under *RCW 19.94.165.

(4) A city sealer shall keep a complete and accurate record of all official acts performed under the authority of this chapter and shall submit an annual report to the governing body of his or her city and shall make any reports as may be required by the director. [1992 c 237 § 20; 1969 c 67 § 28.]

***Reviser's note:** The reference to "section 6 of this act" has been literally translated to RCW 19.94.165. This appears to be erroneous. RCW 19.94.175 relates to fee amounts.

19.94.310 City sealers and deputies—Duties of governing body—Sealer to have standards comparison made every two years. (1) The governing body of each city for which a city sealer has been appointed as provided for by RCW 19.94.280 shall:

(a) Procure at the expense of the city the official weights and measures standards and any field weights and measures standards necessary for the administration and enforcement of the provisions of this chapter or any rule that may be prescribed by the director;

(b) Provide a suitable office for the city sealer and any deputies that have been duly appointed; and

(c) Make provision for the necessary clerical services, supplies, transportation and for defraying contingent expenses incidental to the official activities of the city sealer and his or her deputies in carrying out the provisions of this chapter.

(2) When the acquisition of the official weights and measures standards required under subsection (1)(a) of this section has been made and such weights and measures standards have been examined and approved by the director, they shall be the certified weights and measures standards for such city.

(3) In order to maintain field weights and measure[s] standards in accurate condition, the city sealer shall, at least once every two years, compare the field weights and measures standards used within his or her city to the certified weights and measures standards of such city or to the official weights and measures standards of this state. [1992 c 237 § 21; 1969 c 67 § 31.]

19.94.320 City sealers—Director—General supervisory powers, concurrent authority—Powers and duties of chapter are additional. (1) In cities for which city sealers have been appointed as provided for in this chapter, the director shall have general supervisory powers over such city sealers and may, when he or she deems it reasonably necessary, exercise concurrent authority to carry out the provisions of this chapter.

(2) When the director elects to exercise concurrent authority within a city with a duly appointed city sealer, the director's powers and duties relative to this chapter shall be in addition to the powers granted in any such city by law or charter. [1992 c 237 § 22; 1969 c 67 § 32.]

19.94.325 Service agent—Inspection and testing of weights and measures—Seal of approval—Fees—Violation—Penalty. (1) Except as otherwise provided for in this chapter or in any rule adopted under the authority of this chapter, any person who engages in business within this state as a service agent shall biennially submit to the department for inspection and testing all weights and measures standards used by the service agent, or any agent or employee of the service agent. If the department finds such weights and measures standards to be correct, the director shall issue an official seal of approval for each such standard.

(2) The department may by rule adopt reasonable fees for the inspection and testing services performed by the weights and measures laboratory pursuant to this section.

(3) A service agent shall not use in the installation, inspection, adjustment, repair, or reconditioning of any weighing or measuring instrument or device any weight or measure standard that does not have a valid, official seal of approval from the director. Any service agent who violates this section is subject to a civil penalty of no more than five hundred dollars. [1992 c 237 § 23.]

19.94.340 Sale of commodities—Measurement—Exceptions—Rules to assure good practice and accuracy.

(1) Except as provided in subsection (2) of this section, commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this chapter, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count.

(2) Liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only

if such methods provide accurate information as to the quantity of commodity sold.

(3) The provisions of this section shall not apply to:

(a) Commodities that are sold for immediate consumption on the premises where sold;

(b) Vegetables when sold by the head or bunch;

(c) Commodities in containers standardized by a law of this state or by federal law;

(d) Commodities in package form when there exists a general consumer usage to express the quantity in some other manner;

(e) Concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure; or

(f) Unprocessed vegetable and animal fertilizer when sold by cubic measure.

(4) The director may issue such reasonable rules as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented to be accurate and informative to all interested parties. [1992 c 237 § 24; 1991 sp.s. c 23 § 15; 1969 c 67 § 34.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.350 Packaged commodities in intrastate commerce—Declaration of contents on outside—Rules.

(1) Except as otherwise provided in this chapter, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, offered or exposed for sale or sold in intrastate commerce, shall bear on the outside of the package such definite, plain, and conspicuous declaration of:

(a) The identity of the commodity contained within the package unless the same can easily be identified through the package;

(b) The net quantity of the contents in terms of weight, measure or count; and

(c) In the case of any package not sold on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by rule issued by the director.

(2) In connection with the declaration required under subsection (1)(b) of this section, neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant", "full", "or over", and the like) that tends to exaggerate the amount of commodity in a package, shall be used.

(3) With respect to the declaration required under subsection (1)(b) of this section the director shall by rule establish: (a) Reasonable variations to be allowed, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale to the consumer intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer. [1992 c 237 § 25; 1991 sp.s. c 23 § 16; 1969 c 67 § 35.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.360 Declaration of price on outside of package. In addition to the declarations required by RCW 19.94.350, any commodity in package form, the package being one of a lot containing random weights, measures or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count. [1969 c 67 § 36.]

19.94.370 Misleading wrappers, containers of packaged commodities—Standards of fill required. No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standards of fill as may have been prescribed by the director for the commodity in question. [1992 c 237 § 26; 1969 c 67 § 37.]

19.94.390 Price not to be misleading, deceiving, misrepresented—Fractions. Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, poster or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and one-half the width of the numerals representing the whole cents. [1969 c 67 § 39.]

19.94.400 Meat, fish, poultry to be sold by weight—Exceptions. Except for immediate consumption on the premises where sold or as one of several elements comprising a meal sold as a unit, for consumption elsewhere than on the premises where sold, all meat, meat products, fish and poultry offered or exposed for sale or sold as food, unless otherwise provided for by the laws of the state of Washington, shall be offered or exposed for sale and sold by weight. [1969 c 67 § 40.]

19.94.410 Butter, margarine to be sold by weight in units—Exception. (1) Except as provided in subsection (2) of this section, butter, oleomargarine and margarine shall be offered and exposed for sale and sold by weight and only in units of one-quarter pound, one-half pound, one pound or multiples of one pound, avoirdupois weight.

(2) The director of agriculture may allow the sale of butter speciality products in nonstandard units of weight if the purpose achieved by using such nonstandard units is decorative in nature and the products are clearly labeled as to weight and price per pound. [1988 c 63 § 1; 1969 c 67 § 41.]

19.94.420 Fluid dairy products to be packaged for retail sale in certain units. All fluid dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream and buttermilk and

all fluid imitation and fluid substitute dairy products shall be packaged for retail sale only in units as provided by the director of the department of agriculture by rule pursuant to the provisions of chapter 34.05 RCW. [1991 sp.s. c 23 § 17; 1975 1st ex.s. c 51 § 1; 1969 c 67 § 42.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.430 Packaged flour to be kept, sold, etc., in certain units. When in package form and when packed, kept, offered, exposed for sale or sold, flour such as, but not limited to, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meal and hominy grits shall be packaged only in units of five, ten, twenty-five, fifty and one hundred pounds avoirdupois weight: PROVIDED, That packages in units of less than five pounds or more than one hundred pounds shall be permitted. [1969 c 67 § 43.]

19.94.440 Commodities sold in bulk—Delivery tickets. (1) When a vehicle delivers to an individual purchaser a commodity in bulk, and the commodity is sold in terms of weight units, the delivery must be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or other indelible marking equipment and, in clarity, equal to type or printing:

- (a) The name and address of the vendor;
- (b) The name and address of the purchaser; and
- (c) The weight of the delivery expressed in pounds, and,

if the weight is derived from determinations of gross and tare weights, such gross and tare weights also must be stated in terms of pounds.

(2) One of the delivery tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered on demand to the director or the city sealer who, if he or she elects to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser.

(3) If the purchaser himself or herself carries away the purchase, the vendor shall be required only to give the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered. [1992 c 237 § 27; 1991 sp.s. c 23 § 18; 1969 c 67 § 44.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.450 Solid fuels to be sold by weight, cubic measure—Delivery tickets. (1) Except as provided in subsection (2) of this section, all solid fuels such as, but not limited to, coal, coke, charcoal, broiler chips, pressed fuels and briquets shall be sold by weight.

(2) All solid fuels such as hogged fuel, sawdust and similar industrial fuels may be sold or purchased by cubic measure.

(3) Unless a fuel is delivered to the purchaser in package form, each delivery of such fuel to an individual purchaser must be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or other indelible marking equipment and, in clarity equal to type or printing:

(a) The name and address of the vendor;
 (b) The name and address of the purchaser; and
 (c) The weight of the delivery and the gross and tare weights from which the weight is computed, each expressed in pounds.

(4) One of the delivery tickets shall be retained by the vendor and the other shall be delivered to the purchaser at the time of delivery of the fuel, or shall be surrendered, on demand, to the director or the city sealer who, if he or she elects to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser.

(5) If the purchaser himself or herself carries away the purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of fuel delivered. [1992 c 237 § 28; 1991 sp.s. c 23 § 19; 1969 c 67 § 45.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.460 Heating oils—Delivery tickets—Statements. (1) All stove and furnace oil shall be sold by liquid measure or by weight in accordance with the provisions of RCW 19.94.340.

(2) Unless such fuel is delivered to the purchaser in package form, each delivery of such fuel in an amount greater than ten gallons in the case of sale by liquid measure or one hundred pounds in the case of sale by weight must be accompanied by a delivery ticket or a written statement on which, in ink or other indelible substance, there shall be clearly and legibly stated:

- (a) The name and address of the vendor;
- (b) The name and address of the purchaser;
- (c) The identity of the type of fuel comprising the delivery;
- (d) The unit price (that is, price per gallon or per pound, as the case may be), of the fuel delivered;
- (e) In the case of sale by liquid measure, the liquid volume of the delivery together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions; and
- (f) In the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

(3) The delivery ticket required under this section must be delivered at the time of delivery unless an agreement, written or otherwise, between the vendor and the purchaser has been reached regarding the delivery of such delivery ticket. [1992 c 237 § 29; 1969 c 67 § 46.]

19.94.470 Berries and small fruit. Berries and small fruit shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of one-half dry pint, one dry pint or one dry quart: PROVIDED, That the marking provisions of RCW 19.94.340 shall not apply to such dry volume containers. [1969 c 67 § 47.]

19.94.480 Fractional units as fractional value. Fractional parts of any unit of weight or measure shall mean

like fractional parts of the value of such unit as prescribed in RCW 19.94.150. [1992 c 237 § 30; 1969 c 67 § 48.]

19.94.485 Contracts—Construction. All contracts concerning the sale of commodities and services by weight, measure, or count, will be construed in accordance with the weights and measures adopted under this chapter. [1992 c 237 § 31.]

19.94.490 Obstruction of director or sealer in performance of duties—Penalty. Any person who shall hinder or obstruct in any way the director or a city sealer in the performance of his or her official duties under this chapter is subject to a civil penalty of no more than five hundred dollars. [1992 c 237 § 32; 1969 c 67 § 49.]

19.94.500 Impersonation of director or sealer—Penalty. Any person who shall impersonate in any way the director or a city sealer, by using an official seal of approval without specific authorization to do so or by using a counterfeit seal of approval, or in any other manner, is subject to a civil penalty of no more than one thousand dollars. [1992 c 237 § 33; 1969 c 67 § 50.]

19.94.505 Gasoline containing alcohol—Dispensing device label required—Carbon monoxide nonattainment area—Penalty. (1) It is unlawful for any dealer or service station, as both are defined in RCW 82.36.010, to sell ethanol and/or methanol at one percent, by volume, or greater in gasoline for use as motor vehicle fuel unless the dispensing device has a label stating the type and maximum percentage of alcohol contained in the motor vehicle fuel.

(2) In any county, city, or other political subdivision designated as a carbon monoxide nonattainment area pursuant to the provisions of subchapter I of the clean air act amendments of 1990, P.L. 101-549, and in which the sale of oxygenated petroleum products is required by section 211(m) of the clean air act amendments of 1990, 42 U.S.C. 7545(m), any dealer or service station, as both are defined in RCW 82.36.010, who sells or dispenses a petroleum product that contains at least one percent, by volume, ethanol, methanol, or other oxygenate, shall post only such label or notice as may be required pursuant to 42 U.S.C. 7545(m)(4) or any amendments thereto or any successor provision thereof. This provision shall be applicable only during such portion of the year as oxygenated petroleum product sales are required pursuant to 42 U.S.C. 7545(m).

(3) Any person who violates this section is subject to a civil penalty of no more than five hundred dollars. [1992 c 237 § 34; 1984 c 61 § 1.]

19.94.507 Gasoline delivered to service stations—Invoice required. Persons delivering gasoline to retail service stations shall supply the station with an invoice which shall include the following information: (1) The gross volume of gasoline and the net volume of gasoline at sixty degrees Fahrenheit; (2) the time and temperature of the gasoline as loaded onto the delivery truck; and (3) the time of delivery to the retail service station. [1987 c 42 § 2.]

Intent—1987 c 42: "The legislature finds: That leaking underground storage tanks containing petroleum products may pose a significant and

widespread problem to human health and the environment, that current inventory procedures are inadequately suited to identify leaking underground storage tanks, and that new measures are needed to properly determine which tanks may be leaking." [1987 c 42 § 1.]

19.94.510 Unlawful practices—Penalty. (1) Any person who, by himself or herself, by his or her agent or employee, or as the agent or employee of another person, performs any one of the acts enumerated in (a) through (k) of this subsection is subject to a civil penalty of no more than one thousand dollars:

(a) Use or have in possession for the purpose of using for any commercial purpose a weighing or measuring instrument or device that is intentionally calculated to falsify any weight, measure, or count of any commodity, or to sell, offer, expose for sale or hire or have in possession for the purpose of selling or hiring an incorrect weighing or measuring instrument or device or any weighing or measuring instrument or device calculated to falsify any weight or measure.

(b) Knowingly use or have in possession for current use in the buying or selling of any commodity or thing, for hire or award, or in the computation of any basic charge or payment for services rendered on the basis of weight, measurement, or count, or in the determination of weight, measurement or count, when a charge is made for such determination, any incorrect weighing or measuring instrument or device.

(c) Dispose of any rejected weighing or measuring instrument or device in a manner contrary to law or rule.

(d) Remove from any weighing or measuring instrument or device, contrary to law or rule, any tag, seal, stamp or mark placed thereon by the director or a city sealer.

(e) Sell, offer or expose for sale less than the quantity he or she represents of any commodity, thing or service.

(f) Take more than the quantity he or she represents of any commodity, thing, or service when, as buyer, he or she furnishes the weight, measure, or count by means of which the amount of the commodity, thing or service is determined.

(g) Keep for the purpose of sale, advertise, offer or expose for sale or sell any commodity, thing or service in a condition or manner contrary to law or rule.

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weighing or measuring instrument or device that is not so positioned that its indications may be accurately read and the weighing or measuring operation observable from some position which may reasonably be assumed by a customer.

(i) Knowingly approve or issue an official seal of approval for any weighing or measuring instrument or device known to be incorrect.

(j) Fails to disclose to the department or a city sealer any knowledge of information relating to, or observation of, any device or instrument added to or modifying any weighing or measuring instrument or device for the purpose of selling, offering, or exposing for sale, less than the quantity represented of a commodity or calculated to falsify weight or measure, if the person is a service agent.

(k) Violate any other provision of this chapter or of the rules adopted under the provisions of this chapter for which a specific penalty has not been prescribed.

(2) Any person who, by himself or herself, by his or her agent or employee, or as the agent or employee of another person, performs any of the following acts is subject to a civil penalty of no more than five thousand dollars:

(a) Knowingly adds to or modifies any weighing or measuring instrument or device by the addition of a device or instrument that would allow the sale, or the offering or exposure for sale, of less than the quantity represented of a commodity or falsification of weight or measure.

(b) Commits as a fourth or subsequent infraction any of the acts listed in subsection (1) of this section. [1992 c 237 § 35; 1969 c 67 § 51.]

19.94.520 Injunction against violations. The director is authorized to apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this chapter. [1969 c 67 § 52.]

19.94.530 Proof of existence of weighing or measuring instrument or device presumed proof of regular use. For the purposes of this chapter, proof of the existence of a weighing or measuring instrument or device in or about any building, enclosure, stand, or vehicle in which or from which it is shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the contrary, be presumptive proof of the regular use of such weighing or measuring instrument or device for commercial purposes and of such use by the person in charge of such building, enclosure, stand or vehicle. [1992 c 237 § 36; 1969 c 67 § 53.]

19.94.900 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [1969 c 67 § 54.]

19.94.910 Severability—1969 c 67. 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 c 67 § 55.]

19.94.920 Effective date—1992 c 237. This act shall take effect July 1, 1992. [1992 c 237 § 41.]

Chapter 19.98

FARM IMPLEMENTS, MACHINERY, PARTS

Sections

19.98.010	Contract between retailer and wholesaler—Cancellation— Repurchase payments for unsold merchandise— Amounts—Return—Application of section.
19.98.020	Repurchase payments—Liens and claims.
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 19.98.911 Severability—1990 c 124.
 19.98.912 Effective date—Application—1990 c 124.

19.98.010 Contract between retailer and wholesaler—Cancellation—Repurchase payments for unsold merchandise—Amounts—Return—Application of section. Whenever any person, firm, or corporation engaged in the retail sale of farm implements and repair parts therefor enters into a written contract with any wholesaler, manufacturer, or distributor of farm implements, machinery, attachments, accessories, or repair parts whereby such retailer agrees to maintain a stock of parts or complete or whole machines, attachments, or accessories, and either party to such contract desires to cancel or discontinue the contract, unless the retailer should desire to keep such merchandise the manufacturer, wholesaler, or distributor shall pay the retailer for the merchandise. Such payment shall be in the amount of one hundred percent of the net cost of all current unused complete farm implements, machinery, attachments, and accessories, including transportation charges paid by the retailer, and eighty-five percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs which parts had previously been purchased from such wholesaler, manufacturer, or distributor and held by such retailer on the date of the cancellation or discontinuance of such contract or thereafter received by such retailer from the wholesaler, manufacturer, or distributor. The wholesaler, manufacturer, or distributor shall also pay such retailer a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of such parts for return: PROVIDED, That the provisions of this section shall apply only to repair parts which are new, unused, and in good condition. Upon the payment of such amounts, the title to such farm implements, farm machinery, attachments, accessories, or repair parts, shall pass to the manufacturer, wholesaler, or distributor making such payment, and such manufacturer, wholesaler, or distributor shall be entitled to the possession of such merchandise.

The provisions of this section shall apply to any annual part return adjustment agreement made between a seller or retailer and a manufacturer, wholesaler, or distributor.

The provisions of this section shall be supplemental to any agreement between the retailer and the manufacturer, wholesaler, or distributor covering the return of farm implements, machinery, attachments, accessories, and repair parts so that the retailer can elect to pursue either his contract remedy or the remedy provided herein, and an election by the retailer to pursue his contract remedy shall not bar his right to the remedy provided herein as to those farm implements, machinery, attachments, accessories, and repair parts not affected by the contract remedy.

The provisions of this section shall apply to all contracts now in effect which have no expiration date and are a continuing contract, and all other contracts entered into or renewed after January 1, 1976. Any contract in force and effect on January 1, 1976, which by its own terms will terminate on a date subsequent thereto shall be governed by

the law as it existed prior to this chapter: PROVIDED, That no contract covered by this chapter may be canceled by any party without good cause. Good cause shall include, but shall not be restricted to, the failure of any party to comply with the lawful provisions of the contract, the adjudication of any party to a contract as a bankrupt, wrongful refusal of manufacturer, wholesaler, or distributor to supply farm machinery, farm implements and repair parts therefor. [1975 1st ex.s. c 277 § 1.]

19.98.020 Repurchase payments—Liens and claims. All repurchase payments to retailers and sellers made pursuant to RCW 19.98.010 shall be less amounts owed on any lien or claim then outstanding upon such items covered by this section. Any wholesaler, manufacturer, or distributor making repurchase payments covered by this chapter to any retailer or seller shall satisfy such secured liens or claims pursuant to chapter [article] 62A.9 RCW less any interest owed to the lienholder arising from the financing of such items which shall be paid to any such secured lienholder by the retailer or seller. In no case shall the wholesaler, manufacturer, or distributor, in making payments covered by RCW 19.98.010, pay in excess of those amounts prescribed therein. [1975 1st ex.s. c 277 § 2.]

19.98.030 Prices—How determined. The prices of farm implements, machinery and repair parts therefor, required to be paid to any retail dealer as provided in RCW 19.98.010 shall be determined by taking one hundred percent of the net cost on farm implements, machinery, and attachments, and eighty-five percent of the current net price of repair parts therefor as shown upon the manufacturer's, wholesaler's, or distributor's price lists or catalogues in effect at the time such contract is canceled or discontinued. [1975 1st ex.s. c 277 § 3.]

19.98.040 Failure or refusal to make payments—Civil action. In the event that any manufacturer, wholesaler, or distributor of farm machinery, farm implements, and repair parts therefor, upon cancellation or discontinuation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to such dealer as is required by RCW 19.98.010, such manufacturer, wholesaler, or distributor shall be liable in a civil action to be brought by such retailer for such payments as are required by RCW 19.98.010. [1975 1st ex.s. c 277 § 4.]

19.98.100 Findings. The legislature of this state finds that the retail distribution and sales of agricultural equipment, utilizing independent retail business operating under agreements with the manufacturers and distributors, vitally affects the general economy of the state, public interests, and public welfare and that it is necessary to regulate the business relations between the independent dealers and the equipment manufacturers, wholesalers, and distributors. [1990 c 124 § 1.]

19.98.110 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 19.98.100 through 19.98.150 and 19.98.911:

(1) "Equipment" means machinery consisting of a framework, various fixed and moving parts, driven by an internal combustion engine, and all other implements associated with this machinery that are designed for or adapted and used for agriculture, horticulture, livestock, or grazing use.

(2) "Equipment dealer" or "equipment dealership" means any person, partnership, corporation, association, or other form of business enterprise, primarily engaged in retail sale or service of equipment in this state, pursuant to any oral or written agreement for a definite or indefinite period of time in which there is a continuing commercial relationship in the marketing of the equipment or related services, but does not include dealers covered by chapter 46.70 or 46.94 RCW.

(3) "Supplier" means the manufacturer, wholesaler, or distributor of the equipment to be sold by the equipment dealer.

(4) "Dealer agreement" means a contract or agreement, either expressed or implied, whether oral or written, between a supplier and an equipment dealer, by which the equipment dealer is granted the right to sell, distribute, or service the supplier's equipment where there is a continuing commercial relationship between the supplier and the equipment dealer.

(5) "Continuing commercial relationship" means any relationship in which the equipment dealer has been granted the right to sell or service equipment manufactured by [the] supplier.

(6) "Good cause" means failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the equipment dealer by the dealer agreement, provided such requirements are not different from those requirements imposed on other similarly situated equipment dealers in the state either by their terms or in the manner of their enforcement. [1990 c 124 § 2.]

19.98.120 Violations. It shall be a violation of this chapter for a supplier to:

(1) Require or attempt to require any equipment dealer to order or accept delivery of any equipment or parts or any equipment with special features or accessories not included in the base list price of such equipment as publicly advertised by the supplier which the equipment dealer has not voluntarily ordered;

(2) Require or attempt to require any equipment dealer to enter into any agreement, whether written or oral, supplementary to an existing dealer agreement with the supplier, unless such supplementary agreement is imposed on other similarly situated dealers in the state;

(3) Refuse to deliver in reasonable quantities and within a reasonable time after receipt of the equipment dealer's order, to any equipment dealer having a dealer agreement for the retail sale of new equipment sold or distributed by the supplier, equipment covered by the dealer agreement specifically advertised or represented by the supplier to be available for immediate delivery. However, the failure to deliver any such equipment shall not be considered a violation of this chapter when deliveries are based on prior ordering histories, the priority given to the sequence in which the orders are received, or manufacturing schedules or if the failure is due to prudent and reasonable restriction on extension of credit by the supplier to the equipment dealer,

an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the supplier has no control;

(4) Terminate, cancel, or fail to renew the dealer agreement of any equipment dealer or substantially change the equipment dealer's competitive circumstances, attempt to terminate or cancel, or threaten to not renew the dealer agreement or to substantially change the competitive circumstances without good cause;

(5) Condition the renewal, continuation, or extension of a dealer agreement on the equipment dealer's substantial renovation of the equipment dealer's place of business or on the construction, purchase, acquisition, or rental of a new place of business by the equipment dealer unless: The supplier has advised the equipment dealer in writing of its demand for such renovation, construction, purchase, acquisition, or rental within a reasonable time prior to the effective date of the proposed date of renewal or extensions, but in no case less than one year; the supplier demonstrates the need for such change in the place of business and the reasonableness of the demand with respect to marketing and servicing the supplier's product and any economic conditions existing at the time in the dealer's trade area; and the equipment dealer does not make a good faith effort to complete the construction or renovation plans within one year;

(6) Discriminate in the prices charged for equipment of like grade and quality sold by the supplier to similarly situated dealers in this state. This subsection does not prevent the use of differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are sold or delivered: PROVIDED, That nothing shall prevent a seller from offering a lower price in order to meet an equally low price of a competitor, or the services or facilities furnished by a competitor;

(7) Unreasonably withhold consent for an equipment dealer to change the capital structure of the equipment dealership or the means by which it is financed: PROVIDED, That the equipment dealer meets the reasonable capital requirements of the manufacturer;

(8) Prevent, by contract or otherwise, any equipment dealer or any officer, member, partner, or stockholder of any equipment dealer from selling or transferring any part of the interest in the equipment dealership of any of them to any other person or persons or party or parties. However, no equipment dealer, officer, partner, member, or stockholder shall have the right to sell, transfer, or assign the equipment dealership or power of management or control thereunder without the written consent of the supplier. Such consent shall not be unreasonably withheld if the person or persons or party or parties meets the reasonable financial, business experience, and character standards of the supplier;

(9) Require an equipment dealer to assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability imposed by this chapter; or

(10)(a) Unreasonably withhold consent, in the event of the death of the equipment dealer or the principal owner of the equipment dealership, to the transfer of the equipment dealer's interest in the equipment dealership to a member or members of the family of the equipment dealer, the principal owner of the equipment dealership, or to another qualified

individual if the family member or other qualified individual meets the reasonable financial, business experience, and character standards required by the supplier. Should a supplier determine that the designated family member or other qualified individual does not meet those reasonable standards, it shall provide the equipment dealer with written notice of its objection and specific reasons for withholding its consent. A supplier shall have sixty days to consider an equipment dealer's request to make a transfer to a family member or other qualified individual. If the family member or other qualified individual reasonably satisfies the supplier's objections within sixty days, the supplier shall approve the transfer. As used in this section, "family" includes a spouse, parents, siblings, children, stepchildren, sons-in-law, daughters-in-law, and lineal descendants, including those by adoption, of the equipment dealer or principal owner of the equipment dealership. Nothing in this section shall entitle a family member or other qualified individual of a deceased dealer or principal owner of the equipment dealership to continue to operate the dealership without the consent of the supplier.

(b) If a supplier and equipment dealer have duly executed an agreement concerning succession rights prior to the equipment dealer's death and the agreement has not been revoked, the agreement shall be observed even if it designates someone other than the surviving spouse or heirs of the decedent as the successor. [1990 c 124 § 3.]

19.98.130 Termination, cancellation, or nonrenewal of dealer agreement—Notice. (1) Except where a grounds for termination or nonrenewal of a dealer agreement or a substantial change in an equipment dealer's competitive circumstances are contained in subsection (2) (a), (b), (c), (d), (e), or (f) of this section, a supplier shall give an equipment dealer ninety days' written notice of the supplier's intent to terminate, cancel, or not renew a dealer agreement or substantially change the equipment dealer's competitive circumstances. The notice shall state all reasons constituting good cause for termination, cancellation, or nonrenewal and shall provide, except for termination pursuant to subsection (2) (a), (b), (c), (d), or (e) of this section, that the equipment dealer has sixty days in which to cure any claimed deficiency. If the deficiency is rectified within sixty days, the notice shall be void. The contractual terms of the dealer agreement shall not expire or the equipment dealer's competitive circumstances shall not be substantially changed without the written consent of the equipment dealer prior to the expiration of at least ninety days following such notice.

(2) As used in RCW 19.98.100 through 19.98.150 and 19.98.911, a termination by a supplier of a dealer agreement shall be with good cause when the equipment dealer:

(a) Has transferred a controlling ownership interest in the equipment dealership without the supplier's consent;

(b) Has made a material misrepresentation to the supplier;

(c) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the equipment dealer which has not been discharged within sixty days after the filing, is in default under the provisions of a security agreement in effect with the supplier, or is insolvent or in receivership;

(d) Has been convicted of a crime, punishable for a term of imprisonment for one year or more;

(e) Has failed to operate in the normal course of business for ten consecutive business days or has terminated the business;

(f) Has relocated the equipment dealer's place of business without supplier's consent;

(g) Has consistently engaged in business practices that are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, or failure to provide service and replacement parts or perform warranty obligations;

(h) Has inadequately represented the supplier over a measured period causing lack of performance in sales, service, or warranty areas and failed to achieve market penetration at levels consistent with similarly situated equipment dealerships in the state based on available record information;

(i) Has consistently failed to meet building and house-keeping requirements or failed to provide adequate sales, service, or parts personnel commensurate with the dealer agreement;

(j) Has consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on supplier's behalf; or

(k) Has consistently failed to comply with the terms of the dealer agreement. [1990 c 124 § 4.]

19.98.140 Actions against suppliers—Remedies. Any equipment dealer may bring an action against a supplier in any court of competent jurisdiction for damages sustained by the equipment dealer as a consequence of the supplier's violation including requiring the supplier to repurchase at fair market value any data processing hardware and specialized repair tools and equipment previously purchased pursuant to requirements of the supplier, compensation for any loss of business, and the actual costs of the action, including reasonable attorneys' fees. The equipment dealer may also be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The remedies set forth in this action shall not be deemed exclusive and shall be in addition to any other remedies permitted by law. Nothing in this section is intended to prevent any court from awarding to the supplier actual costs of the action, including reasonable attorney's fees if the action is deemed frivolous. [1990 c 124 § 5.]

19.98.150 Successors in interest. The obligations of any supplier under this chapter are applied to any successor in interest or assignee of the supplier. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from merger or liquidation, and any receiver or any trustee of the original supplier. [1990 c 124 § 6.]

19.98.900 Effective date—1975 1st ex.s. c 277. This act shall take effect on January 1, 1976. [1975 1st ex.s. c 277 § 6.]

19.98.910 Severability—1975 1st ex.s. c 277. 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. [1975 1st ex.s. c 277 § 7.]

19.98.911 Severability—1990 c 124. 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 124 § 7.]

19.98.912 Effective date—Application—1990 c 124. This act shall take effect July 1, 1990, and shall apply to all dealer agreements then in effect that have no expiration date and are a continuing agreement and to all other dealer agreements entered into or renewed on or after July 1, 1990. [1990 c 124 § 9.]

Chapter 19.100

FRANCHISE INVESTMENT PROTECTION

Sections

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Business opportunity fraud act: Chapter 19.110 RCW.

19.100.010 Definitions. When used in this chapter, unless the context otherwise requires:

(1) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communication media published in connection with an offer or sale of a franchise.

(2) "Affiliate" means a person controlling, controlled by, or under common control with another person, every officer or director of such person, and every person occupying a similar status or performing similar functions.

(3) "Director" means the director of licensing.

(4) "Franchise" means:

(a) An agreement, express or implied, oral or written, by which:

(i) A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;

(ii) The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol designating, owned by, or licensed by the grantor or its affiliate; and

(iii) The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.

(b) The following shall not be construed as a franchise within the meaning of this chapter:

(i) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card or any transaction relating to a bank credit card plan;

(ii) Actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state;

(iii) Any motor vehicle dealer franchise subject to the provisions of chapter 46.70 RCW.

(5) "Marketing plan" means a plan or system concerning an aspect of conducting business. A marketing plan may include one or more of the following:

(a) Price specifications, special pricing systems or discount plans;

(b) Sales or display equipment or merchandising devices;

(c) Sales techniques;

(d) Promotional or advertising materials or cooperative advertising;

(e) Training regarding the promotion, operation, or management of the business; or

(f) Operational, managerial, technical, or financial guidelines or assistance.

(6) "Bank credit card plan" means a credit card plan in which the issuer of credit cards is a national bank, state

bank, trust company or any other banking institution subject to the supervision of the supervisor of banking of this state or any parent or subsidiary of such bank.

(7) "Franchisee" means a person to whom a franchise is offered or granted.

(8) "Franchisor" means a person who grants a franchise to another person.

(9) "Subfranchise" means an agreement, express or implied, oral or written, by which a person pays or agrees to pay, directly or indirectly, a franchisor or affiliate for the right to grant, sell or negotiate the sale of a franchise.

(10) "Subfranchisor" means a person to whom a subfranchise is granted.

(11) "Franchise broker" means a person who directly or indirectly engages in the business of the offer or sale of franchises. The term does not include a franchisor, subfranchisor, or their officers, directors, or employees.

(12) "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise agreement, including, but not limited to, the payment either in lump sum or by installments of an initial capital investment fee, any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for the mandatory purchase of goods or services or any payment for goods or services available only from the franchisor, or any training fees or training school fees or charges; however, the following shall not be considered payment of a franchise fee: (a) the purchase or agreement to purchase goods at a bona fide wholesale price; (b) the purchase or agreement to purchase goods by consignment; if, and only if the proceeds remitted by the franchisee from any such sale shall reflect only the bona fide wholesale price of such goods; (c) a bona fide loan to the franchisee from the franchisor; (d) the purchase or agreement to purchase goods at a bona fide retail price subject to a bona fide commission or compensation plan that in substance reflects only a bona fide wholesale transaction; (e) the purchase or lease or agreement to purchase or lease supplies or fixtures necessary to enter into the business or to continue the business under the franchise agreement at their fair market or rental value; (f) the purchase or lease or agreement to purchase or lease real property necessary to enter into the business or to continue the business under the franchise agreement at the fair market or rental value; (g) amounts paid for trading stamps redeemable in cash only; (h) amounts paid for trading stamps to be used as incentives only and not to be used in, with, or for the sale of any goods.

(13) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

(14) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

(15) "Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise.

(16) "Offer or offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a

franchise or an interest in a franchise. [1991 c 226 § 1; 1979 c 158 § 83; 1973 1st ex.s. c 33 § 3; 1972 ex.s. c 116 § 1; 1971 ex.s. c 252 § 1.]

Emergency—Effective date—1972 ex.s. c 116: "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 May 1, 1972." [1972 ex.s. c 116 § 17.]

19.100.020 Unlawful in certain instances to sell or offer to sell franchise if unregistered or not exempt. (1) It is unlawful for any franchisor or subfranchisor to sell or offer to sell any franchise in this state unless the offer of the franchise has been registered under this chapter or exempted under RCW 19.100.030.

(2) For the purpose of this section, an offer to sell a franchise is made in this state when: (a) The offer is directed by the offeror into this state from within or outside this state and is received where it is directed, (b) the offer originates from this state and violates the franchise or business opportunity law of the state or foreign jurisdiction into which it is directed, (c) the offeree is a resident of this state, or (d) the franchise business that is the subject of the offer is to be located or operated, wholly or partly, in this state.

(3) For the purpose of this section, a sale of any franchise is made in this state when: (a) An offer to sell is accepted in this state, (b) an offer originating from this state is accepted and violates the franchise or business opportunity law of the state or foreign jurisdiction in which it is accepted, (c) the purchaser of the franchise is a resident of this state, or (d) the franchise business that is the subject of the sale is to be located or operated, wholly or partly, in this state.

(4) For the purpose of this section, an offer to sell is not made in this state solely because the offer appears: (a) In a newspaper or other publication of general and regular circulation if the publication has had more than two-thirds of its circulation outside this state during the twelve months before the offer is published, or (b) in a broadcast or transmission originating outside this state. [1991 c 226 § 2; 1971 ex.s. c 252 § 2.]

19.100.030 Exemptions from registration requirements. The registration requirements of this chapter shall not apply to:

(1) The offer or sale or transfer of a franchise by a franchisee who is not an affiliate of the franchisor for the franchisee's own account if the franchisee's entire franchise is sold and the sale is not effected by or through the franchisor. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove the sale or requires payment of a reasonable transfer fee. Such right to approve or disapprove the sale shall be exercised in a reasonable manner.

(2) The offer or sale of a franchise by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, conservator, or pursuant to a court-approved offer or sale, on behalf of a person other than the franchisor or the estate of the franchisor.

(3) The offer or sale of a franchise to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of

1940, pension or profit sharing trust, or other financial institution or institutional buyer or to a broker dealer where the purchaser is acting for itself or in some fiduciary capacity.

(4) The offer or sale of a franchise by a franchisor:

(a) Who has delivered in writing to each prospective franchisee, at least ten business days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least ten business days prior to the receipt of any consideration, whichever occurs first, an offering circular complying with guidelines adopted by rule of the director. The director shall be guided in adopting such a rule by the guidelines for the preparation of the Uniform Franchise Offering Circular adopted by the North American Securities Administrators Association, Inc., or its successor, as such guidelines may be revised from time to time; and

(b) Who either:

(i)(A) Has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars or who has a net worth, according to its most recent audited financial statement, of not less than one million dollars and is at least eighty percent owned by a corporation which has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars; and

(B) Has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer or sale or has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale or if any corporation which owns at least eighty percent of the franchisor, has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer or sale or such corporation has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale; and

(C) Requires an initial investment by the franchisee of more than one hundred thousand dollars; and

(D) Files annually with the director a statement prescribed by rule of the director giving notice of such claim, and pays a filing fee as set forth in RCW 19.100.240; or

(ii)(A) Has no outstanding franchises granted for businesses located or to be located outside the state of Washington; and

(B) Has granted and grants no more than three franchises for franchise businesses to be situated within the state of Washington; and

(C) Does not publish an advertisement or engage in general solicitation for the franchise offering; and

(D) The buyer is represented or advised in the transaction by independent legal counsel or certified public accountant; or

(iii) Does not charge a franchise fee, as defined in RCW 19.100.010(12), in excess of five hundred dollars; and

(c) Who has not been found by a court of competent jurisdiction to have been in violation of this chapter, chapter 19.86 RCW, or any of the various federal statutes dealing with the same or similar matters, within seven years of any sale or offer to sell franchise business under franchise agreement in the state of Washington.

(5) The offer or sale of a franchise to an accredited investor, as defined by rule adopted by the director. The director shall be guided in adopting such a rule by the rules defining accredited investor promulgated by the federal securities and exchange commission.

(6) The offer or sale of an additional franchise to an existing franchisee of the franchisor for the franchisee's own account that is substantially the same as the franchise that the franchisee has operated for at least two years at the time of the offer or sale, provided the prior sale to the franchisee was pursuant to a franchise offering that was registered in the state of Washington. [1991 c 226 § 3; 1972 ex.s. c 116 § 2; 1971 ex.s. c 252 § 3.]

19.100.040 Application for registration—Contents—Filing. (1) The application for registration of the offer, signed by the franchisor, subfranchisor, or by any person on whose behalf the offering is to be made, must be filed with the director and shall contain:

(a) A copy of the franchisor's or subfranchisor's offering circular which shall be prepared in compliance with guidelines adopted by rule of the director. The director shall be guided in adopting such rule by the guidelines for the preparation of the Uniform Franchise Offering Circular adopted by the North American Securities Administrators Association, Inc., or its successor, as such guidelines may be revised from time to time;

(b) A copy of all agreements to be proposed to franchisees;

(c) A consent to service of process as required by RCW 19.100.160;

(d) The application for registration of a franchise broker, if any;

(e) The applicable filing fee; and

(f) Such other information as the director determines, by rule or order, to be necessary or appropriate to facilitate the administration of this chapter.

(2) The director may require the filing of financial statements of the franchisor or subfranchisor audited by an independent certified public accountant and prepared in accordance with generally accepted accounting principles.

When the person filing the application for registration is a subfranchisor, the application shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this section. [1991 c 226 § 4; 1972 ex.s. c 116 § 3; 1971 ex.s. c 252 § 4.]

19.100.050 Escrow or impoundment of franchise fees as registration condition—Rules or orders—Procedure to rescind. The director may by rule or order require as a condition to the effectiveness of the registration the escrow or impound of franchise fees if he finds that such requirement is necessary and appropriate to protect prospective franchisees. At any time after the issuance of such rule or order under this section the franchisor may in writing request the rule or order be rescinded. Upon receipt of such a written request, the matter shall be set down for hearing to commence within fifteen days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the administrative procedure act, chapter

34.05 RCW, the director shall determine whether to affirm and to continue or to rescind such order and the director shall have all powers granted under such act. [1972 ex.s. c 116 § 4; 1971 ex.s. c 252 § 5.]

19.100.060 Registration statement—Effective, when. If no stop order is in effect and no proceeding is pending under RCW 19.100.120, a registration statement becomes effective at 3:00 P.M. Pacific Standard Time on the afternoon of the fifteenth business day after the filing of the registration statement or the last amendment or at such earlier time as the director determines. [1971 ex.s. c 252 § 6.]

19.100.070 Registration—Claim of exemption filing—Duration—Renewal—Supplemental report. (1) A franchise offering shall be deemed duly registered, and a claim of exemption under RCW 19.100.030(4)(b)(i) shall be duly filed, for a period of one year from the effective date of registration or filing unless the director by rule or order specifies a different period.

(2) Registration of a franchise offer may be renewed for additional periods of one year each, unless the director by rule or order specifies a different period, by filing with the director no later than fifteen business days prior to the expiration thereof a renewal application containing such information as the director may require to indicate any substantial changes in the information contained in the original application or the previous renewal application and payment of the prescribed fee.

(3) If a material adverse change in the condition of the franchisor or the subfranchisor or any material change in the information contained in its offering circular should occur the franchisor or subfranchisor shall so amend the registration on file with the director as soon as reasonably possible and in any case, before the further sale of any franchise. [1991 c 226 § 5; 1972 ex.s. c 116 § 5; 1971 ex.s. c 252 § 7.]

19.100.080 Delivery of offering circular and amendments required. It is unlawful for any person to sell a franchise that is registered or required to be registered under this chapter without first delivering to the offeree, at least ten business days prior to the execution by the offeree of any binding franchise or other agreement, or at least ten business days prior to the receipt of any consideration, whichever occurs first, a copy of the offering circular required under RCW 19.100.040, with any addition or amendment to the offering circular required by RCW 19.100.070, together with a copy of the proposed agreements relating to the sale of the franchise. [1991 c 226 § 6; 1972 ex.s. c 116 § 6; 1971 ex.s. c 252 § 8.]

19.100.090 Filings, registration, or finding of director—Construction. (1) Neither (a) the fact that application for registration under this law has been filed nor (b) the fact that such registration has become effective constitutes a finding by the director that any document filed under this law is true, complete, or not misleading. Neither any such fact or the fact that an exemption is available for a transaction means that the director has passed in any way

on the merit or qualifications of or recommended or given approval to any person, franchise, or transaction.

(2) It is unlawful to make or cause to be made to any prospective purchaser or offeree any representation inconsistent with this section. [1971 ex.s. c 252 § 9.]

19.100.100 Advertisements—Copy to be filed. No person shall publish in this state any advertisements offering a franchise subject to the registration requirements of this law unless a true copy of the advertisement has been filed in the office of the director at least seven days prior to the publication or such shorter period as the director by rule or order may allow. [1991 c 226 § 7; 1971 ex.s. c 252 § 10.]

19.100.110 Advertisements—False or misleading—Notice—Procedure. No person shall publish in this state any advertisement concerning a franchise subject to the registration requirements of this chapter after the director finds that the advertisement contains any statements that are false or misleading or omits to make any statement necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading and so notifies the person in writing. Such notification may be given summarily without notice or hearing. At any time after the issuance of a notification under this section the person desiring to use the advertisement may in writing request the order be rescinded. Upon receipt of such a written request, the matter shall be set down for hearing to commence within fifteen days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW, the director shall determine whether to affirm and to continue or to rescind such order and the director shall have all powers granted under such act. [1972 ex.s. c 116 § 7; 1971 ex.s. c 252 § 11.]

19.100.120 Registration statement—Stop order—Grounds. The director may issue a stop order denying effectiveness to or suspending or revoking the effectiveness of any registration statement if he finds that the order is in the public interest and that:

(1) The registration statement as of its effective date, or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was in the light of the circumstances under which it was made false or misleading with respect to any material fact;

(2) Any provision of this chapter or any rule or order or condition lawfully imposed under this chapter has been violated in connection with the offering by:

(a) The person filing the registration statement but only if such person is directly or indirectly controlled by or acting for the franchisor; or

(b) The franchisor, any partner, officer or director of a franchisor, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling or controlled by the franchisor.

(3) The franchise offering registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered

under any federal or state act applicable to the offering but the director may not:

(a) Institute a proceeding against an effective registration statement under this clause more than one year from the date of the injunctive relief thereon unless the injunction is thereafter violated; and

(b) enter an order under this clause on the basis of an injunction entered under any other state act unless that order or injunction is based on facts that currently constitute a ground for stop order under this section;

(4) A franchisor's enterprise or method of business includes or would include activities which are illegal where performed;

(5) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) The applicant has failed to comply with any rule or order of the director issued pursuant to RCW 19.100.050.

(7) The applicant or registrant has failed to pay the proper registration fee but the director may enter only a denial order under this subsection and he shall vacate such order when the deficiency has been corrected. [1972 ex.s. c 116 § 8; 1971 ex.s. c 252 § 12.]

19.100.130 Registration statement—Stop order—Notice—Hearing—Modification or vacation of order. Upon the entry of a stop order under any part of RCW 19.100.120, the director shall promptly notify the applicant that the order has been entered and that the reasons therefor and that within fifteen days after receipt of a written request, the matter will be set down for hearing. If no hearing is requested within fifteen days and none is ordered by the director, the director shall enter his written findings of fact and conclusions of law and the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director after notice of an opportunity for hearings to the issuer and to the applicant or registrant shall enter his written findings of fact and conclusions of law and may modify or vacate the order. The director may modify or vacate a stop order if he finds that the conditions which prompted his entry have changed or that it is otherwise in the public interest to do so. [1971 ex.s. c 252 § 13.]

19.100.140 Registration of franchise brokers required. (1) It is unlawful for any franchise broker to offer to sell or sell a franchise in this state unless the franchise broker is registered under this chapter. It is unlawful for any franchisor, subfranchisor, or franchisee to employ a franchise broker unless the franchise broker is registered.

(2) The franchise broker shall apply for registration by filing with the director an application together with a consent to service of process in such form as the director shall prescribe and payment of the fee prescribed in RCW 19.100.240.

(3) The application shall contain whatever information the director requires concerning such matters as:

(a) The applicant's form and place of organization.

(b) The applicant's proposed method of doing business.

(c) The qualifications and business history of the applicant.

(d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and

(e) The applicant's financial condition and history. [1991 c 226 § 8; 1972 ex.s. c 116 § 9; 1971 ex.s. c 252 § 14.]

19.100.150 Records and accounts—Reports. Every person offering franchises for sale shall at all times keep and maintain a complete set of books, records, and accounts of such and the disposition of the proceeds thereof and shall thereafter at such times as are required by the director make and file in the office of the director a report setting forth the franchises sold by it, the proceeds derived therefrom, and the disposition thereof. [1971 ex.s. c 252 § 15.]

19.100.160 Application of chapter—Jurisdiction—Service of process—Consent. Any person who is engaged or hereafter engaged directly or indirectly in the sale or offer to sell a franchise or a subfranchise or in business dealings concerning a franchise, either in person or in any other form of communication, shall be subject to the provisions of this chapter, shall be amenable to the jurisdiction of the courts of this state and shall be amenable to the service of process under RCW 4.28.180, 4.28.185 and 19.86.160. Every applicant for registration of a franchise under this law (by other than a Washington corporation) shall file with the director in such form as he by rule prescribed, an irrevocable consent appointing the director or his successor in office to be his attorney, to receive service or any lawful process in any noncriminal suit, action, or proceeding against him or his successors, executor, or administrator which arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing consent. A person who has filed such a consent in connection with a previous registration under this law need not file another. Service may be made by leaving a copy of the process in the office of the director but it is not as effective unless:

(1) The plaintiff, who may be the director, in a suit, action, or proceeding instituted by him forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address on file with the director; and

(2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further times the court allows. [1991 c 226 § 9; 1971 ex.s. c 252 § 16.]

19.100.170 Violations. It is unlawful for any person in connection with the offer, sale, or purchase of any franchise or subfranchise in this state directly or indirectly:

(1) To make any untrue statement of a material fact in any application, notice, or report filed with the director under this law or willfully to omit to state in any application, notice or report, any material fact which is required to be stated therein or fails to notify the director of any material change as required by RCW 19.100.070(3).

(2) To sell or offer to sell by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in

order to make the statements made in light of the circumstances under which they were made not misleading.

(3) To employ any device, scheme, or artifice to defraud.

(4) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(5) To violate any order of the director. [1991 c 226 § 10; 1971 ex.s. c 252 § 17.]

19.100.180 Relation between franchisor and franchisee—Rights and prohibitions. Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the franchisor or subfranchisor and the franchisees:

(1) The parties shall deal with each other in good faith.

(2) For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and a violation of this chapter for any person to:

(a) Restrict or inhibit the right of the franchisees to join an association of franchisees.

(b) Require a franchisee to purchase or lease goods or services of the franchisor or from approved sources of supply unless and to the extent that the franchisor satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition: PROVIDED, That this provision shall not apply to the initial inventory of the franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition the courts shall be guided by the decisions of the courts of the United States interpreting and applying the anti-trust laws of the United States.

(c) Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is: (i) Reasonable, (ii) based on franchises granted at materially different times and such discrimination is reasonably related to such difference in time, or is based on other proper and justifiable distinctions considering the purposes of this chapter, and (iii) is not arbitrary. However, nothing in (c) of this subsection precludes negotiation of the terms and conditions of a franchise at the initiative of the franchisees.

(d) Sell, rent, or offer to sell to a franchisee any product or service for more than a fair and reasonable price.

(e) Obtain money, goods, services, anything of value, or any other benefit from any other person with whom the franchisee does business on account of such business unless such benefit is disclosed to the franchisee.

(f) If the franchise provides that the franchisee has an exclusive territory, which exclusive territory shall be specified in the franchise agreement, for the franchisor or subfranchisor to compete with the franchisee in an exclusive territory or to grant competitive franchises in the exclusive territory area previously granted to another franchisee.

(g) Require franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter, except as otherwise permitted by RCW 19.100.220.

(h) Impose on a franchisee by contract, rule, or regulation, whether written or oral, any standard of conduct unless the person so doing can sustain the burden of proving such to be reasonable and necessary.

(i) Refuse to renew a franchise without fairly compensating the franchisee for the fair market value, at the time of expiration of the franchise, of the franchisee's inventory, supplies, equipment, and furnishings purchased from the franchisor, and good will, exclusive of personalized materials which have no value to the franchisor, and inventory, supplies, equipment and furnishings not reasonably required in the conduct of the franchise business: PROVIDED, That compensation need not be made to a franchisee for good will if (i) the franchisee has been given one year's notice of nonrenewal and (ii) the franchisor agrees in writing not to enforce any covenant which restrains the franchisee from competing with the franchisor: PROVIDED FURTHER, That a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor.

(j) Terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include, without limitation, the failure of the franchisee to comply with lawful material provisions of the franchise or other agreement between the franchisor and the franchisee and to cure such default after being given written notice thereof and a reasonable opportunity, which in no event need be more than thirty days, to cure such default, or if such default cannot reasonably be cured within thirty days, the failure of the franchisee to initiate within thirty days substantial and continuing action to cure such default: PROVIDED, That after three willful and material breaches of the same term of the franchise agreement occurring within a twelve-month period, for which the franchisee has been given notice and an opportunity to cure as provided in this subsection, the franchisor may terminate the agreement upon any subsequent willful and material breach of the same term within the twelve-month period without providing notice or opportunity to cure: PROVIDED FURTHER, That a franchisor may terminate a franchise without giving prior notice or opportunity to cure a default if the franchisee: (i) Is adjudicated a bankrupt or insolvent; (ii) makes an assignment for the benefit of creditors or similar disposition of the assets of the franchise business; (iii) voluntarily abandons the franchise business; or (iv) is convicted of or pleads guilty or no contest to a charge of violating any law relating to the franchise business. Upon termination for good cause, the franchisor shall purchase from the franchisee at a fair market value at the time of termination, the franchisee's inventory and supplies, exclusive of (i) personalized materials which have no value to the franchisor; (ii) inventory and supplies not reasonably required in the conduct of the franchise business; and (iii), if the franchisee is to retain control of the premises of the franchise business, any inventory and supplies not purchased from the franchisor or on his express requirement: PROVIDED, That a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor.

[1991 c 226 § 11; 1980 c 63 § 1; 1973 1st ex.s. c 33 § 4; 1972 ex.s. c 116 § 10; 1971 ex.s. c 252 § 18.]

19.100.184 Terms and conditions from negotiations initiated by franchisee. This chapter does not preclude negotiation of the terms and conditions of a franchise at the initiative of the franchisee, provided that such negotiated terms and conditions do not violate any provision of this chapter. After the initial offer to a franchisee using the offering circular required by RCW 19.100.030, 19.100.040, or 19.100.070 a franchisor need not provide an amended offering circular to that franchisee by reason of a change in the terms and conditions of a franchise being negotiated at the initiative of that franchisee or amend the registration by reason of such change. [1991 c 226 s 12.]

19.100.190 Unfair or deceptive acts—Suits for damages—Violations of other acts, use in evidence. (1) The commission of any unfair or deceptive acts or practices or unfair methods of competition prohibited by RCW 19.100.180 as now or hereafter amended shall constitute an unfair or deceptive act or practice under the provisions of chapter 19.86 RCW.

(2) Any person who sells or offers to sell a franchise in violation of this chapter shall be liable to the franchisee or subfranchisor who may sue at law or in equity for damages caused thereby for rescission or other relief as the court may deem appropriate. In the case of a violation of RCW 19.100.170 rescission is not available to the plaintiff if the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know or if he had exercised reasonable care would not have known of the untruth or omission.

(3) The suit authorized under subsection (2) of this section may be brought to recover the actual damages sustained by the plaintiff and the court may in its discretion increase the award of damages to an amount not to exceed three times the actual damages sustained: PROVIDED, That the prevailing party may in the discretion of the court recover the costs of said action including a reasonable attorneys' fee.

(4) Any person who becomes liable to make payments under this section may recover contributions as in cases of contracts from any persons who, if sued separately, would have been liable to make the same payment.

(5) A final judgment, order, or decree heretofore or hereafter rendered against a person in any civil, criminal, or administrative proceedings under the United States anti-trust laws, under the Federal Trade Commission Act, under the Washington State Consumer Protection Act, or this chapter shall be regarded as evidence against such persons in any action brought by any party against such person under subsections (1) and (2) of this section as to all matters which said judgment or decree would be an estoppel between the parties thereto. [1972 ex.s. c 116 § 11; 1971 ex.s. c 252 § 19.]

19.100.200 Pendency of other proceedings tolls limitation of action. The pendency of any civil, criminal, or administrative proceedings against a person brought by

the federal or Washington state governments or any of their agencies under the anti-trust laws, the Federal Trade Commission Act, the Consumer Protection Act, or any federal or state act related to anti-trust laws or to franchising, or under this chapter shall toll the limitation of this action if the action is then instituted within one year after the final judgment or order in such proceedings: PROVIDED, That said limitation of actions shall in any case toll the law so long as there is actual concealment on the part of the person. [1972 ex.s. c 116 § 12; 1971 ex.s. c 252 § 20.]

19.100.210 Violations—Injunctions—Assurance of discontinuance—Civil and criminal penalties—Chapter nonexclusive. (1) The attorney general or director may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The prevailing party may in the discretion of the court recover the costs of such action including a reasonable attorneys' fee.

(2) Every person who shall violate the terms of any injunction issued as in this chapter provided shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

Every person who violates RCW 19.100.020, 19.100.080, 19.100.150 and 19.100.170 as now or hereafter amended shall forfeit a civil penalty of not more than two thousand dollars for each violation.

For the purpose of this section the superior court issuing an injunction shall retain jurisdiction and the cause shall be continued and in such cases the attorney general or director acting in the name of the state may petition for the recovery of civil penalties.

In the enforcement of this chapter, the attorney general or director may accept an assurance of discontinuance with the provisions of this chapter from any person deemed by the attorney general or director in violation hereof. Any such assurance shall be in writing, shall state that the person giving such assurance does not admit to any violation of this chapter or to any facts alleged by the attorney general or director, and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. Proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter.

(3) Any person who wilfully violates any provision of this chapter or who wilfully violates any rule adopted or order issued under this chapter shall upon conviction be fined not more than five thousand dollars or imprisoned for not more than ten years or both, but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation.

(4) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law. [1980 c 63 § 2; 1979

ex.s. c 13 § 1; 1972 ex.s. c 116 § 13; 1971 ex.s. c 252 § 21.]

19.100.220 Exceptions or exemptions—Burden of proof—Waivers of compliance void—Settlement release or waiver—Chapter as fundamental policy. (1) In any proceeding under this chapter, the burden of proving an exception from a definition or an exemption from registration is upon the person claiming it.

(2) Any agreement, condition, stipulation or provision, including a choice of law provision, purporting to bind any person to waive compliance with any provision of this chapter or any rule or order hereunder is void. A release or waiver executed by any person pursuant to a negotiated settlement in connection with a bona fide dispute between a franchisee and a franchisor, arising after their franchise agreement has taken effect, in which the person giving the release or waiver is represented by independent legal counsel, is not an agreement prohibited by this subsection.

(3) This chapter represents a fundamental policy of the state of Washington. [1991 c 226 s 13; 1972 ex.s. c 116 s 14; 1971 ex.s. c 252 s 22.]

19.100.230 Referral of evidence to attorney general or prosecuting attorney. The director may refer such evidence as may be available concerning violations of this chapter or any rule or order hereunder to the attorney general or the proper prosecuting attorney who may in his discretion with or without such a reference institute the appropriate criminal proceeding under this chapter. [1971 ex.s. c 252 § 23.]

19.100.240 Fees. The director shall charge and collect fees fixed by this section. All fees collected under this chapter shall be deposited in the state treasury and shall not be refundable except as herein provided:

(1) The fee for filing an application for registration on the sale of franchise under RCW 19.100.040 is six hundred dollars;

(2) The fee for filing an application for renewal of a registration under RCW 19.100.070 is one hundred dollars;

(3) The fee for filing an amendment to the application filed under RCW 19.100.040 is one hundred dollars;

(4) The fee for registration of a franchise broker shall be fifty dollars for original registration and twenty-five dollars for each annual renewal;

(5) The fee for filing a notice of claim of exemption is one hundred dollars for the original filing and one hundred dollars for each annual renewal. [1991 c 226 § 14; 1971 ex.s. c 252 § 24.]

19.100.242 Investigations by director. The director, in the director's discretion, may: (1) Annually, or more frequently, make such public or private investigations within or without this state as the director deems necessary to determine whether any registration should be granted, denied, revoked, or suspended, or whether any person has violated or is about to violate a provision of this chapter or any rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter; and (2) publish informa-

tion concerning a violation of this chapter or a rule adopted or order issued under this chapter. [1979 ex.s. c 13 § 2.]

19.100.245 Investigatory powers—Proceedings for contempt. For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of wilful failure on the part of a person to comply with a subpoena lawfully issued by the director, or on the refusal of a witness to testify to matters regarding which the witness may be lawfully interrogated, the superior court of any county, on application of the director and after satisfactory evidence of wilful disobedience, may compel obedience by proceedings for contempt, as in the case of disobedience of a subpoena issued from the court or a refusal to testify therein. [1979 ex.s. c 13 § 3.]

19.100.248 Cease and desist orders. If it appears to the director that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or a rule adopted or order issued under this chapter, the director may, in the director's discretion, issue an order directing the person to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. The director may issue a temporary order pending the hearing, which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within fifteen days after the receipt of the notice. [1979 ex.s. c 13 § 4.]

19.100.250 Powers of director as to rules, forms, orders and defining terms—Interpretive opinions. The director may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter including rules and forms governing applications and reports and defining any terms whether or not used in this chapter insofar as the definitions are consistent with this chapter. The director in his discretion may honor requests from interested persons for interpretive opinions. [1972 ex.s. c 116 § 15; 1971 ex.s. c 252 § 25.]

19.100.252 Denial, suspension, or revocation of franchise broker by director. The director may by order deny, suspend, or revoke registration of any franchise broker if the director finds that the order is in the public interest and that the applicant or registrant, or any partner, officer, or director of the applicant or registrant:

(1) Has filed an application for registration as a franchise broker under RCW 19.100.140 which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Has willfully violated or willfully failed to comply with any provision of this chapter;

(3) Has been convicted, within the past five years of any misdemeanor involving a franchise, or any felony involving moral turpitude;

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any aspect of the franchise industry;

(5) Is the subject of an order of the director denying, suspending, or revoking registration as a franchise broker;

(6) Has engaged in dishonest or unethical practices in the franchise industry;

(7) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature.

The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. [1991 c 226 § 16.]

19.100.255 Denial, suspension, or revocation of exemption by director. The director may by order deny, suspend, or revoke any exemption from registration otherwise available under RCW 19.100.030 for the offer or sale of the franchise if he or she finds that the order is in the public interest and that:

(1) Any provision of this chapter or any rule or order or condition lawfully imposed under this chapter has been violated or is about to be violated in connection with the offering by the franchisor, any partner, officer, or director of a franchisor, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlled by the franchisor, or any franchise broker offering or selling the offering;

(2) The franchise offering is the subject of a permanent or temporary injunction of a court of competent jurisdiction entered under any federal or state act applicable to the offering; but (a) the director may not enter an order of revocation or suspension under this subsection more than one year from the date of the injunction relied on, and (b) the director may not enter an order under this subsection on the basis of an injunction unless that injunction was based on facts that currently constitute a ground for an order under this section;

(3) The franchisor's enterprise or method of business includes or would include activities which are illegal where performed;

(4) The offering has worked or tended to work or would tend to work a fraud on purchasers;

(5) The franchisor has failed to pay the required filing fee for a claim of exemption but the director may enter only a denial order under this subsection and shall vacate such order when the deficiency has been corrected;

(6) The franchisor has made a claim of exemption which is incomplete in a material respect or contains any statement which in the light of the circumstances under which it was made is false or misleading with respect to any material fact. [1991 c 226 § 17.]

19.100.260 Applicability of administrative procedure act. The administrative procedure act, chapter 34.05 RCW, shall wherever applicable herein govern the rights,

remedies, and procedures respecting the administration of this chapter. [1971 ex.s. c 252 § 26.]

19.100.270 Administrator of securities. The director shall appoint a competent person to administer this chapter who shall be designated administrator of securities. The director shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this chapter. The administrator shall hold office at the pleasure of the director. [1971 ex.s. c 252 § 27.]

19.100.900 Chapter applicable to existing and future franchises and contracts. The provisions of this chapter shall be applicable to all franchises and contracts existing between franchisors and franchisees and to all future franchises and contracts. [1971 ex.s. c 252 § 28.]

19.100.910 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [1971 ex.s. c 252 § 29.]

19.100.920 Effective date—1971 ex.s. c 252. This act shall become effective May 1, 1972: PROVIDED, That the director is authorized and empowered to undertake and perform duties and conduct activities necessary for the implementation of this act prior to that date. [1971 ex.s. c 252 § 30.]

19.100.930 Severability—1971 ex.s. c 252. 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, provisions, or part thereof not adjudged invalid or unconstitutional. [1971 ex.s. c 252 § 31.]

19.100.931 Severability—1972 ex.s. c 116. If any provision of this 1972 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. [1972 ex.s. c 116 § 16.]

19.100.932 Severability—1979 ex.s. c 13. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 13 § 5.]

19.100.940 Short title. This chapter shall be known and designated as the "Franchise Investment Protection Act". [1971 ex.s. c 252 § 32.]

Chapter 19.102

CHAIN DISTRIBUTOR SCHEMES

Sections

- 19.102.010 Definitions.
 19.102.020 Chain distributor schemes prohibited—Unfair practice.
Business opportunity fraud act: Chapter 19.110 RCW.

19.102.010 Definitions. (1) "Chain distributor scheme" is a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment, and may further perpetuate the chain of persons who are granted such license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the above license or right to recruit or the receipt of profits therefrom, does not change the identity of the scheme as a chain distributor scheme.

(2) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

(3) "Investment" is any acquisition, for a consideration other than personal services, of personal property, tangible or intangible, for profit or business purposes, and includes, without limitation, franchises, business opportunities, services and inventory for resale. It does not include sales demonstration equipment and materials, furnished at cost for use in making sales and not for resale. [1973 1st ex.s. c 33 § 1.]

19.102.020 Chain distributor schemes prohibited—Unfair practice. No person shall promote, offer or grant participation in a chain distributor scheme. Any violation of this chapter shall be construed for purposes of the application of the Consumer Protection Act, chapter 19.86 RCW, to constitute an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce. [1973 1st ex.s. c 33 § 2.]

Chapter 19.105

CAMPING RESORTS

Sections

- 19.105.300 Definitions.
 19.105.310 Unlawful to offer or sell contract unless contract registered—Exemptions.
 19.105.320 Registration—Filings required upon application—Waiver.
 19.105.325 Exemptions from chapter.
 19.105.330 Registration—Effective, when—Completed form of application required.
 19.105.333 Signature of operator, trustee, or holder of power of attorney required on application documentation.
 19.105.336 Availability of campgrounds to contract purchasers—Blanket encumbrances—Penalty for noncompliance.
 19.105.340 Impounding proceeds from contract sales—Conditional release of impounded funds—Funds not subject to lien—No assignment of impounded or reserved assets.
 19.105.345 Persons licensed under chapter 18.85 RCW exempt from salesperson registration requirements.

- 19.105.350 Director may require reserve fund by order—Denial or suspension of registration.
 19.105.360 Filing of sales literature, contract form, disclosure supplements.
 19.105.365 Advertising promises of free gifts, awards, or prizes—Provision of gift or substitute—Security arrangements after violation—Advance fees placed in trust—Membership referral programs considered promotional programs.
 19.105.370 Purchaser to receive written disclosures from operator or department—Exemptions.
 19.105.380 Registration or application—Conditions for denial, suspension, or revocation by order—Fine—Reimbursement of costs—Notices, hearings, and findings—Summary orders—Assurances of discontinuance.
 19.105.390 Resort contracts—Purchaser's cancellation—Notice—Statement of right to cancel.
 19.105.400 Resort contracts—Voidable—Estoppel.
 19.105.405 Purchaser lists—Authorized uses.
 19.105.411 Fees.
 19.105.420 Resort contracts—Registration, duration—Renewal, amendment—Renewal of prior permits.
 19.105.430 Unlawful to act as salesperson without registering—Exemptions.
 19.105.440 Registration as salesperson—Application—Denial, suspension, or revocation of registration or application by order—Fine—Notices, hearings, and findings—Summary orders—Assurances of discontinuance—Renewal of registration.
 19.105.450 Investigations—Scope—Publishing information.
 19.105.460 Investigations—Powers relating to—Proceedings for contempt.
 19.105.470 Cease and desist order—Utilizing temporary order, injunction, restraining order, or writ of mandamus.
 19.105.480 Violations—As gross misdemeanors—Statute of limitations.
 19.105.490 Violations—Referral to attorney general or prosecuting attorney.
 19.105.500 Violations—Application of consumer protection act.
 19.105.510 Resort contracts—Nonapplicability of certain laws—County and city powers.
 19.105.520 Unlawful to represent director's administrative approval as determination as to merits of resort—Penalty.
 19.105.530 Rules, forms, orders—Administration of chapter.
 19.105.540 Administrative procedure act application.
 19.105.550 Administration.
 19.105.910 Construction—Chapter as cumulative and nonexclusive.
 19.105.920 Severability—1982 c 69.
 19.105.930 Effective date—1982 c 69.

Exemption of timeshares from chapter: RCW 64.36.290.

19.105.300 Definitions. As used in this chapter, unless the context clearly requires otherwise:

(1) "Camping resort" means any enterprise, other than one that is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that has as its primary purpose the ownership, operation, or promotion of campgrounds that includes or will include camping sites.

(2) "Camping resort contract" means an agreement evidencing a purchaser's title to, estate or interest in, or right or license to use for more than thirty days the campground of a camping resort.

(3) "Camping site" means a space designed and promoted for the purpose of locating a trailer, tent, tent trailer, pickup camper, or other similar device used for land-based portable housing.

(4) "Purchaser" means a person who enters into a camping resort contract and thereby obtains title to, an estate or interest in, or license or the right to use the campground of a camping resort.

(5) "Person" means any individual, corporation, partnership, trust, association, or other organization other than a government or a subdivision thereof.

(6) "Director" means the director of licensing.

(7) "Camping resort operator" means any person who establishes, promotes, owns, or operates a camping resort.

(8) "Advertisement" means any offer, written, printed, audio, or visual, by general solicitation, including all material used by an operator in a membership referral program.

(9) "Offer" means any solicitation reasonably designed to result in the entering into of a camping resort contract.

(10) "Sale" or "sell" means entering into, or other disposition, of a camping resort contract for value, but the term value does not include a reasonable fee to offset the ministerial costs of transfer of a camping resort contract if, in transferring the contract or membership, the terms of the original contract or membership are not changed by the camping resort operator.

(11) "Salesperson" means any individual, other than a camping resort operator, who is engaged in obtaining commitments of persons to enter into camping resort contracts by making a sales presentation to, or negotiating sales with, the persons, but does not include members of a camping resort engaged in the referral of persons without making a sales presentation to the persons.

(12) "Affiliate" means any person who, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control of a registrant or camping resort operator.

(13) "Campground" means real property owned or operated by a camping resort that is available for camping or outdoor recreation by purchasers of camping resort contracts.

(14) "Department" means the department of licensing.

(15) "Resale camping resort contract" means a camping resort contract offered or sold which is not the original offer, transfer, or sale of such contract, and not a forfeited contract being reoffered by an operator.

(16) "Start-up camping resort contract" means a camping resort contract that is being offered or sold for the first time or a forfeited contract being resold by a camping resort operator.

(17) "Blanket encumbrance" means any mortgage, deed of trust, option to purchase, vendor's lien or interest under a contract or agreement of sale, or other material financing lien or encumbrance granted by the camping resort operator or affiliate that secures or evidences the obligation to pay money or to sell or convey any campgrounds made available to purchasers by the camping resort operator or any portion thereof and that authorizes, permits, or requires the foreclosure or other disposition of the campground affected.

(18) "Nondisturbance agreement" means an instrument by which the holder of a blanket encumbrance agrees that: (a) Its rights in any campground made available to purchasers, prior or subsequent to the agreement, by the camping resort operator shall be subordinate to the rights of purchasers from and after the recording of the instrument; (b) the holder and all successors and assignees, and any person who acquires the campground through foreclosure or by deed in lieu of foreclosure of such blanket encumbrance, shall take the campground subject to the use rights of purchasers; and (c) the holder or any successor acquiring the campground through the blanket encumbrance shall not discontinue use,

or cause the campground to be used, in a manner which would materially prevent purchasers from using or occupying the campground in a manner contemplated by the purchasers' camping resort contracts. However, the holder has no obligation or liability to assume the responsibilities or obligations of the camping resort operator under camping resort contracts. [1988 c 159 § 1; 1982 c 69 § 1.]

19.105.310 Unlawful to offer or sell contract unless contract registered—Exemptions. Except in transactions exempt under RCW 19.105.325, it is unlawful for any person to offer or sell a camping resort contract in this state unless the camping resort contract is registered and the operator or registrant has received a permit to market the registered contracts under this chapter. [1988 c 159 § 2; 1982 c 69 § 2.]

19.105.320 Registration—Filings required upon application—Waiver. (1) To apply for registration an applicant shall file with the director:

(a) An application for registration on such a form as may be prescribed by the director. The director may, by rule or order, prescribe the contents of the application to include information (including financial statements) reasonably necessary for the director to determine if the requirements of this chapter have been met, whether any of the grounds for which a registration may be suspended or denied have occurred, and what conditions, if any, should be imposed under RCW 19.105.340, 19.105.350, or 19.105.336 in connection with the registration;

(b) Written disclosures, in any format the director is satisfied accurately, completely, and clearly communicates the required information, which include:

(i) The name and address of the camping resort applicant or operator and any material affiliate and, if the operator or registrant is other than a natural person, the identity of each person owning a ten percent or greater share or interest;

(ii) A brief description of the camping resort applicant's experience in the camping resort business;

(iii) A brief description of the nature of the purchaser's title to, estate or interest in, or right to use the camping resort property or facilities and whether or not the purchaser will obtain an estate, title to, or interest in specified real property;

(iv) The location and a brief description of the significant facilities and recreation services then available for use by purchasers and those which are represented to purchasers as being planned, together with a statement whether any of the resort facilities or recreation services will be available to nonpurchasers or the general public;

(v) A brief description of the camping resort's ownership of or other right to use the camping resort properties or facilities represented to be available for use by purchasers, together with a brief description of any material encumbrance, the duration of any lease, real estate contract, license, franchise, reciprocal agreement, or other agreement entitling the camping resort applicant or operator to use the property, and any material provisions of the agreements which restrict a purchaser's use of the property;

(vi) A summary of any local or state health, environmental, subdivision, or zoning requirements or permits that have not been complied with for the resort property or facility represented to purchasers as in or planned for the campground;

(vii) A copy of the articles, by-laws, rules, restrictions, or covenants regulating the purchaser's use of each property, the facilities located on each property, and any recreation services provided;

(viii) A statement of whether and how the articles, declarations, by-laws, rules, restrictions, or covenants used in structuring the project may be changed and whether and how the members may participate in the decision on the changes;

(ix) A brief description of all payments of a purchaser under a camping resort contract, including initial fees and any further fees, charges, or assessments, together with any provisions for changing the payments;

(x) A description of any restraints on the transfer of camping resort contracts;

(xi) A brief description of the policies relating to the availability of camping sites and conditions under which reservations are required and the availability of the sites to guests and family members;

(xii) A disclosure covering the right of the camping resort operator or the registrant and their heirs, assigns, and successors in interest to change, substitute, or withdraw from use all or a portion of the camping resort properties or facilities and the extent to which the operator is obligated to replace camping resort facilities or properties withdrawn;

(xiii) A brief description of any grounds for forfeiture of a purchaser's camping resort contract;

(xiv) A statement concerning the effect upon membership camping resort contracts if there is a foreclosure affecting any of the operator's properties, a bankruptcy, or creditor or lienholder action affecting the operator or the camping resort properties; and

(xv) Any other information deemed necessary by the department for the protection of the public health, safety, and welfare;

(c) The prescribed registration fees;

(d) A statement of the total number of camping resort contracts then in effect, both within and without this state; and a statement of the total number of camping resort contracts intended to be sold, both within and without this state, together with a commitment that the total number will not be exceeded unless disclosed by post-effective amendment to the registration as provided in RCW 19.105.420;

(e) Copies or prototypes of all camping resort contracts, and addendum thereto, and membership certificates, deeds, leases, or other evidences of interest, title, or estate, to be registered;

(f) An irrevocable consent to service of process on the director or the department, effective for the term of the statute of limitations covering the last sale in this state of a camping resort contract by the applicant or operator; and

(g) Any other material information the director deems necessary for the protection of the public health, welfare, or safety, or to effectively conduct an examination of an application.

(2) The director may waive for an applicant any of the information required in this section if it is not needed for the

protection of the public health and welfare. [1988 c 159 § 3; 1982 c 69 § 3.]

Administrative procedure act application: RCW 19.105.540.

19.105.325 Exemptions from chapter. (1) The following transactions are exempt from registration under this chapter:

(a) An offer or sale by a government or governmental agency;

(b) A bona fide pledge of a camping resort contract; and

(c) Offerings and dispositions of resale camping resort contracts by purchasers thereof on their own behalf or by third parties brokering on behalf of purchasers, other than resale contracts forfeited by or placed into an operator's sale inventory.

(2) The director may, by rule or order, exempt any person, wholly or partially, from any or all requirements of this chapter if the director finds the requirements are not necessary for the protection of the public health, safety, and welfare. [1988 c 159 § 4.]

19.105.330 Registration—Effective, when—Completed form of application required. [(1)] Unless an order denying effectiveness under RCW 19.105.380 is in effect, or unless declared effective by order of the director prior thereto, the application for registration shall automatically become effective upon the expiration of the twentieth full business day following a filing with the director in complete and proper form, but an applicant may consent to the delay of effectiveness until such time as the director may by order declare registration effective or issue a permit to market.

(2) An application for registration, renewal of registration, or amendment is not in completed form and shall not be deemed a statutory filing until such time as all required fees, completed application forms, and the information and documents required pursuant to RCW 19.105.320(1) and departmental rules have been filed.

It is the operator's responsibility to see that required filing materials and fees arrive at the appropriate mailing address of the department. Within seven business days, excluding the date of receipt, of receiving an application or initial request for registration and the filing fees, the department shall notify the applicant of receipt of the application and whether or not the application is complete and in proper form. If the application is incomplete, the department shall at the same time inform the applicant what additional documents or information is required.

If the application is not in a completed form, the department shall give immediate notice to the applicant. On the date the application is complete and properly filed, the statutory period for an in-depth examination of the filing, prescribed in subsection (1) of this section, shall begin to run, unless the applicant and the department have agreed to a stay of effectiveness or the department has issued a denial of the application or a permit to market. [1988 c 159 § 5; 1982 c 69 § 4.]

19.105.333 Signature of operator, trustee, or holder of power of attorney required on application documentation. Applications, consents to service, all affidavits

required in connection with applications, and all final permits to market shall be signed by the operator, unless a trustee or power of attorney specifically granted such powers has signed on behalf of the operator. If a power of attorney or trustee signature is used, the filing shall contain a copy of the authorization, power of attorney, or trustee authorization. [1988 c 159 § 6.]

19.105.336 Availability of campgrounds to contract purchasers—Blanket encumbrances—Penalty for non-compliance. (1) With respect to every campground located within the state which was not made available to purchasers of camping resort contracts prior to June 20, 1988, and with respect to any new blanket encumbrance placed against any campground in this state or any prior blanket encumbrance against any campground in this state with respect to which the underlying obligation is refinanced after June 20, 1988, the camping resort operator shall not represent any such campground to be available to purchasers of its camping resort contracts until one of the following events has occurred with regard to each such blanket encumbrance:

(a) The camping resort operator obtains and records as covenants to run with the land a nondisturbance agreement from each holder of the blanket encumbrance. The nondisturbance agreement shall be executed by the camping resort operator and by each holder of the blanket encumbrance and shall include the provisions set forth in RCW 19.105.300(18) and the following:

(i) The instrument may be enforced by individual purchasers of camping resort contracts. If the camping resort operator is not in default under its obligations to the holder of the blanket encumbrance, the agreement may be enforced by the camping resort operator.

(ii) The agreement shall be effective as between each purchaser and the holder of the blanket encumbrance despite any rejection or cancellation of the purchaser's contract during any bankruptcy proceedings of the camping resort operator.

(iii) The agreement shall be binding upon the successors in interest of both the camping resort operator and the holder of the blanket encumbrance.

(iv) A holder of the blanket encumbrance who obtains title or possession or who causes a change in title or possession in a campground by foreclosure or otherwise and who does not continue to operate the campground upon conditions no less favorable to members than existed prior to the change of title or possession shall either:

(A) Offer the title or possession to an association of members to operate the campground; or

(B) Obtain a commitment from another entity which obtains title or possession to undertake the responsibility of operating the campground.

(b) The camping resort operator posts a bond or irrevocable letter of credit with the director in a form satisfactory to the director in the amount of the aggregate principal indebtedness remaining due under the blanket encumbrance.

(c) The camping resort operator delivers an encumbrance trust agreement in a form satisfactory to the director, as provided in subsection (2) of this section.

(d) The camping resort operator delivers other financial assurances reasonably acceptable to the director.

(2) With respect to any campground located within the state other than a campground described in subsection (1) of this section, the camping resort operator shall not represent the campground to be available to purchasers of camping resort contracts after June 20, 1988, until one of the following events has occurred with regard to each blanket encumbrance:

(a) The camping resort operator obtains and records a nondisturbance agreement to run with the land pursuant to subsection (1) of this section from each holder of the blanket encumbrance.

(b) The camping resort operator posts a surety bond or irrevocable letter of credit with the director in a form satisfactory to the director in the amount of the aggregate principal indebtedness remaining due under the blanket encumbrance.

(c) The camping resort operator delivers to the director, in a form satisfactory to the director, an encumbrance trust agreement among the camping resort operator, a trustee (which can be either a corporate trustee licensed to act as a trustee under Washington law, licensed escrow agent, or a licensed attorney), and the director.

(d) The camping resort operator delivers evidence to the director that any financial institution that has made a hypothecation loan to the camping resort operator (the "hypothecation lender") shall have a lien on, or security interest in, the camping resort operator's interest in the campground, and the hypothecation lender shall have executed and recorded a nondisturbance agreement in the real estate records of the county in which the campground is located. Each person holding an interest in a blanket encumbrance superior to the interest held by the hypothecation lender shall have executed and recorded an instrument stating that such person shall give the hypothecation lender notice of, and at least thirty days to cure, any default under the blanket encumbrance before the person commences any foreclosure action affecting the campground. For the purposes of this subsection, a hypothecation loan to a camping resort operator is a loan or line of credit secured by the camping resort contracts receivable arising from the sale of camping resort contracts by the camping resort operator, which exceeds in the aggregate all outstanding indebtedness secured by blanket encumbrances superior to the interest held by the hypothecation lender.

(e) The camping resort operator delivers other financial assurances reasonably acceptable to the director.

(3) Any camping resort operator which does not comply at all times with subsection (1) or (2) of this section with regard to any blanket encumbrance in connection with any applicable campground is prohibited from offering any camping resort contracts for sale in Washington during the period of noncompliance. [1988 c 159 § 7.]

Effective date—1988 c 159: "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, with the exception of section 7 of this act, shall take effect immediately [March 20, 1988]. Section 7 of this act shall take effect ninety days thereafter [June 20, 1988]." [1988 c 159 § 29.] "Section 7 of this act" is codified as RCW 19.105.336.

19.105.340 Impounding proceeds from contract sales—Conditional release of impounded funds—Funds not subject to lien—No assignment of impounded or reserved assets. (1) If the director finds that the applicant or registrant has not by other means assured future availability to and quiet enjoyment of the campgrounds and facilities, as required under this chapter, the director may, notwithstanding the provisions of RCW 19.105.336, require impoundment of the funds or membership receivables, or both, from camping resort contract sales, including the impoundment of periodic dues or assessments required of purchasers under the contracts, or provide other assurances acceptable to the director, until sufficient funds have been impounded or arrangements made to alleviate the inadequacy. The director may, upon finding it reasonable and necessary, for compliance with RCW 19.105.336 and 19.105.365, and not inconsistent with the protection of purchasers or owners of camping resort contracts, provide for release to the applicant, registrant, or others of all or a portion of the impounded funds, membership receivables, or other assets in the impound. The director may take appropriate measures to assure that the impounded funds will be applied as required by this chapter.

(2) Funds placed in impounds under this section or reserve accounts under RCW 19.105.350 are not subject to lien, attachment, or the possession of lenders or creditors of the operator, trustees in bankruptcy, receivers, or other third parties. In instances of bankruptcy, foreclosure, attachment, or other contingency where the ownership or beneficiary status of funds in depositories, or the receivables and funds to be collected from receivables, may be at issue, the purchasers of contracts under this chapter, as a class, shall be deemed the beneficiary. No individual purchaser or group of purchasers, other than the purchasers as a class, have any right to possession, attachment, lien, or right of partition of funds or receivables in the impound or reserve.

(3) It is unlawful for an operator or other person to assign, hypothecate, sell, or pledge any contract or other asset placed into an impound or reserve under this chapter without the express written approval of the director or a court of competent jurisdiction. [1988 c 159 § 8; 1982 c 69 § 5.]

19.105.345 Persons licensed under chapter 18.85 RCW exempt from salesperson registration requirements. Persons licensed under chapter 18.85 RCW are exempt from the camping resort salesperson registration requirements of this chapter for camping resort contracts offered through the licensed brokerage. [1988 c 159 § 9.]

19.105.350 Director may require reserve fund by order—Denial or suspension of registration. (1) If the purchaser will own or acquire title to specified real property or improvements to be acquired by the camping resort, the director may by order require to the extent necessary to protect the interests of the purchasers or owners of camping resort contracts, that an appropriate portion of the proceeds paid under those camping resort contracts be placed in a separate reserve fund to be set aside and applied toward the purchase price of the real property, improvements, or facilities.

(2) The director may deny or suspend a registration in which the registrant is advertising or offering annual or periodic dues or assessments by members that the director finds would result in the registrant's future inability to fund operating costs. [1988 c 159 § 10; 1982 c 69 § 6.]

19.105.360 Filing of sales literature, contract form, disclosure supplements. The camping resort operator or other registrant of offerings of camping resort contracts shall file with the director at least five business days prior to the first use thereof in the state of Washington (1) the proposed text of all advertisements and sales promotion literature, (2) its proposed form of camping resort contract, and (3) the text of any supplements or amendments to the written disclosures required to be furnished prospective purchasers under RCW 19.105.370: PROVIDED, That if the text in lieu of definitive copies of any materials are filed, definitive copies shall be filed with the director within five business days following the date of first use of the materials. [1988 c 159 § 11; 1982 c 69 § 7.]

19.105.365 Advertising promises of free gifts, awards, or prizes—Provision of gift or substitute—Security arrangements after violation—Advance fees placed in trust—Membership referral programs considered promotional programs. (1) It is unlawful for a camping resort operator or other person, in connection with an advertisement or offer for sale of a camping resort contract in this state, to promise or offer a free gift, award, prize, or other item of value if the operator or person knows or has reason to know that the offered item is unavailable in a sufficient quantity based upon the reasonably anticipated response to the advertisement or offer.

(2) A person who responds to an advertisement or offer in the manner specified, who performs all stated requirements, and who meets the qualifications disclosed shall receive the offered item subject to chapter 19.170 RCW.

(3) The director may, upon making a determination that a violation of subsection (1) or (2) of this section has occurred, require any person, including an operator or other registrant found in violation, who continues, or proposes to continue, offering a free gift, award, prize, or other item of value in this state for purposes of advertising a camping resort or inducing persons to purchase a camping resort contract, to provide evidence of the ability to deliver on promised gifts, prizes, or awards by means such as bonds, irrevocable letters of credit, cash deposits, or other security arrangements acceptable to the director.

(4) The director may require that any fees or funds of any description collected in advance from persons for purposes of obtaining promised gifts, awards, prizes, or other items of value, be placed in trust in a depository in this state until after delivery of the promised gift, prize, award, or other item of value.

(5) Operators or other registrants or persons promising gifts, prizes, awards, or other items of consideration as part of a membership referral program shall be considered to be offering or selling promotional programs.

(6) Chapter 19.170 RCW applies to free gifts, awards, or prizes regulated under this chapter. [1991 c 227 § 9; 1988 c 159 § 12.]

Severability—1991 c 227: See RCW 19.170.900.

19.105.370 Purchaser to receive written disclosures from operator or department—Exemptions. Except in a transaction exempt under RCW 19.105.325, any operator who offers or sells camping resort contracts in this state shall provide the prospective purchaser with the written disclosures required to be filed under RCW 19.105.320(1)(b) in a form that is materially accurate and complete before the prospective purchaser signs a camping resort contract or gives any item of value for the purchase of a camping resort contract. The department may provide its own disclosures, supplementing those of the operator, in any format it deems appropriate. The department shall not be held liable for any alleged failure to disclose information or for deficiencies in the content of its disclosures when such disclosures are based upon information provided by the operator or a registrant. [1988 c 159 § 13; 1982 c 69 § 8.]

19.105.380 Registration or application—Conditions for denial, suspension, or revocation by order—Fine—Reimbursement of costs—Notices, hearings, and findings—Summary orders—Assurances of discontinuance.

(1) A registration or an application for registration of camping resort contracts or renewals thereof may by order be denied, suspended, or revoked if the director finds that:

(a) The advertising, sales techniques, or trade practices of the applicant, registrant, or its affiliate or agent have been or are deceptive, false, or misleading;

(b) The applicant or registrant has failed to file copies of the camping resort contract form under RCW 19.105.360;

(c) The applicant, registrant, or affiliate has failed to comply with any provision of this chapter, the rules adopted or the conditions of a permit granted under this chapter, or a stipulation or final order previously entered into by the operator or issued by the department under this chapter;

(d) The applicant's, registrant's, or affiliate's offering of camping resort contracts has worked or would work a fraud upon purchasers or owners of camping resort contracts;

(e) The camping resort operator or any officer, director, or affiliate of the camping resort operator has been within the last five years convicted of or pleaded nolo contendere to any misdemeanor or felony involving conversion, embezzlement, theft, fraud, or dishonesty, has been enjoined from or had any civil penalty assessed for a finding of dishonest dealing or fraud in a civil suit, or been found to have engaged in any violation of any act designed to protect consumers, or has been engaged in dishonest practices in any industry involving sales to consumers;

(f) The applicant or registrant has represented or is representing to purchasers in connection with the offer or sale of a camping resort contract that a camping resort property, facility, amenity camp site, or other development is planned, promised, or required, and the applicant or registrant has not provided the director with a security or assurance of performance as required by this chapter;

(g) The applicant or registrant has not provided or is no longer providing the director with the necessary security arrangements to assure future availability of titles or properties as required by this chapter or agreed to in the permit to market;

(h) The applicant or registrant is or has been employing unregistered salespersons or offering or proposing a membership referral program not in compliance with this chapter;

(i) The applicant or registrant has breached any escrow, impound, reserve account, or trust arrangement or the conditions of an order or permit to market required by this chapter;

(j) The applicant or registrant has breached any stipulation or order entered into in settlement of the department's filing of a previous administrative action;

(k) The applicant or registrant has filed or caused to be filed with the director any document or affidavit, or made any statement during the course of a registration or exemption procedure with the director, that is materially untrue or misleading;

(l) The applicant or registrant has engaged in a practice of failing to provide the written disclosures to purchasers or prospective purchasers as required under this chapter;

(m) The applicant, registrant, or any of its officers, directors, or employees, if the operator is other than a natural person, have wilfully done, or permitted any of their salespersons or agents to do, any of the following:

(i) Engage in a pattern or practice of making untrue or misleading statements of a material fact, or omitting to state a material fact;

(ii) Employ any device, scheme, or artifice to defraud purchasers or members;

(iii) Engage in a pattern or practice of failing to provide the written disclosures to purchasers or prospective purchasers as required under this chapter;

(n) The applicant or registrant has failed to provide a bond, letter of credit, or other arrangement to assure delivery of promised gifts, prizes, awards, or other items of consideration, as required under this chapter, breached such a security arrangement, or failed to maintain such a security arrangement in effect because of a resignation or loss of a trustee, impound, or escrow agent;

(o) The applicant or registrant has engaged in a practice of selling contracts using material amendments or codicils that have not been filed or are the consequences of breaches or alterations in previously filed contracts;

(p) The applicant or registrant has engaged in a practice of selling or proposing to sell contracts in a ratio of contracts to sites available in excess of that filed in the affidavit required by this chapter;

(q) The camping resort operator has withdrawn, has the right to withdraw, or is proposing to withdraw from use all or any portion of any camping resort property devoted to the camping resort program, unless:

(i) Adequate provision has been made to provide within a reasonable time thereafter a substitute property in the same general area that is at least as desirable for the purpose of camping and outdoor recreation;

(ii) The property is withdrawn because, despite good faith efforts by the camping resort operator, a nonaffiliate of the camping resort has exercised a right of withdrawal from use by the camping resort (such as withdrawal following expiration of a lease of the property to the camping resort) and the terms of the withdrawal right have been disclosed in writing to all purchasers at or prior to the time of any sales of camping resort contracts after the camping resort has

represented to purchasers that the property is or will be available for camping or recreation purposes;

(iii) The specific date upon which the withdrawal becomes effective has been disclosed in writing to all purchasers and members prior to the time of any sales of camping resort contracts after the camping resort has represented to purchasers that the property is or will be available for camping or recreation purposes;

(iv) The rights of members and owners of the camping resort contracts under the express terms of the camping resort contract have expired, or have been specifically limited, upon the lapse of a stated or determinable period of time, and the director by order has found that the withdrawal is not otherwise inconsistent with the protection of purchasers or the desire of the majority of the owners of camping resort contracts, as expressed in their previously obtained vote of approval;

(r) The format, form, or content of the written disclosures provided therein is not complete, full, or materially accurate, or statements made therein are materially false, misleading, or deceptive;

(s) The applicant or registrant has failed or declined to respond to any subpoena lawfully issued and served by the department under this chapter;

(t) The applicant or registrant has failed to file an amendment for a material change in the manner or at the time required under this chapter or its implementing rules;

(u) The applicant or registrant has filed voluntarily or been placed involuntarily into a federal bankruptcy or is proposing to do so; or

(v) A camping resort operator's rights or interest in a campground has been terminated by foreclosure or the operations in a camping resort have been terminated in a manner contrary to contract provisions.

(2) Any applicant or registrant who has violated subsection (1) (a), (b), (c), (f), (h), (i), (j), (l), (m), or (n) of this section may be fined by the director in an amount not to exceed one thousand dollars for each such violation. Proceedings seeking such fines shall be held in accordance with chapter 34.05 RCW and may be filed either separately or in conjunction with other administrative proceedings to deny, suspend, or revoke registrations authorized under this chapter. Fines collected from such proceedings shall be deposited in the state general fund.

(3) An operator, registrant, or applicant against whom administrative or legal proceedings have been filed shall be responsible for and shall reimburse the state, by payment into the general fund, for all administrative and legal costs actually incurred by the department in issuing, processing, and conducting any such administrative or legal proceeding authorized under this chapter that results in a final legal or administrative determination of any type or degree in favor of the department.

(4) No order may be entered under this section without appropriate prior notice to the applicant or registrant of opportunity for a hearing and written findings of fact and conclusions of law, except that the director may by order summarily deny an application for registration or renewal under any of the above subsections and may summarily suspend or revoke a registration under subsection (1) (d), (f), (g), (h), (i), (k), (l), (m), and (n) of this section. No fine may be imposed by summary order.

(5) The proceedings to deny an application or renewal, suspend or revoke a registration or permit, whether summarily or otherwise, or impose a fine shall be held in accordance with chapter 34.05 RCW.

(6) The director may enter into assurances of discontinuance in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing under this chapter. The assurances shall consist of a statement of the law in question and an agreement not to violate the stated provision. The applicant or registrant shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violating or breaching an assurance under this subsection is grounds for suspension or revocation of registration or imposition of a fine. [1988 c 159 § 14; 1982 c 69 § 9.]

19.105.390 Resort contracts—Purchaser's cancellation—Notice—Statement of right to cancel. Any camping resort contract may be canceled at the option of the purchaser, if the purchaser sends notice of the cancellation by certified mail (return receipt requested) to the camping resort operator at the address contained in the camping resort contract and if the notice is postmarked not later than midnight of the third business day following the day on which the contract is signed. In addition to this cancellation right, any purchaser who signs a camping resort contract of any description required to be registered with the department without having received the written disclosures required by this chapter has cancellation rights until three business days following eventual receipt of the written disclosures. Purchasers shall request cancellation of contracts by sending the notice of cancellation by certified mail (return receipt requested), postmarked not later than midnight of the third business day following the day on which the contract is signed or the day on which the disclosures were actually received, whichever event is later to the camping resort operator at the address contained in the camping resort contract. In computing the number of business days, the day on which the contract was signed shall not be included as a "business day," nor shall Saturday, Sunday, or legal holidays be included. Within three business days following receipt of timely and proper notice of cancellation from the purchaser, the camping resort operator shall provide evidence that the contract has been cancelled. Thereafter, any money or other consideration paid by the purchaser shall be promptly refunded.

Every camping resort contract, other than those being offered and registered as resales, shall include the following statement in at least ten-point bold-face type immediately prior to the space for the purchaser's signature:

"Purchaser's right to cancel: You may cancel this contract without any cancellation fee or other penalty, or stated reason for doing so, by sending notice of cancellation by certified mail, return receipt requested, to (insert name and address of camping resort operator). The notice must be postmarked by midnight of the third business day following the day on which the contract is signed. In computing the three business days, the day on which the contract is signed shall not be included as a "business day," nor shall Saturday, Sunday, or legal holidays be included."

If the purchaser has not inspected a camping resort property or facility at which camping resort sites are located or planned, the notice must contain the following additional language:

"If you sign this contract without having inspected a property at which camping sites are located or planned, you may cancel this contract by giving this notice within six (6) business days following the day on which you signed the contract." [1988 c 159 § 15; 1982 c 69 § 10.]

19.105.400 Resort contracts—Voidable—Estoppel.

Any camping resort contract entered into in violation of this chapter may be voided by the purchaser and the purchaser's entire consideration recovered at the option of the purchaser, but no suit under this section may be brought after two years from the date the contract is signed. [1988 c 159 § 16; 1982 c 69 § 11.]

19.105.405 Purchaser lists—Authorized uses. (1)

The legislature recognizes the proprietary interest camping resort operators have in purchaser lists. The legislature also recognizes that purchasers of camping resort contracts have a legitimate interest in being able to contact other resort purchasers for the purpose of forming a members' association. In balancing these competing interests, the legislature believes that purchaser lists can be made available to camping resort purchasers with reasonable restrictions on the dissemination of those lists.

(2) Upon request of a purchaser, the camping resort operator shall provide to the purchaser a list of the names, addresses, and unit, site, or purchaser number of all purchasers. The camping resort operator may charge for the reasonable costs for preparing the list. The operator shall require the purchaser to sign an affidavit agreeing not to use the list for any commercial purpose.

(3) It is a violation of this chapter and chapter 19.86 RCW for any person to use a membership list for commercial purposes unless authorized to do so by the operator.

(4) It is a violation of this chapter and chapter 19.86 RCW for a camping resort operator to fail to provide a list of purchasers as provided in this section. [1988 c 159 § 17.]

19.105.411 Fees. Applicants or registrants under this chapter shall pay fees determined by the director as provided in RCW 43.24.086. The fees shall be prepaid and the director may determine fees for the following activities or events:

(1) A fee for the initial application and an additional fee for each camping resort contract registered;

(2) Renewals of camping resort registrations and an additional fee for each additional camping resort contract registered;

(3) An initial and annual fee for processing and administering any required impound, trust, reserve, or escrow arrangement and security arrangements for such programs;

(4) The review and processing of advertising or promotional materials;

(5) Registration and renewal of registrations of salespersons;

(6) The transfer of a salesperson's permit from one operator to another;

(7) Administering examinations for salespersons;
(8) Amending the registration or the public offering statement;

(9) Conducting site inspections;

(10) Granting exemptions under this chapter;

(11) Penalties for registrants in any situation where a registrant has failed to file an amendment to the registration or the public offering statement in a timely manner for material changes, as required in this chapter and its implementing rules. [1988 c 159 § 18.]

19.105.420 Resort contracts—Registration, duration—Renewal, amendment—Renewal of prior permits.

A registration of camping resort contracts shall be effective for a period of one year and may, upon application, be renewed for successive periods of one year each, unless the director prescribes a shorter period for a permit or registration. A camping resort contract registration shall be amended if there is to be an increase in inventory or consolidation to the number of camping resort contracts registered, or in instances in which new contract forms are to be offered. Consolidations, new contract forms, the adding of resorts to the program, or amendments for material changes shall become effective in the manner provided by RCW 19.105.330. The written disclosures required to be furnished prospective purchasers under RCW 19.105.370 shall be supplemented by amendment request in writing as necessary to keep the required information reasonably current and reflective of material changes. Amendments shall be filed with the director as provided in RCW 19.105.360. The foregoing notwithstanding, however, the camping resort operator or registrant shall file an amendment to the registration disclosing any event which will have a material effect on the conduct of the operation of the camping resort, the financial condition of the camping resort, or the future availability of the camping resort properties to purchasers. The amendment shall be filed within thirty days following the event. The amendment shall be treated as an original application for registration, except that until the director has acted upon the application for amendment the applicant's registration shall continue to be deemed effective for the purposes of RCW 19.105.310.

Any permit to sell camping resort memberships issued prior to November 1, 1982, shall be deemed a camping resort registration subject to the renewal provisions of this chapter upon the anniversary date of the issuance of the original permit. [1988 c 159 § 19; 1982 c 69 § 13.]

19.105.430 Unlawful to act as salesperson without registering—Exemptions.

Unless the transaction is exempt under RCW 19.105.325, it is unlawful for any person to act as a camping resort salesperson in this state without first registering under this chapter as a salesperson or being licensed as a salesperson under chapter 18.85 RCW or a broker licensed under that chapter. [1988 159 § 20; 1982 c 69 § 14.]

19.105.440 Registration as salesperson—Application—Denial, suspension, or revocation of registration or application by order—Fine—Notices, hearings, and findings—Summary orders—Assurances of discon-

tinuance—Renewal of registration. (1) A salesperson may apply for registration by filing in a complete and readable form with the director an application form provided by the director which includes the following:

(a) A statement whether or not the applicant within the past five years has been convicted of, pleaded nolo contendere to, or been ordered to serve probation for a period of a year or more for any misdemeanor or felony involving conversion, embezzlement, theft, fraud, or dishonesty or the applicant has been enjoined from, had any civil penalty assessed for, or been found to have engaged in any violation of any act designed to protect consumers;

(b) A statement fully describing the applicant's employment history for the past five years and whether or not any termination of employment during the last five years was the result of any theft, fraud, or act of dishonesty;

(c) A consent to service comparable to that required of operators under this chapter; and

(d) Required filing fees.

(2) The director may by order deny, suspend, or revoke a camping resort salesperson's registration or application for registration under this chapter or the person's license or application under chapter 18.85 RCW, or impose a fine on such persons not exceeding two hundred dollars per violation, if the director finds that the order is necessary for the protection of purchasers or owners of camping resort contracts and the applicant or registrant is guilty of:

(a) Obtaining registration by means of fraud, misrepresentation, or concealment, or through the mistake or inadvertence of the director;

(b) Violating any of the provisions of this chapter or any lawful rules adopted by the director pursuant thereto;

(c) Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses. For the purposes of this section, "being convicted" includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended;

(d) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication, or distribution of false statements, descriptions, or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions, or promises purport to be made or to be performed by either the applicant or registrant and the applicant or registrant then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions, or promises;

(e) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the work, representation, or conduct of the applicant or registrant;

(f) Failing, upon demand, to disclose to the director or the director's authorized representatives acting by authority of law any information within his or her knowledge or to produce for inspection any document, book or record in his or her possession, which is material to the salesperson's registration or application for registration;

(g) Continuing to sell camping resort contracts in a manner whereby the interests of the public are endangered, if the director has, by order in writing, stated objections thereto;

(h) Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter;

(i) Misrepresentation of membership in any state or national association; or

(j) Discrimination against any person in hiring or in sales activity on the basis of race, color, creed, or national origin, or violating any state or federal antidiscrimination law.

(3) No order may be entered under this section without appropriate prior notice to the applicant or registrant of opportunity for a hearing and written findings of fact and conclusions of law, except that the director may by order summarily deny an application for registration under this section.

(4) The proceedings to deny an application or renewal, suspend or revoke a registration or permit, whether summarily or otherwise, or impose a fine shall be held in accordance with chapter 34.05 RCW.

(5) The director, subsequent to any complaint filed against a salesperson or pursuant to an investigation to determine violations, may enter into stipulated assurances of discontinuances in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement not to violate the stated provision. The salesperson shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation of an assurance under this subsection is grounds for a disciplinary action, a suspension of registration, or a fine not to exceed one thousand dollars.

(6) The director may by rule require such further information or conditions for registration as a camping resort salesperson, including qualifying examinations and fingerprint cards prepared by authorized law enforcement agencies, as the director deems necessary to protect the interests of purchasers.

(7) Registration as a camping resort salesperson shall be effective for a period of one year unless the director specifies otherwise or the salesperson transfers employment to a different registrant. Registration as a camping resort salesperson shall be renewed annually, or at the time of transferring employment, whichever occurs first, by the filing of a form prescribed by the director for that purpose.

(8) It is unlawful for a registrant of camping resort contracts to employ or a person to act as a camping resort salesperson covered under this section unless the salesperson has in effect with the department and displays a valid registration in a conspicuous location at each of the sales offices at which the salesperson is employed. It is the responsibility of both the operator and the salesperson to notify the department when and where a salesperson is employed, his or her responsibilities and duties, and when the salesperson's employment or reported duties are changed or terminated. [1988 c 159 § 21; 1982 c 69 § 15.]

19.105.450 Investigations—Scope—Publishing information. The director may make such public or private investigations or may make such requests for information, within or without this state, as the director deems necessary to determine whether any registration should be granted, denied, suspended, or revoked, or a fine imposed, or whether any person has violated or is about to violate any of the provisions of this chapter or any rule, order, or permit under this chapter, or to aid in the enforcement of this chapter or in prescribing of rules and forms under, and amendments to, this chapter and may publish information concerning any violation of this chapter or any rule or order under this chapter. [1988 c 159 § 22; 1982 c 69 § 16.]

19.105.460 Investigations—Powers relating to—Proceedings for contempt. For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In the case of any person who disobeys any subpoena lawfully issued by the director, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, the superior court of any county or the judge thereof, on application by the director, and after satisfactory evidence of wilful disobedience, may compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such a court on a refusal to testify therein. [1982 c 69 § 17.]

19.105.470 Cease and desist orders—Utilizing temporary order, injunction, restraining order, or writ of mandamus. (1) Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter, any withdrawal of a camping resort property in violation of *RCW 19.105.380(1)(j), or any rule, order, or permit issued under this chapter, the director may in his or her discretion issue an order directing the person to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. However, the director may issue a temporary order pending the hearing which shall be effective immediately upon delivery to the person affected and which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within fifteen days after receipt of notice.

(2) If it appears necessary in order to protect the interests of members and purchasers, whether or not the director has issued a cease and desist order, the attorney general in the name of the state, the director, the proper prosecuting attorney, an affiliated members' common-interest association, or a group of members as a class, may bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this

chapter or any rule, order, or permit under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant, for the defendant's assets, or to protect the interests or assets of a members' common-interest association or the members of a camping resort as a class. The state, the director, a members' common-interest association, or members as a class shall not be required to post a bond in such proceedings. [1988 c 159 § 23; 1982 c 69 § 18.]

***Reviser's note:** The reference to RCW 19.105.380(1)(j) appears to be erroneous. Before March 20, 1988, the reference was to RCW 19.105.380(9). Chapter 159, Laws of 1988 placed the text of RCW 19.105.380(9) in RCW 19.105.380(1)(q), effective March 20, 1988.

19.105.480 Violations—As gross misdemeanors—Statute of limitations. Any person who wilfully fails to register an offering of camping resort contracts under this chapter is guilty of a gross misdemeanor. It is a gross misdemeanor for any person in connection with the offer or sale of any camping resort contracts wilfully and knowingly:

(1) To make any untrue or misleading statement of a material fact, or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(2) To employ any device, scheme, or artifice to defraud;

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(4) To file, or cause to be filed, with the director any document which contains any untrue or misleading information;

(5) To breach any impound, escrow, trust, or other security arrangement provided for by this chapter;

(6) To cause the breaching of any trust, escrow, impound, or other arrangement placed in a registration for compliance with RCW 19.105.336; or

(7) To employ unlicensed salespersons or permit salespersons or employees to make misrepresentations or violate this chapter.

No indictment or information may be returned under this chapter more than five years after the date of the event alleged to have been a violation. [1988 c 159 § 24; 1982 c 69 § 19.]

19.105.490 Violations—Referral to attorney general or prosecuting attorney. The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order under this chapter to the attorney general or the proper prosecuting attorney who may in his discretion, with or without such a reference, institute the appropriate civil or criminal proceedings under this chapter. [1982 c 69 § 20.]

19.105.500 Violations—Application of consumer protection act. For the purposes of application of the consumer protection act, chapter 19.86 RCW, any material violation of the provisions of this chapter shall be construed to constitute an unfair or deceptive act or practice or unfair

method of competition in the conduct of trade or commerce. [1982 c 69 § 21.]

19.105.510 Resort contracts—Nonapplicability of certain laws—County and city powers. Camping resort contracts registered under this chapter are exempt from the provisions of chapters 21.20 and 58.19 RCW and any act in this state regulating the offer and sale of land developments, real estate cooperatives, or time shares. Nothing in this chapter prevents counties or cities from enacting ordinances or resolutions setting platting or subdivision requirements solely for camping resorts or for camping resorts as subdivisions or binding site plans if appropriate to chapter 58.17 RCW or local ordinances. [1988 c 159 § 25; 1982 c 69 § 22.]

19.105.520 Unlawful to represent director's administrative approval as determination as to merits of resort—Penalty. Neither the fact that an application for registration nor the written disclosures required by this chapter have been filed, nor the fact that a camping resort contract offering has been effectively registered or exempted, constitutes a finding by the director that the offering or any document filed under this chapter is true, complete, and not misleading, nor does the fact mean that the director has determined in any way the merits or qualifications of or recommended or given approval to any person, camping resort operator, or camping resort contract transaction. It is a gross misdemeanor to make or cause to be made to any prospective purchaser any representation inconsistent with this section. [1988 c 159 § 26; 1982 c 69 § 24.]

19.105.530 Rules, forms, orders—Administration of chapter. (1) The director may make, amend, and repeal rules, forms, and orders when necessary to carry out the provisions of this chapter.

(2) The director may appoint those persons within the department deemed necessary to administer this chapter. The director may delegate to such persons any powers, subject to the authority of the director, that may be necessary to carry out this chapter, including the issuance and processing of administrative proceedings and entering into stipulations under RCW 19.105.380. [1988 c 159 § 27; 1982 c 69 § 25.]

19.105.540 Administrative procedure act application. Chapter 34.05 RCW shall apply to any administrative procedures carried out by the director under this chapter unless otherwise provided in this chapter. [1982 c 69 § 26.]

19.105.550 Administration. This chapter shall be administered by the director of licensing. [1982 c 69 § 27.]

19.105.910 Construction—Chapter as cumulative and nonexclusive. Except as specifically provided in RCW 19.105.510, the provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy available at law. [1982 c 69 § 23.]

19.105.920 Severability—1982 c 69. 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 69 § 29.]

19.105.930 Effective date—1982 c 69. This act shall take effect on November 1, 1982. [1982 c 69 § 32.]

Chapter 19.108

UNIFORM TRADE SECRETS ACT

Sections

- 19.108.010 Definitions.
- 19.108.020 Remedies for misappropriation—Injunction, royalty.
- 19.108.030 Remedies for misappropriation—Damages.
- 19.108.040 Award of attorney's fees.
- 19.108.050 Court orders to preserve secrecy of alleged trade secrets.
- 19.108.060 Actions for misappropriation—Time limitation.
- 19.108.900 Effect of chapter on other law.
- 19.108.910 Construction of uniform act.
- 19.108.920 Short title.
- 19.108.930 Effective date—Application—1981 c 286.
- 19.108.940 Severability—1981 c 286.

Requiring assignment of employee's rights to inventions: RCW 49.44.140, 49.44.150.

19.108.010 Definitions. Unless the context clearly requires otherwise, the definitions set forth in this section apply throughout this chapter.

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means;

(2) "Misappropriation" means:

(a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) Used improper means to acquire knowledge of the trade secret; or

(ii) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was (A) derived from or through a person who had utilized improper means to acquire it, (B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or (C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being

readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. [1981 c 286 § 1.]

19.108.020 Remedies for misappropriation—Injunction, royalty. (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) If the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order. [1981 c 286 § 2.]

19.108.030 Remedies for misappropriation—Damages. (1) In addition to or in lieu of injunctive relief, a complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss.

(2) If wilful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (1). [1981 c 286 § 3.]

19.108.040 Award of attorney's fees. If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or wilful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party. [1981 c 286 § 4.]

19.108.050 Court orders to preserve secrecy of alleged trade secrets. In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval. [1981 c 286 § 5.]

19.108.060 Actions for misappropriation—Time limitation. An action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim. [1981 c 286 § 6.]

19.108.900 Effect of chapter on other law. (1) This chapter displaces conflicting tort, restitutionary, and other

law of this state pertaining to civil liability for misappropriation of a trade secret.

(2) This chapter does not affect:

(a) Contractual or other civil liability or relief that is not based upon misappropriation of a trade secret; or

(b) Criminal liability for misappropriation of a trade secret. [1981 c 286 § 7.]

Theft of trade secrets: RCW 9A.56.010(5), 9A.56.020.

19.108.910 Construction of uniform act. 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. [1981 c 286 § 8.]

19.108.920 Short title. This chapter may be known and cited as the uniform trade secrets act. [1981 c 286 § 9.]

19.108.930 Effective date—Application—1981 c 286. This chapter takes effect on January 1, 1982, and does not apply to misappropriation occurring prior to the effective date. [1981 c 286 § 12.]

19.108.940 Severability—1981 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. [1981 c 286 § 10.]

Chapter 19.110

BUSINESS OPPORTUNITY FRAUD ACT

Sections

- 19.110.010 Legislative declaration.
- 19.110.020 Definitions.
- 19.110.030 Sale or lease of business opportunity—Offer to sell or lease business opportunity—Occurrence in Washington.
- 19.110.040 Application of chapter.
- 19.110.050 Persons proposing to sell or lease business opportunity—Registration required—Application—Renewal—Denial, suspension, or revocation of registration.
- 19.110.060 Registration fees.
- 19.110.070 Disclosure document required—Contents.
- 19.110.080 Disclosure document—Director authorized to accept alternative.
- 19.110.090 Persons proposing to sell or lease business opportunity—Service of process.
- 19.110.100 Seller to provide surety bond or trust account—Action by state or injured person—Damages.
- 19.110.110 Business opportunity contract—Content—Cancellation period.
- 19.110.120 Unlawful acts.
- 19.110.130 Liability of seller for violation of chapter—Remedies—Damages.
- 19.110.140 Director authorized to investigate violations—Authority to subpoena witnesses or require production of documents.
- 19.110.150 Order to cease and desist—Hearing—Notice.
- 19.110.160 Actions by attorney general or prosecuting attorney to enjoin violations—Injunction—Appointment of receiver or conservator—Civil and criminal penalties.
- 19.110.170 Violations constitute unfair practice.
- 19.110.180 Authority of director to issue rules, forms, orders, interpretive opinions.
- 19.110.190 Appointment of administrator—Delegation of powers.
- 19.110.900 Chapter cumulative and nonexclusive.
- 19.110.910 Short title.

19.110.920 Severability—1981 c 155.

19.110.930 Effective date—1981 c 155.

19.110.010 Legislative declaration. The legislature finds and declares that the widespread and unregulated sale of business opportunities has become a common area of investment problems and deceptive practices in the state of Washington. As a result, the provisions of this chapter are necessary to counteract the potential negative impact of the sale of business opportunities upon the economy of the state. [1981 c 155 § 1.]

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

(1) "Business opportunity" means the sale or lease of any product, equipment, supply, or service which is sold or leased to enable the purchaser to start a business; and:

(a) The seller represents that the seller will provide locations or assist the purchaser in finding locations, on premises neither owned nor leased by the purchaser or seller, for the use or operation of vending machines, display racks, cases, or similar devices or coin-operated amusement machines or similar devices; or

(b) The seller represents that the seller will purchase any product made, produced, fabricated, assembled, modified, grown, or bred by the purchaser using, in whole or part, any product, equipment, supply, or service sold or leased to the purchaser by the seller; or

(c) The seller guarantees that the purchaser will earn an income greater than or equal to the price paid for the business opportunity; or

(d) The seller represents that if the purchaser pays a fee exceeding three hundred dollars directly or indirectly for the purpose of the seller providing a sales or marketing program, the seller will provide such a program which will enable the purchaser to derive income from the business opportunity which exceeds the price paid for the business opportunity.

(2) "Person" includes an individual, corporation, partnership, joint venture, or any business entity.

(3) "Seller" means a person who sells or leases a business opportunity.

(4) "Purchaser" means a person who buys or leases a business opportunity.

(5) "Director" means the director of the department of licensing.

(6) "Guarantee" means an undertaking by the seller to refund all or a portion of the purchase price paid for the business opportunity. [1981 c 155 § 2.]

19.110.030 Sale or lease of business opportunity—Offer to sell or lease business opportunity—Occurrence in Washington. (1) An offer to sell or offer to lease a business opportunity occurs in Washington when:

(a) The offer is made in Washington; or

(b) The purchaser resides in Washington at the time of the offer and the business opportunity is or will be located, in whole or in part, in the state of Washington; or

(c) The offer originates from Washington; or

(d) The business opportunity is or will be, in whole or in part, located in Washington.

(2) An offer does not occur in Washington if a seller advertises only in a newspaper having more than two-thirds of its circulation outside the state of Washington, or on a radio or television program originating outside the state and does not sell or lease business opportunities in Washington.

(3) A sale or lease of a business opportunity occurs in Washington when:

(a) The sale or lease is made in Washington; or

(b) The purchaser resides in Washington at the time of the sale or lease, and the business opportunity is or will be located, in whole or in part, in Washington; or

(c) The business opportunity is or will be located in Washington. [1981 c 155 § 3.]

19.110.040 Application of chapter. Nothing in this chapter applies to:

(1) A radio station, television station, publisher, printer, or distributor of a newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of this chapter;

(2) A franchise subject to the provisions of chapter 19.100 RCW;

(3) A security subject to the provisions of chapter 21.20 RCW;

(4) A newspaper distribution system;

(5) The sale, lease, or transfer of a business opportunity by a purchaser if the purchaser sells only one business opportunity in any twelve-month period;

(6) The not-for-profit sale of sales demonstration equipment, materials, or samples where the total cost does not exceed five hundred dollars;

(7) A marketing program made in conjunction with licensing of a registered trademark or service mark for which no consideration is paid. Any consideration paid in conjunction with the purchase of goods at a bona fide wholesale price does not constitute consideration under this subsection; or

(8) A transaction regulated pursuant to chapter 18.85 RCW. [1981 c 155 § 4.]

19.110.050 Persons proposing to sell or lease business opportunity—Registration required—Application—Renewal—Denial, suspension, or revocation of registration. (1) Any person who proposes to sell or lease a business opportunity must register prior to advertising, soliciting, or making any offer, sale, or lease in this state.

(2) Any person proposing to sell or lease a business opportunity must apply for registration by filing with the director:

(a) A copy of the disclosure document required by RCW 19.110.070;

(b) An irrevocable consent to service of process;

(c) The prescribed registration fee; and

(d) Copies of all advertisements intended to be used in connection with the offer and sale of the business opportunity.

(3) If the application meets the requirements for registration, the director shall issue a registration number to

the applicant. The applicant must include the number in every advertisement in this state.

(4) Registration is effective for one year. An applicant must renew registration annually unless the director extends the duration of registration in order to stagger renewal periods. The renewal application must contain:

(a) Any new information necessary to comply with the disclosure requirements of RCW 19.110.070;

(b) The prescribed renewal fee; and

(c) Copies of any and all advertisements intended to be used in connection with the offer and sale of the business opportunity.

(5) The applicant must amend the registration whenever there is any material change in the required information.

(6) The applicant must file copies of all advertisements offering business opportunities seven days before their intended use.

(7) The director may issue an order denying, suspending, or revoking any applicant's registration if the director finds that the order is in the public interest and that:

(a) The registration application is incomplete or contains any statement which is false or misleading with respect to any material fact; or

(b) Any provision of this chapter or any rule or order lawfully imposed under this chapter has been violated; or

(c) The business opportunity includes or would include activities which are illegal; or

(d) The business opportunity has worked or tended to work a fraud on purchasers or would so operate.

(8) The director shall promptly notify the applicant of any order denying, suspending, or revoking registration. The applicant may request a hearing within fifteen days of notification. If the applicant does not request a hearing, the order remains in effect until the director modifies or vacates it. The applicant shall be notified of the right to request a hearing within fifteen days. [1981 c 155 § 5.]

19.110.060 Registration fees. The director shall charge and collect the fees specified by this section. All fees are nonrefundable and shall be deposited in the state treasury.

(1) The registration fee is two hundred dollars.

(2) The renewal fee is one hundred twenty-five dollars.

(3) The amendment fee is thirty dollars. [1981 c 155 § 6.]

19.110.070 Disclosure document required—

Contents. The seller shall provide the purchaser a written disclosure document at least forty-eight hours before the purchaser signs a business opportunity contract. The cover sheet of the disclosure document shall be entitled: "DISCLOSURES REQUIRED BY THE STATE OF WASHINGTON." The following statement shall appear under the title: "The state of Washington has not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract." The cover sheet shall contain only the required title and statement, and both shall be in at least ten point

type. The disclosure document shall include at least the following information:

(1) The official name, address, and principal place of business of the seller and of any parent or affiliated company, or any predecessors;

(2) The names, addresses, and titles of the seller's officers, directors, trustees, general partners, general managers, principal executives, and any other persons responsible for the seller's business opportunity activities;

(3) A statement disclosing which, if any, of the persons listed in subsections (1) or (2) of this section:

(a) Has, at any time during the previous ten years, been convicted of a felony or pleaded nolo contendere to a felony charge if the felony involved fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade;

(b) Has, at any time during the previous ten years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any civil action involving allegations of fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade, or any civil action which was brought by a present or former purchaser or purchasers and which involves or involved the business opportunity;

(c) Is subject to any currently effective state or federal agency or court injunctive or restrictive order, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting business opportunities activities or the business opportunity seller-purchaser relationship, or involving fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

The statement shall include the identity and location of the court or agency, the date of conviction, judgment, or decision, the penalty imposed, the damages assessed, the terms of settlement or the terms of the order, and the date, nature, terms, and conditions of each such order or ruling;

(4) A statement disclosing which, if any, of the persons listed in subsections (1) and (2) of this section has, at any time during the previous ten years:

(a) Filed in bankruptcy; or

(b) Been adjudged bankrupt; or

(c) Been reorganized due to insolvency; or

(d) Been a principal, director, executive officer, or partner of any other person who has filed in bankruptcy, been adjudged bankrupt, or been reorganized due to insolvency;

(5) A statement of when, where, and how long the seller has:

(a) Offered, sold, or leased business opportunity plans; and

(b) Offered, sold, or leased the specific business opportunity plan offered to the purchaser; and

(c) Operated a business of the type offered to the purchaser;

(6) A statement disclosing:

(a) The total number of business opportunities which the seller has sold or leased; and

(b) The number of failures of business opportunities which the seller has sold or leased;

(7) The terms and conditions of payment, including the initial payment, downpayment, and any additional or recurring payments;

(8) A copy of any statement concerning estimated or projected sales or earnings, the data on which the estimations or projections are based, and an explanation of the extent to which the data relates to the actual operations of the business opportunity offered to the purchaser;

(9) A copy of the bond or written notice of the depository, the name of the trustee, and account number of the trust account, if the seller is required by RCW 19.110.100 to establish either a bond or trust account;

(10) A copy of the seller's current (not more than three months old) financial statement and any amendments necessary to reflect material changes in the seller's financial condition;

(11) An unexecuted copy of any business opportunity contract or agreement which the purchaser may be required to sign;

(12) Any additional information which the director requires by rule or order. [1981 c 155 § 7.]

19.110.080 Disclosure document—Director authorized to accept alternative. The director may, by rule or order:

(1) Accept any disclosure document filed with agencies of the United States or any other state; or

(2) Accept any disclosure document compiled in accordance with any rule or regulation of any agency of the United States or any other state; or

(3) Waive disclosure of information which is inapplicable or unnecessary for protection of purchasers. [1981 c 155 § 8.]

19.110.090 Persons proposing to sell or lease business opportunity—Service of process. Every person who proposes to sell or lease a business opportunity in this state through any person acting on an agency basis in the common law sense shall file with the director, in such form as the director by rule prescribes, an irrevocable consent appointing the director or the director's successor in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless (1) the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant on file with the director, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any,

or within such further time as the court allows. [1981 c 155 § 9.]

19.110.100 Seller to provide surety bond or trust account—Action by state or injured person—Damages.

(1) If the seller makes any guarantee described in RCW 19.110.020(1)(c), the seller shall have a surety bond issued by a surety company authorized to do business in Washington or a trust account with a licensed and insured bank or savings institution located in the state of Washington. The trustee shall be acceptable to the director. The bond or the trust account shall be at least fifty thousand dollars. The director may, by rule or order, establish procedures for the initiation, operation, or termination of any bond or trust account required under this section.

(2) The bond or trust account shall be in the name of the state of Washington. It shall be for the benefit of the state and any person injured by any violation of this chapter, or by the seller's breach of any business opportunity contract or obligation arising from a business opportunity contract. The state may bring an action against the bond or trust account to recover penalties. The state or an injured person may bring an action against the bond or trust account for damages to the injured person. The liability of the surety or trustee shall be only for actual damages and shall not exceed the amount of the bond or trust account. [1981 c 155 § 10.]

19.110.110 Business opportunity contract—Content—Cancellation period.

(1) Every business opportunity contract shall be in writing and shall be dated and signed by the purchaser.

(2) The seller shall provide the purchaser with a copy of the completed contract at the time the purchaser signs the contract.

(3) The seller may not receive any consideration before the purchaser signs a business opportunity contract.

(4) The contract shall include the following notifications, in ten point type, immediately above the space for the purchaser's signature:

(a) "Do not sign this contract if any of the spaces for agreed terms are blank."

(b) "Do not sign this contract unless you received a written disclosure document from the seller at least forty-eight hours before signing."

(c) "You are entitled to a copy of this contract at the time you sign it."

(d) "You have seven days exclusive of Saturday, Sunday, and holidays to cancel this contract for any reason by sending written notice to the seller by certified mail, return receipt requested. Notice of cancellation should be mailed to:

.....
(seller's name and business street address)

The notice must be postmarked before midnight of the seventh day exclusive of Saturday, Sunday, and holidays after you sign the contract.

The seller shall return all deposits and payments within ten days after receipt of your cancellation notice.

You must make available to the seller all equipment, products, and supplies provided by the seller within ten days

after receipt of all refunded deposits and payments." [1981 c 155 § 11.]

19.110.120 Unlawful acts. It is unlawful for any person:

(1) To make any untrue or misleading statement of a material fact or to omit to state a material fact in connection with the offer, sale, or lease of any business opportunity in the state; or

(2) To employ any device, scheme, or artifice to defraud; or

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or

(4) To knowingly file or cause to be filed with the director any document which contains any untrue or misleading information; or

(5) To knowingly violate any rule or order of the director. [1981 c 155 § 12.]

19.110.130 Liability of seller for violation of chapter—Remedies—Damages. Any seller who violates any provision of this chapter is liable to the purchaser. The purchaser may sue for actual damages, or an injunction, or rescission, or other relief.

In addition, the purchaser may sue for costs of suit, including a reasonable attorney's fee. The court may increase the amount of damages awarded up to three times the amount of actual damages. [1981 c 155 § 13.]

19.110.140 Director authorized to investigate violations—Authority to subpoena witnesses or require production of documents. The director may make public or private investigations within or outside the state of Washington to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order issued under this chapter. The director, or any officer designated by the director, may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant to the inquiry.

If any person fails to comply with a lawful subpoena, or refuses to testify under lawful interrogation, or refuses to produce documents and records, the director may apply to the superior court of any county for relief. After satisfactory evidence of wilful disobedience, the court may compel obedience by proceedings for contempt. [1981 c 155 § 14.]

19.110.150 Order to cease and desist—Hearing—Notice. (1) The director may order any person to cease and desist from an act or practice if it appears that the person is violating or is about to violate any provision of this chapter or any rule or order issued under this chapter.

(2) Reasonable notice of and opportunity for a hearing shall be given. The director may issue a temporary order to cease and desist pending the hearing. The temporary order shall remain in effect until ten days after the hearing. If a person does not request a hearing within fifteen days of receiving an order to cease and desist, the order becomes

final. Any person who is named in the order to cease and desist shall be notified of the right to request a hearing within fifteen days. [1981 c 155 § 15.]

19.110.160 Actions by attorney general or prosecuting attorney to enjoin violations—Injunction—Appointment of receiver or conservator—Civil and criminal penalties. (1)(a) The attorney general, in the name of the state or the director, or the proper prosecuting attorney may bring an action to enjoin any person from violating any provision of this chapter. Upon proper showing, the superior court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus.

The court may make such additional orders or judgments as may be necessary to restore to any person in interest and money or property, real or personal, which may have been acquired by means of an act prohibited or declared unlawful by this chapter.

The prevailing party may recover costs of the action, including a reasonable attorney's fee.

(b) The superior court issuing an injunction shall retain jurisdiction. Any person who violates the terms of an injunction shall pay a civil penalty of not more than twenty-five thousand dollars.

(2) The attorney general, in the name of the state or the director, or the proper prosecuting attorney may apply to the superior court to appoint a receiver or conservator for any person, or the assets of any person, who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

(3) Any person who violates any provision of this chapter except as provided in subsection (1)(b) of this section, is subject to a civil penalty not to exceed two thousand dollars for each violation. Civil penalties authorized by this subsection may be imposed in any civil action brought by the attorney general or proper prosecuting attorney under this chapter and shall be deposited in the state treasury. Any action for recovery of such civil penalty shall be commenced within five years.

(4) Any person who violates RCW 19.110.050 or 19.110.070 is guilty of a gross misdemeanor. Any person who knowingly violates RCW 19.110.050 or 19.110.070 is guilty of a class B felony. Any violation of RCW 19.110.120 is a class B felony. No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation.

(5) The director may refer evidence concerning violations of this chapter to the attorney general or proper prosecuting attorney. The prosecuting attorney, or the attorney general pursuant to authority granted by RCW 10.01.190, 43.10.230, 43.10.232, and 43.10.234 may, with or without such reference, institute appropriate criminal proceedings. [1981 c 155 § 16.]

19.110.170 Violations constitute unfair practice. Any violation of this chapter is declared to be an unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of application of the Consumer Protection Act, chapter 19.86 RCW. [1981 c 155 § 20.]

19.110.180 Authority of director to issue rules, forms, orders, interpretive opinions. The director may make, amend, and repeal rules, forms, and orders as necessary to carry out the provisions of this chapter. The director may honor requests for interpretive opinions. [1981 c 155 § 17.]

19.110.190 Appointment of administrator—Delegation of powers. The director shall appoint a competent person to administer this chapter. The director shall delegate to an administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this chapter. The administrator will hold office at the pleasure of the director. [1981 c 155 § 18.]

19.110.900 Chapter cumulative and nonexclusive. The provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy available at law. [1981 c 155 § 19.]

19.110.910 Short title. This chapter may be known and cited as the Business Opportunity Fraud Act. [1981 c 155 § 22.]

19.110.920 Severability—1981 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. [1981 c 155 § 21.]

19.110.930 Effective date—1981 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 July 1, 1981. [1981 c 155 § 25.]

Chapter 19.112 MOTOR FUEL QUALITY ACT

Sections

19.112.005	Purpose.
19.112.010	Definitions.
19.112.020	Administration of chapter—Standards—Testing laboratory.
19.112.030	Director's authority.
19.112.040	Motor fuel registration.
19.112.050	Unlawful acts.
19.112.060	Penalties.
19.112.070	Injunctive relief.
19.112.080	Chapter in addition to chapter 19.94 RCW.
19.112.090	Air pollution reduction—Variances from ASTM.
19.112.900	Short title.
19.112.901	Severability—1990 c 102.
19.112.902	Effective date—1990 c 102.

19.112.005 Purpose. It is desired that there should be uniformity among the requirements of the several states. This chapter provides for the establishment of quality specifications for all liquid motor fuels, except aviation fuel, marine fuel, and liquefied petroleum gases, and establishes a sampling, testing, and enforcement program. [1990 c 102 § 1.]

19.112.010 Definitions. As used in this chapter:

(1) "Motor fuel" means any liquid product used for the generation of power in an internal combustion engine used for the propulsion of a motor vehicle upon the highways of this state. Motor fuels containing ethanol may be marketed if either (a) the base motor fuel meets the applicable standards before the addition of the ethanol or (b) the resultant blend meets the applicable standards after the addition of the ethanol.

(2) "Director" means the director of agriculture. [1991 c 145 § 1; 1990 c 102 § 2.]

19.112.020 Administration of chapter—Standards—Testing laboratory. This chapter shall be administered by the director or his or her authorized agent. For the purpose of administering this chapter, the standards set forth in the Annual Book of ASTM Standards and supplements thereto, and revisions thereof, are adopted, together with applicable federal environmental protection agency standards. If a conflict exists between federal environmental protection agency standards, ASTM standards, or state standards, for purposes of uniformity, federal environmental protection agency standards shall take precedence over ASTM standards. Any state standards adopted must be consistent with federal environmental protection agency standards and ASTM standards not in conflict with federal environmental protection agency standards.

The director may establish a testing laboratory. The director may also adopt rules on false and misleading advertising, labeling and posting of prices, and the standards for, and identity of, motor fuels. [1990 c 102 § 3.]

19.112.030 Director's authority. The director may:

(1) Enforce and administer this chapter by inspections, analyses, and other appropriate actions;

(2) Have access during normal business hours to all places where motor fuels are marketed for the purpose of examination, inspection, taking of samples, and investigation. If access is refused by the owner or agent or other persons leasing the same, the director or his or her agent may obtain an administrative search warrant from a court of competent jurisdiction;

(3) Collect or cause to be collected, samples of motor fuels marketed in this state, and cause such samples to be tested or analyzed for compliance with this chapter;

(4) Issue a stop-sale order for any motor fuel found not to be in compliance and rescind the stop-sale order if the motor fuel is brought into compliance with this chapter;

(5) Refuse, revoke, or suspend the registration of a motor fuel;

(6) Delegate to authorized agents any of the responsibilities for the proper administration of this chapter;

(7) Establish a motor fuel testing laboratory. [1990 c 102 § 4.]

19.112.040 Motor fuel registration. All motor fuel shall be registered by the name, brand, or trademark under which it will be sold at the terminal. Registration shall include:

(1) The name and address of the person registering the motor fuel;

(2) The antiknock index or cetane number, as appropriate, at which the motor fuel is to be marketed;

(3) A certification, declaration, or affidavit that each individual grade or type of motor fuel shall conform to this chapter. [1990 c 102 § 5.]

19.112.050 Unlawful acts. It is unlawful to:

(1) Market motor fuels in any manner that may deceive or tend to deceive the purchaser as to the nature, price, quantity, and quality of a motor fuel;

(2) Fail to register a motor fuel;

(3) Submit incorrect, misleading, or false information regarding the registration of a motor fuel;

(4) Hinder or obstruct the director, or his or her authorized agent, in the performance of his or her duties;

(5) Market a motor fuel that is contrary to this chapter. [1990 c 102 § 6.]

19.112.060 Penalties. Any person who knowingly violates any provision of this chapter or rules adopted under it is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both. The director shall assess a civil penalty ranging from one hundred dollars to ten thousand dollars per occurrence, giving due consideration to the appropriateness of the penalty with respect to the gravity of the violation, and the history of previous violations. Civil penalties collected under this chapter shall be deposited into the motor vehicle fund. [1990 c 102 § 7.]

19.112.070 Injunctive relief. The director may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating any provision of this chapter. [1990 c 102 § 8.]

19.112.080 Chapter in addition to chapter 19.94 RCW. This chapter is in addition to any requirements under chapter 19.94 RCW. [1990 c 102 § 9.]

19.112.090 Air pollution reduction—Variances from ASTM. The directors of the departments of ecology and agriculture may grant a variance from ASTM motor fuel specifications if necessary to produce lower emission motor fuels. [1991 c 199 s 231.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

19.112.900 Short title. RCW 19.112.005 through 19.112.080 shall constitute a new chapter in Title 19 RCW and may be cited as the motor fuel quality act. [1990 c 102 § 11.]

19.112.901 Severability—1990 c 102. 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 102 § 10.]

19.112.902 Effective date—1990 c 102. This act shall take effect on July 1, 1990. [1990 c 102 § 12.]

Chapter 19.116

MOTOR VEHICLE SUBLEASING OR TRANSFER

Sections

19.116.005 Finding.

19.116.010 Public interest—Finding.

19.116.020 Definitions.

19.116.030 Application of consumer protection act.

19.116.040 Violations of chapter.

19.116.050 Unlawful transfer of motor vehicle—Conditions.

19.116.060 Unlawful subleasing of motor vehicle—Conditions.

19.116.070 Nonparties assisting, causing, or arranging unlawful assignment or transfer.

19.116.080 Unlawful subleasing or transfer—Class C felony.

19.116.090 Violations—Criminal profiteering.

19.116.100 Persons who may bring action—Damages.

19.116.110 Transfer or assignment of interest by persons with motor vehicles under lease contract or security agreement not subject to prosecution—Enforceability of contract or agreement not affected.

19.116.120 Penalties in addition to other remedies or penalties.

19.116.900 Severability—1990 c 44.

19.116.005 Finding. The legislature finds that the practices of unlawful subleasing or unlawful transfer of an ownership interest in motor vehicles have a substantial negative impact on the state's financial institutions and other businesses engaged in the financing and leasing of motor vehicles. [1990 c 44 § 1.]

19.116.010 Public interest—Finding. The legislature finds that the practice of unlawful subleasing or unlawful transfer of an ownership interest in motor vehicles is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1990 c 44 § 2.]

19.116.020 Definitions. The definitions set forth in this section apply throughout this chapter, unless the context requires otherwise:

(1) "Debtor" has the meaning set forth in RCW 62A.9-105(1)(d).

(2) "Motor vehicle" means a vehicle required to be registered under chapter 46.16 RCW.

(3) "Person" means an individual, company, firm, association, partnership, trust, corporation, or other legal entity.

(4) "Security agreement" has the meaning set forth in RCW 62A.9-105(1)(l).

(5) "Security interest" has the meaning set forth in RCW 62A.1-201(37).

(6) "Secured party" has the meaning set forth in RCW 62A.9-105(1)(m). [1990 c 44 § 3.]

19.116.030 Application of consumer protection act. Unlawful subleasing or unlawful transfer of an ownership interest in motor vehicles are [is] not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or

commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1990 c 44 § 4.]

19.116.040 Violations of chapter. (1) It is a violation of this chapter for a vehicle dealer, as defined in RCW 46.70.011(3), to engage in the unlawful transfer of an ownership interest in motor vehicles.

(2) It is a violation of this chapter for a person to engage in the unlawful subleasing of motor vehicles. [1990 c 44 § 5.]

19.116.050 Unlawful transfer of motor vehicle—Conditions. A dealer engages in an act of unlawful transfer of ownership interest in motor vehicles when all of the following circumstances are met:

(1) The dealer does not pay off any balance due to the secured party on a vehicle acquired by the dealer, no later than the close of the second business day after the acquisition date of the vehicle; and

(2) The dealer does not obtain a certificate of ownership under RCW 46.12.140 for each used vehicle kept in his or her possession unless that certificate is in the possession of the person holding a security interest in the dealer's inventory; and

(3) The dealer does not transfer the certificate of ownership after the transferee has taken possession of the motor vehicle. [1990 c 44 § 6.]

19.116.060 Unlawful subleasing of motor vehicle—Conditions. A person engages in an act of unlawful subleasing of a motor vehicle if all of the following conditions are met:

(1) The motor vehicle is subject to a lease contract or security agreement the terms of which prohibit the transfer or assignment of any right or interest in the motor vehicle or under the lease contract or security agreement; and

(2) The person is not a party to the lease contract or security agreement; and

(3) The person transfers or assigns or purports to transfer or assign any right or interest in the motor vehicle or under the lease contract or security agreement to any person who is not a party to the lease contract or security agreement; and

(4) The person does not obtain, before the transfer or assignment described in subsection (3) of this section, written consent to the transfer or assignment from the motor vehicle lessor in connection with a lease contract or from the secured party in connection with a security agreement; and

(5) The person receives compensation or some other consideration for the transfer or assignment described in subsection (3) of this section. [1990 c 44 § 7.]

19.116.070 Nonparties assisting, causing, or arranging unlawful assignment or transfer. (1) A person engages in an act of unlawful subleasing of a motor vehicle when the person is not a party to the lease contract or security agreement, and assists, causes, or arranges an actual or purported assignment as described in RCW 19.116.060.

(2) A dealer engages in an act of unlawful transfer of an ownership interest in a motor vehicle when the dealer is not a party to the security agreement, and assists, causes, or

arranges an actual or purported transfer as described in RCW 19.116.050. [1990 c 44 § 8.]

19.116.080 Unlawful subleasing or transfer—Class C felony. Unlawful subleasing or unlawful transfer of an ownership interest in a motor vehicle is a class C felony punishable under chapter 9A.20 RCW. [1990 c 44 § 9.]

19.116.090 Violations—Criminal profiteering. A violation of this chapter constitutes an act of criminal profiteering, as defined in RCW 9A.82.010. [1990 c 44 § 10.]

19.116.100 Persons who may bring action—Damages. (1) Any one or more of the following persons who suffers damage proximately resulting from one or more acts of unlawful motor vehicle subleasing or unlawful transfer of an ownership interest in a motor vehicle may bring an action against the person who has engaged in those acts:

(a) A secured party;

(b) A debtor;

(c) A lessor;

(d) A lessee;

(e) An actual or purported transferee or assignee;

(f) A guarantor of a lease or security agreement or a guarantor of a purported transferee or assignee.

(2) In an action for unlawful subleasing or unlawful transfer of an ownership interest in a motor vehicle the court may award actual damages; equitable relief, including, but not limited to an injunction and restitution of money and property; reasonable attorneys' fees and costs; and any other relief that the court deems proper. [1990 c 44 § 11.]

19.116.110 Transfer or assignment of interest by persons with motor vehicles under lease contract or security agreement not subject to prosecution—Enforceability of contract or agreement not affected. (1) The actual or purported transfer or assignment, or the assisting, causing, or arranging of an actual or purported transfer or assignment, of any right or interest in a motor vehicle or under a lease contract or security agreement, by an individual who is a party to the lease contract or security agreement is not an act of unlawful subleasing of or unlawful transfer of an ownership interest in a motor vehicle and is not subject to prosecution.

(2) This chapter does not affect the enforceability of any provision of a lease contract or security agreement by a party thereto. [1990 c 44 § 12.]

19.116.120 Penalties in addition to other remedies or penalties. The penalties under this chapter are in addition to any other remedies or penalties provided by law for the conduct proscribed by this chapter. [1990 c 44 § 13.]

19.116.900 Severability—1990 c 44. 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 44 § 15.]

Chapter 19.118

MOTOR VEHICLE WARRANTIES

Sections

- 19.118.005 Legislative intent.
- 19.118.010 Motor vehicle manufacturers—Express warranties—Service and repair facilities.
- 19.118.021 Definitions.
- 19.118.031 Manufacturers and new motor vehicle dealers—Responsibilities to consumers—Extension of warranty period.
- 19.118.041 Replacement or repurchase of nonconforming new motor vehicle—Reasonable number of attempts—Liabilities and rights of parties—Application of consumer protection act.
- 19.118.061 Vehicle with nonconformities or out of service—Notification of correction—Resale or transfer of title—Issuance of new title—Disclosure to buyer.
- 19.118.070 Remedies.
- 19.118.080 New motor vehicle arbitration boards—Board proceedings—Prerequisite to filing action in superior court.
- 19.118.090 Request for arbitration—Eligibility—Rejection—Remedies—Defenses—Acceptance or appeal—Fine.
- 19.118.100 Trial de novo—Posting security—Recovery.
- 19.118.110 Arbitration fee—New motor vehicle arbitration account—Report by attorney general.
- 19.118.120 Application of consumer protection act.
- 19.118.130 Waivers, limitations, disclaimers—Void.
- 19.118.140 Other rights and remedies not precluded.
- 19.118.150 Informal dispute resolution settlement procedure.
- 19.118.160 New motor vehicle arbitration boards—When established by attorney general—Membership—Travel expenses and compensation.
- 19.118.900 Effective dates—1987 c 344.
- 19.118.902 Severability—1987 c 344.
- 19.118.903 Severability—1989 c 347.
- 19.118.904 Effective date—1989 c 347.

19.118.005 Legislative intent. The legislature recognizes that a new motor vehicle is a major consumer purchase and that a defective motor vehicle is likely to create hardship for, or may cause injury to, the consumer. The legislature further recognizes that good cooperation and communication between a manufacturer and a new motor vehicle dealer will considerably increase the likelihood that a new motor vehicle will be repaired within a reasonable number of attempts. It is the intent of the legislature to ensure that the consumer is made aware of his or her rights under this chapter and is not refused information, documents, or service that would otherwise obstruct the exercise of his or her rights.

In enacting these comprehensive measures, it is the intent of the legislature to create the proper blend of private and public remedies necessary to enforce this chapter, such that a manufacturer will be sufficiently induced to take necessary steps to improve quality control at the time of production or provide better warranty service for the new motor vehicles that it sells in this state. [1987 c 344 § 1.]

19.118.010 Motor vehicle manufacturers—Express warranties—Service and repair facilities. Every manufacturer of motor vehicles sold in this state and for which the manufacturer has made an express warranty shall maintain in this state sufficient service and repair facilities reasonably close to all areas in which its motor vehicles are sold to carry out the terms of the warranties or designate and authorize in this state as service and repair facilities indepen-

dent repair or service facilities reasonably close to all areas in which its motor vehicles are sold to carry out the terms of the warranties. As a means of complying with this section, a manufacturer may enter into warranty service contracts with independent service and repair facilities. [1983 c 240 § 1.]

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

(1) "Board" means new motor vehicle arbitration board.

(2) "Collateral charges" means any sales or lease related charges including but not limited to sales tax, use tax, arbitration service fees, unused license fees, unused registration fees, unused title fees, finance charges, prepayment penalties, credit disability and credit life insurance costs not otherwise refundable, any other insurance costs prorated for time out of service, transportation charges, dealer preparation charges, or any other charges for service contracts, undercoating, rustproofing, or factory or dealer installed options.

(3) "Condition" means a general problem that results from a defect or malfunction of one or more parts, or their improper installation by the manufacturer, its agents, or the new motor vehicle dealer.

(4) "Consumer" means any person who has entered into an agreement or contract for the transfer, lease, or purchase of a new motor vehicle, other than for purposes of resale or sublease, during the duration of the warranty period defined under this section.

(5) "Court" means the superior court in the county where the consumer resides, except if the consumer does not reside in this state, then the superior court in the county where an arbitration hearing or determination was conducted or made pursuant to this chapter.

(6) "Incidental costs" means any reasonable expenses incurred by the consumer in connection with the repair of the new motor vehicle, including any towing charges and the costs of obtaining alternative transportation.

(7) "Manufacturer" means any person engaged in the business of constructing or assembling new motor vehicles or engaged in the business of importing new motor vehicles into the United States for the purpose of selling or distributing new motor vehicles to new motor vehicle dealers. "Manufacturer" does not include any person engaged in the business of set-up of motorcycles as an agent of a new motor vehicle dealer if the person does not otherwise construct or assemble motorcycles.

(8) "Motorcycle" means any motorcycle as defined in RCW 46.04.330 which has an engine displacement of at least seven hundred fifty cubic centimeters.

(9) "New motor vehicle" means any new self-propelled vehicle, including a new motorcycle, primarily designed for the transportation of persons or property over the public highways that, after original retail purchase or lease in this state, was initially registered in this state or for which a temporary motor vehicle license was issued pursuant to RCW 46.16.460, but does not include vehicles purchased or leased by a business as part of a fleet of ten or more vehicles. If the motor vehicle is a motor home, this chapter shall apply to the self-propelled vehicle and chassis, but does not include those portions of the vehicle designated, used, or

maintained primarily as a mobile dwelling, office, or commercial space. The term "new motor vehicle" does not include trucks with nineteen thousand pounds or more gross vehicle weight rating. The term "new motor vehicle" includes a demonstrator or lease-purchase vehicle as long as a manufacturer's warranty was issued as a condition of sale.

(10) "New motor vehicle dealer" means a person who holds a dealer agreement with a manufacturer for the sale of new motor vehicles, who is engaged in the business of purchasing, selling, servicing, exchanging, or dealing in new motor vehicles, and who is licensed as a dealer by the state of Washington.

(11) "Nonconformity" means a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of a new motor vehicle, but does not include a defect or condition that is the result of abuse, neglect, or unauthorized modification or alteration of the new motor vehicle.

(12) "Purchase price" means the cash price of the new motor vehicle appearing in the sales agreement or contract, including any allowance for a trade-in vehicle; "purchase price" in the instance of a lease means the purchase price or value of the vehicle declared to the department of licensing for purposes of tax collection.

Where the consumer is a second or subsequent purchaser, lessee, or transferee and the consumer selects repurchase of the motor vehicle, "purchase price" means the purchase price of the second or subsequent purchase or lease. Where the consumer is a second or subsequent purchaser, lessee, or transferee and the consumer selects replacement of the motor vehicle, "purchase price" means the original purchase price.

(13) "Reasonable offset for use" means the definition provided in RCW 19.118.041(1)(c) for a new motor vehicle other than a new motorcycle. The reasonable offset for use for a new motorcycle shall be computed by the number of miles that the vehicle traveled before the manufacturer's acceptance of the vehicle upon repurchase or replacement multiplied by the purchase price, and divided by twenty-five thousand.

(14) "Reasonable number of attempts" means the definition provided in RCW 19.118.041.

(15) "Replacement motor vehicle" means a new motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options.

(16) "Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the consumer's ability to control or operate the new motor vehicle for ordinary use or reasonable intended purposes or creates a risk of fire or explosion.

(17) "Substantially impair" means to render the new motor vehicle unreliable, or unsafe for ordinary use, or to diminish the resale value of the new motor vehicle below the average resale value for comparable motor vehicles.

(18) "Warranty" means any implied warranty, any written warranty of the manufacturer, or any affirmation of fact or promise made by the manufacturer in connection with the sale of a new motor vehicle that becomes part of the basis of the bargain. The term "warranty" pertains to the obligations of the manufacturer in relation to materials,

workmanship, and fitness of a new motor vehicle for ordinary use or reasonably intended purposes throughout the duration of the warranty period as defined under this section.

(19) "Warranty period" means the period ending two years after the date of the original delivery to the consumer of a new motor vehicle, or the first twenty-four thousand miles of operation, whichever occurs first. [1990 c 239 § 1; 1989 c 347 § 1; 1987 c 344 § 2.]

19.118.031 Manufacturers and new motor vehicle dealers—Responsibilities to consumers—Extension of warranty period. (1) Each new motor vehicle dealer shall provide an owner's manual which shall be published by the manufacturer and include a list of the addresses and phone numbers for its zone or regional offices for this state.

(2) At the time of purchase, the new motor vehicle dealer shall provide the consumer with a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared and supplied by the attorney general and shall contain a toll-free number that the consumer can contact for information regarding the procedures and remedies under this chapter.

(3) For the purposes of this chapter, if a new motor vehicle does not conform to the warranty and the consumer reports the nonconformity during the term of the warranty period or the period of coverage of the applicable manufacturer's written warranty, whichever is less, to the manufacturer, its agent, or the new motor vehicle dealer who sold the new motor vehicle, the manufacturer, its agent, or the new motor vehicle dealer shall make repairs as are necessary to conform the vehicle to the warranty, regardless of whether such repairs are made after the expiration of the warranty period. Any corrections or attempted repairs undertaken by a new motor vehicle dealer under this chapter shall be treated as warranty work and billed by the dealer to the manufacturer in the same manner as other work under the manufacturer's written warranty is billed. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(4) Upon request from the consumer, the manufacturer or new motor vehicle dealer shall provide a copy of any report or computer reading compiled by the manufacturer's field or zone representative regarding inspection, diagnosis, or test-drive of the consumer's new motor vehicle, or shall provide a copy of any technical service bulletin issued by the manufacturer regarding the year and model of the consumer's new motor vehicle as it pertains to any material, feature, component, or the performance thereof.

(5) The new motor vehicle dealer shall provide to the consumer each time the consumer's vehicle is returned from being diagnosed or repaired under the warranty, a fully itemized, legible statement or repair order indicating any diagnosis made, and all work performed on the vehicle including but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the vehicle was submitted for repair, and the date when the vehicle was made available to the consumer.

(6) No manufacturer, its agent, or the new motor vehicle dealer may refuse to diagnose or repair any nonconformity covered by the warranty for the purpose of avoiding liability under this chapter.

(7) For purposes of this chapter, consumers shall have the rights and remedies, including a cause of action, against manufacturers as provided in this chapter.

(8) The warranty period and thirty-day out-of-service period shall be extended by any time that repair services are not available to the consumer as a direct result of a strike, war, invasion, fire, flood, or other natural disaster. [1987 c 344 § 3.]

19.118.041 Replacement or repurchase of nonconforming new motor vehicle—Reasonable number of attempts—Liabilities and rights of parties—Application of consumer protection act. (1) If the manufacturer, its agent, or the new motor vehicle dealer is unable to conform the new motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer, within forty calendar days of a consumer's written request to the manufacturer's corporate, dispute resolution, zone, or regional office address shall, at the option of the consumer, replace or repurchase the new motor vehicle.

(a) The replacement motor vehicle shall be identical or reasonably equivalent to the motor vehicle to be replaced as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options. Where the manufacturer supplies a replacement motor vehicle, the manufacturer shall be responsible for sales tax, license, and registration fees. Compensation for a reasonable offset for use shall be paid by the consumer to the manufacturer in the event that the consumer accepts a replacement motor vehicle.

(b) When repurchasing the new motor vehicle, the manufacturer shall refund to the consumer the purchase price, all collateral charges, and incidental costs, less a reasonable offset for use. When repurchasing the new motor vehicle, in the instance of a lease, the manufacturer shall refund to the consumer all payments made by the consumer under the lease including but not limited to all lease payments, trade-in value or inception payment, security deposit, all collateral charges and incidental costs less a reasonable offset for use. The manufacturer shall make such payment to the lessor and/or lienholder of record as necessary to obtain clear title to the motor vehicle and upon the lessor's and/or lienholder's receipt of that payment and payment by the consumer of any late payment charges, the consumer shall be relieved of any future obligation to the lessor and/or lienholder.

(c) The reasonable offset for use shall be computed by multiplying the number of miles that the vehicle traveled directly attributable to use by the consumer times the purchase price, and dividing the product by one hundred thousand. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects repurchase of the motor vehicle, "the number of miles that the vehicle traveled" shall be calculated from the date of purchase or lease by the consumer. Where

the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects replacement of the motor vehicle, "the number of miles that the vehicle traveled" shall be calculated from the original purchase, lease, or in-service date.

(2) Reasonable number of attempts shall be deemed to have been undertaken by the manufacturer, its agent, or the new motor vehicle dealer to conform the new motor vehicle to the warranty within the warranty period, if: (a) The same serious safety defect has been subject to diagnosis or repair two or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the serious safety defect continues to exist; (b) the same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the nonconformity continues to exist; or (c) the vehicle is out-of-service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of thirty calendar days, at least fifteen of them during the period of the applicable manufacturer's written warranty. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(3) No new motor vehicle dealer may be held liable by the manufacturer for any collateral charges, incidental costs, purchase price refunds, or vehicle replacements. Manufacturers shall not have a cause of action against dealers under this chapter. Consumers shall not have a cause of action against dealers under this chapter, but a violation of any responsibilities imposed upon dealers under this chapter is a per se violation of chapter 19.86 RCW. Consumers may pursue rights and remedies against dealers under any other law, including chapters 46.70 and 46.71 RCW. Manufacturers and consumers may not make dealers parties to arbitration board proceedings under this chapter. [1989 c 347 § 2; 1987 c 344 § 4.]

19.118.061 Vehicle with nonconformities or out of service—Notification of correction—Resale or transfer of title—Issuance of new title—Disclosure to buyer. (1) A manufacturer shall be prohibited from reselling any motor vehicle determined or adjudicated as having a serious safety defect unless the serious safety defect has been corrected and the manufacturer warrants upon the resale that the defect has been corrected.

(2) After the replacement or repurchase of a motor vehicle determined to have a nonconformity or to have been out of service for thirty or more calendar days pursuant to this chapter, the manufacturer shall notify the attorney general and the department of licensing, by certified mail or by personal service, upon receipt of the motor vehicle. If the nonconformity in the motor vehicle is corrected, the manufacturer shall notify the attorney general and the department of licensing of such correction.

(3) Upon the resale, either at wholesale or retail, or transfer of title of a motor vehicle and which was previously returned after a final determination, adjudication, or settlement under this chapter or under a similar statute of any other state, the manufacturer, its agent, or the new motor

vehicle dealer shall execute and deliver to the buyer before sale an instrument in writing setting forth information identifying the nonconformity in a manner to be specified by the attorney general, and the department of licensing shall place on the certificate of title information indicating the vehicle was returned under this chapter.

(4) Upon receipt of the manufacturer's notification under subsection (2) of this section that the nonconformity has been corrected and upon the manufacturer's request and payment of any fees, the department of licensing shall issue a new title with information indicating the vehicle was returned under this chapter and that the nonconformity has been corrected. Upon the resale, either at wholesale or retail, or transfer of title of a motor vehicle for which a new title has been issued under this subsection, the manufacturer shall warrant upon the resale that the nonconformity has been corrected, and the manufacturer, its agent, or the new motor vehicle dealer shall execute and deliver to the buyer before sale an instrument in writing setting forth information identifying the nonconformity and indicating that it has been corrected in a manner to be specified by the attorney general. [1989 c 347 § 3; 1987 c 344 § 5.]

19.118.070 Remedies. The remedies provided under this chapter are cumulative and are in addition to any other remedies provided by law. [1983 c 240 § 7.]

19.118.080 New motor vehicle arbitration boards—Board proceedings—Prerequisite to filing action in superior court. (1) Except as provided in RCW 19.118.160, the attorney general shall contract with one or more private entities to conduct arbitration proceedings in order to settle disputes between consumers and manufacturers as provided in this chapter, and each private entity shall constitute a new motor vehicle arbitration board for purposes of this chapter. The entities shall not be affiliated with any manufacturer or new motor vehicle dealer and shall have available the services of persons with automotive technical expertise to assist in resolving disputes under this chapter. No private entity or its officers or employees conducting board proceedings and no arbitrator presiding at such proceedings shall be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle. Payment to the entities for the arbitration services shall be made from the new motor vehicle arbitration account.

(2) The attorney general shall adopt rules for the uniform conduct of the arbitrations by the boards whether conducted by a private entity or by the attorney general pursuant to RCW 19.118.160, which rules shall include but not be limited to the following procedures:

(a) At all arbitration proceedings, the parties are entitled to present oral and written testimony, to present witnesses and evidence relevant to the dispute, to cross-examine witnesses, and to be represented by counsel.

(b) A dealer, manufacturer, or other persons shall produce records and documents requested by a party which are reasonably related to the dispute. If a dealer, manufacturer, or other person refuses to comply with such a request, a party may request the attorney general to issue a subpoena on behalf of the board.

The subpoena shall be issued only for the production of records and documents which the board has determined are reasonably related to the dispute, including but not limited to documents described in RCW 19.118.031 (4) or (5).

If a party fails to comply with the subpoena, the arbitrator may at the outset of the arbitration hearing impose any of the following sanctions: (i) Find that the matters which were the subject of the subpoena, or any other designated facts, shall be taken to be established for purposes of the hearing in accordance with the claim of the party which requested the subpoena; (ii) refuse to allow the disobedient party to support or oppose the designated claims or defenses, or prohibit that party from introducing designated matters into evidence; (iii) strike claims or defenses, or parts thereof; or (iv) render a decision by default against the disobedient party.

If a nonparty fails to comply with a subpoena and upon an arbitrator finding that without such compliance there is insufficient evidence to render a decision in the dispute, the attorney general shall enforce such subpoena in superior court and the arbitrator shall continue the arbitration hearing until such time as the nonparty complies with the subpoena or the subpoena is quashed.

(c) A party may obtain written affidavits from employees and agents of a dealer, a manufacturer or other party, or from other potential witnesses, and may submit such affidavits for consideration by the board.

(d) Records of the board proceedings shall be open to the public. The hearings shall be open to the public to the extent practicable.

(e) Where the board proceedings are conducted by one or more private entities, a single arbitrator may be designated to preside at such proceedings.

(3) A consumer shall exhaust the new motor vehicle arbitration board remedy or informal dispute resolution settlement procedure under RCW 19.118.150 before filing any superior court action.

(4) The attorney general shall maintain records of each dispute submitted to the new motor vehicle arbitration board, including an index of new motor vehicles by year, make, and model.

(5) The attorney general shall compile aggregate annual statistics for all disputes submitted to, and decided by, the new motor vehicle arbitration board, as well as annual statistics for each manufacturer that include, but shall not be limited to, the number and percent of: (a) Replacement motor vehicle requests; (b) purchase price refund requests; (c) replacement motor vehicles obtained in prehearing settlements; (d) purchase price refunds obtained in prehearing settlements; (e) replacement motor vehicles awarded in arbitration; (f) purchase price refunds awarded in arbitration; (g) board decisions neither complied with during the forty calendar day period nor petitioned for appeal within the thirty calendar day period; (h) board decisions appealed categorized by consumer or manufacturer; (i) the nature of the court decisions and who the prevailing party was; (j) appeals that were held by the court to be brought without good cause; and (k) appeals that were held by the court to be brought solely for the purpose of harassment. The statistical compilations shall be public information.

(6) The attorney general shall submit biennial reports of the information in this section to the senate and house of

representatives committees on commerce and labor, with the first report due January 1, 1990.

(7) The attorney general shall adopt rules to implement this chapter. Such rules shall include uniform standards by which the boards shall make determinations under this chapter, including but not limited to rules which provide:

(a) A board shall find that a nonconformity exists if it determines that the consumer's new motor vehicle has a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of the vehicle.

(b) A board shall find that a reasonable number of attempts to repair a nonconformity have been undertaken if: (i) The same serious safety defect has been subject to diagnosis or repair two or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the serious safety defect continues to exist; (ii) the same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the nonconformity continues to exist; or (iii) the vehicle is out-of-service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of thirty calendar days, at least fifteen of them during the period of the applicable manufacturer's written warranty. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(c) A board shall find that a manufacturer has failed to comply with RCW 19.118.041 if it finds that the manufacturer, its agent, or the new motor vehicle dealer has failed to correct a nonconformity after a reasonable number of attempts and the manufacturer has failed, within forty days of the consumer's written request, to repurchase the vehicle or replace the vehicle with a vehicle identical or reasonably equivalent to the vehicle being replaced.

(8) The attorney general shall provide consumers with information regarding the procedures and remedies under this chapter. [1989 c 347 § 4; 1987 c 344 § 6.]

19.118.090 Request for arbitration—Eligibility—Rejection—Remedies—Defenses—Acceptance or appeal—Fine. (1) A consumer may request arbitration under this chapter by submitting the request to the attorney general. Within ten days after receipt of an arbitration request, the attorney general shall make a reasonable determination of the cause of the request for arbitration and provide necessary information to the consumer regarding the consumer's rights and remedies under this chapter. The attorney general shall assign the dispute to a board, except that if it clearly appears from the materials submitted by the consumer that the dispute is not eligible for arbitration, the attorney general may refuse to assign the dispute and shall explain any required procedures to the consumer.

(2) Manufacturers shall submit to arbitration if such arbitration is requested by the consumer within thirty months from the date of the original delivery of the new motor vehicle to a consumer at retail and if the consumer's dispute is deemed eligible for arbitration by the board.

(3) The new motor vehicle arbitration board may reject for arbitration any dispute that it determines to be frivolous, fraudulent, filed in bad faith, res judicata or beyond its authority. Any dispute deemed by the board to be ineligible for arbitration due to insufficient evidence may be reconsidered by the board upon the submission of other information or documents regarding the dispute that would allegedly qualify for relief under this chapter. Following a second review, the board may reject the dispute for arbitration if evidence is still clearly insufficient to qualify the dispute for relief under this chapter. A rejection by the board is subject to review by the attorney general or may be appealed under RCW 19.118.100.

A decision to reject any dispute for arbitration shall be sent by certified mail to the consumer and the manufacturer, and shall contain a brief explanation as to the reason therefor.

(4) The arbitration board shall award the remedies under RCW 19.118.041 if it finds a nonconformity and that a reasonable number of attempts have been undertaken to correct the nonconformity. The board shall award reasonable costs and attorneys' fees incurred by the consumer in connection with board proceedings where the manufacturer is represented by counsel.

(5) It is an affirmative defense to any claim under this chapter that: (a) The alleged nonconformity does not substantially impair the use, value, or safety of the new motor vehicle; or (b) the alleged nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the new motor vehicle.

(6) The board shall have forty-five calendar days from the date the board receives the consumer's request for arbitration to hear the dispute. If the board determines that additional information is necessary, the board may continue the arbitration proceeding on a subsequent date within ten calendar days of the initial hearing. The board shall decide the dispute within sixty calendar days from the date the board receives the consumer's request for arbitration.

The decision of the board shall be delivered by certified mail or personal service to the consumer and the manufacturer, and shall contain a written finding of whether the new motor vehicle meets the standards set forth under this chapter.

(7) The consumer may accept the arbitration board decision or appeal to superior court, pursuant to RCW 19.118.100. Upon acceptance by the consumer, the arbitration board decision shall become final. The consumer shall send written notification of acceptance or rejection to the arbitration board within sixty days of receiving the decision and the arbitration board shall immediately deliver a copy of the consumer's acceptance to the manufacturer by certified mail, return receipt requested, or by personal service. Failure of the consumer to respond to the arbitration board within sixty calendar days of receiving the decision shall be considered a rejection of the decision by the consumer. The consumer shall have one hundred twenty calendar days from the date of rejection to file a petition of appeal in superior court. At the time the petition of appeal is filed, the consumer shall deliver, by certified mail or personal service, a conformed copy of such petition to the attorney general.

(8) Upon receipt of the consumer's acceptance, the manufacturer shall have forty calendar days to comply with

the arbitration board decision or thirty calendar days to file a petition of appeal in superior court. At the time the petition of appeal is filed, the manufacturer shall deliver, by certified mail or personal service, a conformed copy of such petition to the attorney general. If the attorney general receives no notice of petition of appeal after forty calendar days, the attorney general shall contact the consumer to verify compliance.

(9) If, at the end of the forty calendar day period, neither compliance with, nor a petition to appeal the board's decision has occurred, the attorney general may impose a fine of one thousand dollars per day until compliance occurs or a maximum penalty of one hundred thousand dollars accrues unless the manufacturer can provide clear and convincing evidence that any delay or failure was beyond its control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide such evidence or fails to pay the fine, the attorney general shall initiate proceedings against the manufacturer for failure to pay any fine that accrues until compliance with the board's decision occurs or the maximum penalty of one hundred thousand dollars results. Where the attorney general prevails in an enforcement action regarding any fine imposed under this subsection, the attorney general shall be entitled to reasonable costs and attorneys' fees. Fines and recovered costs and fees shall be returned to the new motor vehicle arbitration account. [1989 c 347 § 5; 1987 c 344 § 7.]

19.118.100 Trial de novo—Posting security—Recovery. (1) The consumer or the manufacturer may request a trial de novo of the arbitration decision, including a rejection, in superior court.

(2) If the manufacturer appeals, the court may require the manufacturer to post security for the consumer's financial loss due to the passage of time for review.

(3) If the consumer prevails, recovery shall include the monetary value of the award, attorneys' fees and costs incurred in the superior court action, and, if the board awarded the consumer replacement or repurchase of the vehicle and the manufacturer did not comply, continuing damages in the amount of twenty-five dollars per day for all days beyond the forty calendar day period following the manufacturer's receipt of the consumer's acceptance of the board's decision in which the manufacturer did not provide the consumer with the free use of a comparable loaner replacement motor vehicle. If it is determined by the court that the party that appealed acted without good cause in bringing the appeal or brought the appeal solely for the purpose of harassment, the court may triple, but at least shall double, the amount of the total award. [1989 c 347 § 6; 1987 c 344 § 8.]

19.118.110 Arbitration fee—New motor vehicle arbitration account—Report by attorney general. A five-dollar arbitration fee shall be collected by either the new motor vehicle dealer or vehicle lessor from the consumer upon execution of a retail sale or lease agreement. The fee shall be forwarded to the department of licensing at the time of title application for deposit in the new motor vehicle arbitration account hereby created in the state treasury.

Moneys in the account shall be used for the purposes of this chapter, subject to appropriation.

At the end of each fiscal year, the attorney general shall prepare a report listing the annual revenue generated and the expenses incurred in implementing and operating the arbitration program under this chapter. [1989 c 347 § 7; 1987 c 344 § 9.]

19.118.120 Application of consumer protection act. A violation of this chapter shall constitute an unfair or deceptive trade practice affecting the public interest under chapter 19.86 RCW. All public and private remedies provided under that chapter shall be available to enforce this chapter. [1987 c 344 § 10.]

19.118.130 Waivers, limitations, disclaimers—Void. Any agreement entered into by a consumer for the purchase of a new motor vehicle that waives, limits, or disclaims the rights set forth in RCW 19.118.021 through 19.118.140 shall be void as contrary to public policy. Said rights shall extend to a subsequent transferee of such new motor vehicle. [1987 c 344 § 11.]

19.118.140 Other rights and remedies not precluded. Nothing in this chapter limits the consumer from pursuing other rights or remedies under any other law. [1987 c 344 § 12.]

19.118.150 Informal dispute resolution settlement procedure. If a manufacturer has established an informal dispute resolution settlement procedure which substantially complies with the applicable provision of Title 16, Code of Federal Regulations Part 703, as from time to time amended, a consumer may choose to first submit a dispute under this chapter to the informal dispute resolution settlement procedure. [1989 c 347 § 8; 1987 c 344 § 14.]

19.118.160 New motor vehicle arbitration boards—When established by attorney general—Membership—Travel expenses and compensation. If the attorney general is unable at any time to contract with private entities to conduct arbitrations under the procedures and standards in this chapter, the attorney general shall establish one or more new motor vehicle arbitration boards. Each such board shall consist of three members appointed by the attorney general, only one of whom may be directly involved in the manufacture, distribution, sale, or service of any motor vehicle. Board members shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and shall be compensated pursuant to RCW 43.03.240. [1989 c 347 § 9; 1987 c 344 § 15.]

19.118.900 Effective dates—1987 c 344. (1) Section 9 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 1, 1987.

(2) Sections 2 through 8, 10 through 12, and 14 through 16 of this act shall take effect January 1, 1988, except that the attorney general may take such actions as are necessary

to ensure the new motor vehicle arbitration boards are established and operational. [1987 c 344 § 22.]

19.118.902 Severability—1987 c 344. 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 344 § 23.]

19.118.903 Severability—1989 c 347. 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 347 § 10.]

19.118.904 Effective date—1989 c 347. 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 June 1, 1989. [1989 c 347 § 11.]

Chapter 19.120

GASOLINE DEALER BILL OF RIGHTS ACT

Sections

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- 19.120.130 Exception or exemption—Burden of proof—Waiver of provisions of chapter void.
- 19.120.900 Short title.
- 19.120.901 Application of chapter.
- 19.120.902 Intent—Interpretation consistent with chapter 19.100 RCW.
- 19.120.903 Liberal construction.
- 19.120.904 Severability—1986 c 320.
- 19.120.905 Effective date—1986 c 320.

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

(1) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communication media published in connection with an offer or sale of a franchise.

(2) "Affiliate" means any person, firm, or corporation who controls or is controlled by any motor fuel refiner-supplier, and includes any subsidiary or affiliated corporation in which the motor fuel refiner-supplier or its shareholders, officers, agents, or employees hold or control more than twenty-five percent of the voting shares.

(3) "Community interest" means a continuing financial interest between the motor fuel refiner-supplier and motor fuel retailer in the operation of the franchise business.

(4) "Motor fuel" means gasoline or diesel fuel of a type distributed for use in self-propelled motor vehicles and includes gasohol.

(5) "Motor fuel franchise" means any oral or written contract, either expressed or implied, between a motor fuel refiner-supplier and motor fuel retailer under which the motor fuel retailer is supplied motor fuel for resale to the public under a trademark owned or controlled by the motor fuel refiner-supplier or for sale on commission or for a fee to the public, or any agreements between a motor fuel refiner-supplier and motor fuel retailer under which the retailer is permitted to occupy premises owned, leased, or controlled by the refiner-supplier for the purpose of engaging in the retail sale of motor fuel under a trademark owned or controlled by the motor fuel refiner-supplier supplied by the motor fuel refiner-supplier.

(6) "Motor fuel refiner-supplier" means any person, firm, or corporation, including any affiliate of the person, firm, or corporation, engaged in the refining of crude oil into petroleum who supplies motor fuel for sale, consignment, or distribution through retail outlets.

(7) "Motor fuel retailer" means a person, firm, or corporation that resells motor fuel entirely at one or more retail motor fuel outlets pursuant to a motor fuel franchise entered into with a refiner-supplier.

(8) "Offer or offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise.

(9) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

(10) "Price" means the net purchase price, after adjustment for commission, brokerage, rebate, discount, services or facilities furnished, or other such adjustment.

(11) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

(12) "Retail motor fuel outlet" means any location where motor fuel is distributed for purposes other than resale.

(13) "Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise.

(14) "Trademark" means any trademark, trade name, service mark, or other identifying symbol or name. [1989 c 11 § 3; 1986 c 320 § 1.]

Severability—1989 c 11: See note following RCW 9A.56.220.

19.120.020 Sale of franchise to third party. Notwithstanding the terms of any motor fuel franchise, a motor fuel refiner-supplier shall not absolutely prohibit or unreasonably withhold its consent to any sale, assignment, or other transfer of the motor fuel franchise by a motor fuel retailer to a third party without fairly compensating the motor fuel retailer for the fair market value, at the time of expiration of the franchise, of the motor fuel retailer's inventory, supplies, equipment, and furnishings purchased

from the motor fuel refiner-supplier, and good will, exclusive of personalized materials which have no value to the motor fuel refiner-supplier, and inventory, supplies, equipment, and furnishings not reasonably required in the conduct of the franchise business. A motor fuel refiner-supplier may offset against amounts owed to a motor fuel retailer under this section any amounts owed by the motor fuel retailer to the motor fuel refiner-supplier. [1986 c 320 § 3.]

19.120.030 Sale of franchise to corporation.

Notwithstanding the terms of any motor fuel franchise, no motor fuel refiner-supplier may prohibit or prevent the sale, assignment, or other transfer of the motor fuel franchise to a corporation in which the motor fuel retailer has and maintains a controlling interest if the motor fuel retailer offers in writing personally to guarantee the performance of the obligations under the motor fuel franchise. [1986 c 320 § 4.]

19.120.040 Franchise considered personal property—Designated successor in interest. Notwithstanding the terms of any motor fuel franchise, the interest of a motor fuel retailer under such an agreement shall be considered personal property and shall devolve on the death of the motor fuel retailer to a designated successor in interest of the retailer, limited to the retailer's spouse, adult child, or adult stepchild or, if no successor in interest is designated, to the retailer's spouse, if any. The designation shall be made, witnessed in writing by at least two persons, and delivered to the motor fuel refiner-supplier during the term of the franchise. The designation may be revised at any time by the motor fuel retailer and shall be substantially in the following form:

"I (motor fuel retailer name) at the service station located at, in the City of, Washington, designate as my successor in interest under RCW 19.120.030 and as my alternate successor if the originally designated successor is unable or unwilling so to act.

I so specify this day of, 19. . ."

The motor fuel refiner-supplier shall assist the designated successor in interest temporarily in the day-to-day operation of the service station to insure continued operation of the service station. [1986 c 320 § 5.]

19.120.050 Purchase of real estate and improvements owned by refiner-supplier—Retailer given right of first refusal—Notice to retailer. Notwithstanding the terms of any motor fuel franchise, the motor fuel retailer shall be given the right of first refusal to purchase the real estate and/or improvements owned by the refiner-supplier at the franchise location, and at least thirty days' advance notice within which to exercise this right, prior to any sale thereof to any other buyer. [1986 c 320 § 6.]

19.120.060 Refiner-suppliers—Prohibited conduct. Notwithstanding the terms of any motor fuel franchise, no motor fuel refiner-supplier may:

(1) Require any motor fuel retailer to meet mandatory minimum sales volume requirements for fuel or other products unless the refiner-supplier proves that its price to the motor fuel retailer has been sufficiently low to enable the motor fuel retailer reasonably to meet the mandatory minimum;

(2) Alter, or require the motor fuel retailer to consent to the alteration of, any provision of the motor fuel franchise during its effective term without mutual consent of the motor fuel retailer;

(3) Interfere with any motor fuel retailer's right to assistance of counsel on any matter or to join or be active in any trade association; and

(4) Set or compel, directly or indirectly, the retail price at which the motor fuel retailer sells motor fuel or other products to the public. [1986 c 320 § 7.]

19.120.070 Offers, sales, or purchases of franchises—Unlawful acts. It is unlawful for any person in connection with the offer, sale, or purchase of any motor fuel franchise directly or indirectly:

(1) To sell or offer to sell a motor fuel franchise in this state by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading.

(2) To employ any device, scheme, or artifice to defraud.

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. [1986 c 320 § 8.]

19.120.080 Refiner-supplier and retailer relationship—Rights and prohibitions. Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the motor fuel refiner-supplier and the motor fuel retailers:

(1) The parties shall deal with each other in good faith.

(2) For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and a violation of this chapter for any person to:

(a) Require a motor fuel retailer to purchase or lease goods or services of the motor fuel refiner-supplier or from approved sources of supply unless and to the extent that the motor fuel refiner-supplier satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition: PROVIDED, That this provision shall not apply to the initial inventory of the motor fuel franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition the courts shall be guided by the decisions of the courts of the United States interpreting and applying the anti-trust laws of the United States.

(b) Discriminate between motor fuel retailers in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the motor fuel

refiner-supplier satisfies the burden of proving that any classification of or discrimination between motor fuel retailers is reasonable, is based on motor fuel franchises granted at materially different times and such discrimination is reasonably related to such difference in time or on other proper and justifiable distinctions considering the purposes of this chapter, and is not arbitrary.

(c) Sell, rent, or offer to sell to a motor fuel retailer any product or service for more than a fair and reasonable price.

(d) Require [a] motor fuel retailer to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter. [1986 c 320 § 9.]

19.120.090 Action for damages, rescission, or other relief. (1) Any person who sells or offers to sell a motor fuel franchise in violation of this chapter shall be liable to the motor fuel retailer or motor fuel refiner-supplier who may sue at law or in equity for damages caused thereby for rescission or other relief as the court may deem appropriate. In the case of a violation of RCW 19.120.070 rescission is not available to the plaintiff if the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know or if he had exercised reasonable care would not have known of the untruth or omission.

(2) The suit authorized under subsection (1) of this section may be brought to recover the actual damages sustained by the plaintiff: PROVIDED, That the prevailing party may in the discretion of the court recover the costs of said action including a reasonable attorneys' fee.

(3) Any person who becomes liable to make payments under this section may recover contributions as in cases of contracts from any persons who, if sued separately, would have been liable to make the same payment.

(4) A final judgment, order, or decree heretofore or hereafter rendered against a person in any civil, criminal, or administrative proceedings under the United States anti-trust laws, under the Federal Trade Commission Act, or this chapter shall be regarded as evidence against such persons in any action brought by any party against such person under subsection (1) of this section as to all matters which said judgment or decree would be an estoppel between the parties thereto. [1986 c 320 § 10.]

19.120.100 Limitation period tolled. The pendency of any civil, criminal, or administrative proceedings against a person brought by the federal or Washington state governments or any of their agencies under the anti-trust laws, the Federal Trade Commission Act, or any federal or state act related to anti-trust laws or to franchising, or under this chapter shall toll the limitation of this action if the action is then instituted within one year after the final judgment or order in such proceedings: PROVIDED, That said limitation of actions shall in any case toll the law so long as there is actual concealment on the part of the person. [1986 c 320 § 11.]

19.120.110 Civil actions by retailers—Attorneys' fees. Any motor fuel retailer who is injured in his or her business by the commission of any act prohibited by this

chapter, or any motor fuel retailer injured because of his or her refusal to accede to a proposal for an arrangement which, if consummated, would be in violation of this chapter may bring a civil action in superior court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including reasonable attorney's fees. [1986 c 320 § 12.]

19.120.120 Civil actions by attorney general—Attorneys' fees—Criminal actions not limited by chapter.

(1) The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful. The prevailing party may in the discretion of the court recover the costs of such action including a reasonable attorneys' fee.

(2) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law. [1986 c 320 § 13.]

19.120.130 Exception or exemption—Burden of proof—Waiver of provisions of chapter void. In any proceeding under this chapter, the burden of proving an exception or an exemption from definition is upon the person claiming it. Any condition, stipulation or provision purporting to bind any person acquiring a motor fuel franchise at the time of entering into a motor fuel franchise or other agreement to waive compliance with any provision of this chapter or any rule or order hereunder is void. [1986 c 320 § 14.]

19.120.900 Short title. This chapter shall be known as the "gasoline dealer bill of rights act." [1986 c 320 § 19.]

19.120.901 Application of chapter. The provisions of this chapter apply to any motor fuel franchise or contract entered into or renewed on or after June 30, 1986, between a motor fuel refiner-supplier and a motor fuel retailer. [1986 c 320 § 15.]

19.120.902 Intent—Interpretation consistent with chapter 19.100 RCW. It is the intent of the legislature that this chapter be interpreted consistent with chapter 19.100 RCW. [1986 c 320 § 17.]

19.120.903 Liberal construction. This chapter shall be liberally construed to effectuate its beneficial purposes. [1986 c 320 § 18.]

19.120.904 Severability—1986 c 320. 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 320 § 22.]

19.120.905 Effective date—1986 c 320. (1) Sections 20 and 21 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 immediately.

(2) Sections 1 through 19, 22 and 23 of this act shall take effect June 30, 1986. [1986 c 320 § 24.]

Reviser's note: (1) Sections 20 and 21 of this act are uncodified sections that took effect April 4, 1986.

(2) Sections 1 through 19, 22 and 23 of this act consist of the enactment of RCW 19.120.010 through 19.120.130 and 19.120.900 through 19.120.904.

Chapter 19.122 UNDERGROUND UTILITIES

Sections

19.122.010	Intent.
19.122.020	Definitions.
19.122.030	Notice of excavation to owners of underground facilities—One-number locator service—Time for notice—Marking of underground facilities—Costs.
19.122.040	Underground facilities identified in bid or contract—Excavator's duty of reasonable care—Liability for damages—Attorneys' fees.
19.122.045	Exemption from liability.
19.122.050	Damage to underground facility—Notification by excavator—Repairs or relocation of facility.
19.122.060	Exemption from notice and marking requirements for property owners.
19.122.070	Civil penalties—Treble damages—Existing remedies not affected.
19.122.080	Waiver of notification and marking requirements.
19.122.900	Severability—1984 c 144.

19.122.010 Intent. It is the intent of the legislature in enacting this chapter to assign responsibilities for locating and keeping accurate records of utility locations, protecting and repairing damage to existing underground facilities, and protecting the public health and safety from interruption in utility services caused by damage to existing underground utility facilities. [1984 c 144 § 1.]

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

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Damage" includes the substantial weakening of structural or lateral support of an underground facility, penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected utility owner determines that repairs are required.

(3) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.

(4) "Excavation" means any operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than twelve inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flowline.

(5) "Excavator" means any person who engages directly in excavation.

(6) "Identified facility" means any underground facility which is indicated in the project plans as being located within the area of proposed excavation.

(7) "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.

(8) "Locatable underground facility" means an underground facility which can be field-marked with reasonable accuracy.

(9) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

(10) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

(11) "Reasonable accuracy" means location within twenty-four inches of the outside dimensions of both sides of an underground facility.

(12) "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors below ground.

(13) "One-number locator service" means a service through which a person can notify utilities and request field-marking of underground facilities. [1984 c 144 § 2.]

19.122.030 Notice of excavation to owners of underground facilities—One-number locator service—Time for notice—Marking of underground facilities—Costs. Before commencing any excavation, the excavator shall provide notice of the scheduled commencement of excavation to all owners of underground facilities through a one-number locator service. All owners of underground facilities within a one-number locator service area shall subscribe to the service. One number locator service rates for cable television companies will be based on the amount of their underground facilities. If no one-number locator service is available, notice shall be provided individually to those owners of underground facilities known to or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated to the owners of underground facilities not less than two business days or more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed by the parties.

Upon receipt of the notice provided for in this section, the owner of the underground facility shall provide the excavator with reasonably accurate information as to its locatable underground facilities by surface-marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of such facilities shall provide the excavator with the best available information as to their locations. The owner of the underground facility providing the information shall respond no later than two business days after the receipt of the notice or

before the excavation time, at the option of the owner, unless otherwise agreed by the parties. Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, the excavator is responsible for maintaining the markings. Excavators shall have the right to receive compensation from the owner of the underground facility for costs incurred if the owner of the underground facility does not locate its facilities in accordance with this section.

The owner of the underground facility shall have the right to receive compensation for costs incurred in responding to excavation notices given less than two business days prior to the excavation from the excavator.

An owner of underground facilities is not required to indicate the presence of existing service laterals or appurtenances if the presence of existing service laterals or appurtenances on the site of the construction project can be determined from the presence of other visible facilities, such as buildings, manholes, or meter and junction boxes on or adjacent to the construction site.

Emergency excavations are exempt from the time requirements for notification provided in this section.

If the excavator, while performing the contract, discovers underground facilities which are not identified, the excavator shall cease excavating in the vicinity of the facility and immediately notify the owner or operator of such facilities, or the one-number locator service. [1988 c 99 § 1; 1984 c 144 § 3.]

Damages to facilities on state highways: RCW 47.44.150.

19.122.040 Underground facilities identified in bid or contract—Excavator's duty of reasonable care—Liability for damages—Attorneys' fees. (1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation. The following shall be deemed changed or differing site conditions:

(a) An underground facility not identified as required by this chapter or other provision of law; and

(b) An underground facility not located, as required by this chapter or other provision of law, by the project owner or excavator if the project owner or excavator is also a utility.

(2) An excavator shall use reasonable care to avoid damaging underground facilities. An excavator shall:

(a) Determine the precise location of underground facilities which have been marked;

(b) Plan the excavation to avoid damage to or minimize interference with underground facilities in and near the excavation area; and

(c) Provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.

(3) If an underground facility is damaged and such damage is the consequence of the failure to fulfill an obligation under this chapter, the party failing to perform that obligation shall be liable for any damages. Any clause in an excavation contract which attempts to allocate liability, or requires indemnification to shift the economic conse-

quences of liability, different from the provisions of this chapter is against public policy and unenforceable. Nothing in this chapter prevents the parties to an excavation contract from contracting with respect to the allocation of risk for changed or differing site conditions.

(4) In any action brought under this section, the prevailing party is entitled to reasonable attorneys' fees. [1984 c 144 § 4.]

19.122.045 Exemption from liability. Excavators who comply with the requirements of this chapter are not liable for any damages arising from contact or damage to an underground fiber optics facility other than the cost to repair the facility. [1988 c 99 § 2.]

19.122.050 Damage to underground facility—Notification by excavator—Repairs or relocation of facility. (1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the utility owning or operating such facility and the one-number locator service. If the damage causes an emergency condition, the excavator causing the damage shall also alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

(2) The owner of the underground facilities damaged shall arrange for repairs or relocation as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price. [1984 c 144 § 5.]

19.122.060 Exemption from notice and marking requirements for property owners. An excavation of less than twelve inches in vertical depth on private noncommercial property shall be exempt from the requirements of RCW 19.122.030, if the excavation is being performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed. [1984 c 144 § 6.]

19.122.070 Civil penalties—Treble damages—Existing remedies not affected. (1) Any person who violates any provision of this chapter, and which violation results in damage to underground facilities, is subject to a civil penalty of not more than one thousand dollars for each violation. All penalties recovered in such actions shall be deposited in the general fund.

(2) Any excavator who wilfully or maliciously damages a field-marked underground facility shall be liable for treble the costs incurred in repairing or relocating the facility. In those cases in which an excavator fails to notify known underground facility owners or the one-number locator service, any damage to the underground facility shall be deemed wilful and malicious and shall be subject to treble damages for costs incurred in repairing or relocating the facility.

(3) This chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage. [1984 c 144 § 7.]

Damages to facilities on state highways: RCW 47.44.150.

19.122.080 Waiver of notification and marking requirements. The notification and marking provisions of this chapter may be waived for one or more designated persons by an underground facility owner with respect to all or part of that underground facility owner's own underground facilities. [1984 c 144 § 8.]

19.122.900 Severability—1984 c 144. 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 144 § 9.]

Chapter 19.126

WHOLESALE DISTRIBUTORS AND SUPPLIERS OF WINE AND MALT BEVERAGES

Sections

19.126.010	Purpose.
19.126.020	Definitions.
19.126.030	Suppliers' protections.
19.126.040	Distributors' protections.
19.126.050	Suppliers' prohibited acts.
19.126.060	Attorney's fees—Costs.
19.126.070	Suspension or cancellation of license or certificate.
19.126.080	Civil actions—Injunctive relief.
19.126.900	Short title.
19.126.901	Severability—1984 c 169.

19.126.010 Purpose. (1) The legislature recognizes that both suppliers and wholesale distributors of malt beverages and wine are interested in the goal of best serving the public interest through the fair, efficient, and competitive distribution of such beverages. The legislature encourages them to achieve this goal by:

(a) Assuring the wholesale distributor's freedom to manage the business enterprise, including the wholesale distributor's right to independently establish its selling prices; and

(b) Assuring the supplier and the public of service from wholesale distributors who will devote their best competitive efforts and resources to sales and distribution of the supplier's products which the wholesale distributor has been granted the right to sell and distribute.

(2) This chapter governs the relationship between suppliers of malt beverages and wine and their wholesale distributors to the full extent consistent with the Constitution and laws of this state and of the United States. [1984 c 169 § 1.]

19.126.020 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agreement of distributorship" means any contract, agreement, commercial relationship, license, association, or any other arrangement, for a definite or indefinite period, between a supplier and wholesale distributor.

(2) "Wholesale distributor" means any person, including but not limited to a component of a supplier's distribution system constituted as an independent business, importing or causing to be imported into this state, or purchasing or causing to be purchased within this state, any malt beverage

or wine for sale or resale to retailers licensed under the laws of this state, regardless of whether the business of such person is conducted under the terms of any agreement with a malt beverage or wine manufacturer.

(3) "Supplier" means any malt beverage or wine manufacturer or importer who enters into or is a party to any agreement of distributorship with a wholesale distributor. "Supplier" does not include: (a) Any domestic winery licensed pursuant to RCW 66.24.170; (b) any winery or manufacturer of wine producing less than three hundred thousand gallons of wine annually and holding a certificate of approval issued pursuant to RCW 66.24.206; (c) any brewer licensed under RCW 66.24.240 and producing less than fifty thousand barrels of malt liquor annually; or (d) any brewer or manufacturer of malt liquor producing less than fifty thousand barrels of malt liquor annually and holding a certificate of approval issued under RCW 66.24.270.

(4) "Malt beverage manufacturer" means every brewer, fermenter, processor, bottler, or packager of malt beverages located within or outside this state, or any other person, whether located within or outside this state, who enters into an agreement of distributorship for the resale of malt beverages in this state with any wholesale distributor doing business in the state of Washington.

(5) "Wine manufacturer" means every winery, processor, bottler, or packager of wine located within or outside this state, or any other person, whether located within or outside this state who enters into an agreement of distributorship for the resale of wine in this state with any wine wholesale distributor doing business in the state of Washington.

(6) "Importer" means any wholesale distributor importing beer or wine into this state for sale to retailer accounts or for sale to other wholesalers designated as "subjobbers" for resale.

(7) "Person" means any natural person, corporation, partnership, trust, agency, or other entity, as well as any individual officers, directors, or other persons in active control of the activities of such entity. [1984 c 169 § 2.]

19.126.030 Suppliers' protections. Suppliers are entitled to the following protections which shall be incorporated in the agreement of distributorship:

(1) Agreements between suppliers and wholesale distributors shall be in writing;

(2) A wholesale distributor shall maintain the financial and competitive capability necessary to achieve efficient and effective distribution of the supplier's products;

(3) A wholesale distributor shall maintain the quality and integrity of the supplier's product in the manner set forth by the supplier;

(4) A wholesale distributor shall exert its best efforts to sell the product of the supplier and shall merchandise such products in the stores of its retail customers as agreed between the wholesale distributor and supplier;

(5) The supplier may cancel or otherwise terminate any agreement with a wholesale distributor immediately and without notice if the reason for such termination is insolvency, the occurrence of an assignment for the benefit of creditors, bankruptcy, or suspension in excess of fourteen days or revocation of a license issued by the state liquor board;

(6) A wholesale distributor shall give the supplier prior written notice, of not less than ninety days, of any material change in its ownership or management and the supplier has the right to reasonable prior approval of any such change; and

(7) A wholesale distributor shall give the supplier prior written notice, of not less than ninety days, of the wholesale distributor's intent to cancel or otherwise terminate the distributorship agreement. [1984 c 169 § 3.]

19.126.040 Distributors' protections. Wholesale distributors are entitled to the following protections which shall be incorporated in the agreement of distributorship:

(1) Agreements between wholesale distributors and suppliers shall be in writing;

(2) A supplier shall give the wholesale distributor at least sixty days prior written notice of the supplier's intent to cancel or otherwise terminate the agreement, unless such termination is based on a reason set forth in RCW 19.126.030(5). The notice shall state all the reasons for the intended termination or cancellation. Upon receipt of notice, the wholesale distributor shall have sixty days in which to rectify any claimed deficiency. If the deficiency is rectified within this sixty-day period, the proposed termination or cancellation is null and void and without legal effect;

(3) The wholesale distributor is entitled to compensation for the laid-in cost of inventory and liquidated damages measured on the fair market price of the business as provided for in the agreement for any termination of the agreement by the supplier other than termination for cause, for failure to live up to the terms and conditions of the agreement, or any reason set forth in RCW 19.126.030(5); and

(4) The wholesale distributor may sell or transfer its business, or any portion thereof, including the agreement, to successors in interest upon prior approval of the transfer by the supplier. No supplier may unreasonably withhold or delay its approval of any transfer, including wholesaler's rights and obligations under the terms of the agreement, if the person or persons to be substituted meet reasonable standards imposed by the supplier. [1984 c 169 § 4.]

19.126.050 Suppliers' prohibited acts. No supplier may:

(1) Coerce or induce, or attempt to induce or coerce, any wholesale distributor to engage in any illegal act or course of conduct;

(2) Require a wholesale distributor to assent to any unreasonable requirement, condition, understanding, or term of an agreement which prohibits a wholesaler from selling the product of any other supplier or suppliers;

(3) Require a wholesale distributor to accept delivery of any product or any other item or commodity which was not ordered by the wholesale distributor; or

(4) Fail or refuse to enter into an agreement of distributorship with a wholesale distributor that handles the supplier's products. [1985 c 440 § 1; 1984 c 169 § 5.]

19.126.060 Attorney's fees—Costs. In any action brought by a wholesale distributor or a supplier pursuant to this chapter, the prevailing party shall be awarded its reasonable attorney's fees and costs. [1984 c 169 § 6.]

19.126.070 Suspension or cancellation of license or certificate. Continued violation of this chapter constitutes grounds, in the discretion of the state liquor control board, for suspension or cancellation under RCW 66.24.010 of any license or certificate held by a supplier or its agent. [1985 c 440 § 2.]

19.126.080 Civil actions—Injunctive relief. A person injured by a violation of this chapter may bring a civil action in a court of competent jurisdiction to enjoin further violations. Injunctive relief may be granted in an action brought under this chapter without the injured party being required to post bond if, in the opinion of the court, there exists a likelihood that the injured party will prevail on the merits. [1985 c 440 § 3.]

19.126.900 Short title. This chapter may be known and cited as the wholesale distributor/supplier equity agreement act. [1984 c 169 § 7.]

19.126.901 Severability—1984 c 169. 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 169 § 9.]

Chapter 19.130

TELEPHONE BUYERS' PROTECTION ACT

Sections

- 19.130.010 Legislative findings.
- 19.130.020 Sales of new or reconditioned telephone equipment—
Disclosure of certain information.
- 19.130.030 Certain advertising media—Application of chapter.
- 19.130.040 Certain radio equipment—Application of chapter.
- 19.130.050 Equipment not intended for connection to telephone network
and used equipment located on customer's premises—
Application of chapter.
- 19.130.060 Violations—Application of consumer protection act.
- 19.130.900 Chapter cumulative.
- 19.130.901 Short title.

19.130.010 Legislative findings. The legislature finds that the federal deregulation of the telephone industry provides telephone users with the opportunity to purchase and use telephone and other telecommunications equipment suited to their needs. The legislature finds that competitive markets function optimally when potential buyers have adequate information about the capabilities and reliability of the equipment offered for sale. The legislature further finds that disclosure of certain product information will benefit both buyers and sellers of telephone and other telecommunications equipment and is in the public interest. [1984 c 275 § 1.]

19.130.020 Sales of new or reconditioned telephone equipment—Disclosure of certain information. Any person offering for sale or selling new or reconditioned telephone handsets or keysets, private branch exchanges, or private automatic branch exchanges of not more than a twenty-station capacity, shall clearly disclose prior to sale by

methods which may include posting of notice or printing on the equipment package the following:

- (1) Whether the equipment uses pulse, tone, pulse-or-tone, or other signaling methods, and a general description of the services that can be accessed through the equipment;
- (2) Whether the equipment is registered with the federal communications commission under the applicable federal regulations;
- (3) The person responsible for repair of the equipment;
- (4) Standard repair charges, if any; and
- (5) The terms of any written warranty offered with the equipment. [1984 c 275 § 2.]

19.130.030 Certain advertising media—Application of chapter. Nothing in this chapter applies to a radio station, television station, publisher, printer, or distributor of a newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of this chapter. [1984 c 275 § 3.]

19.130.040 Certain radio equipment—Application of chapter. This chapter shall not apply to radio equipment used for land, marine, or air mobile service, or any like service, whether or not such equipment is capable of interconnection by manual or automatic means to a telephone line. [1984 c 275 § 4.]

19.130.050 Equipment not intended for connection to telephone network and used equipment located on customer's premises—Application of chapter. This chapter shall not apply to equipment not intended for connection to the telephone network, nor to used equipment located on the customer's premises. [1984 c 275 § 5.]

19.130.060 Violations—Application of consumer protection act. Violation of this chapter constitutes a violation of chapter 19.86 RCW, the consumer protection act. It shall be presumed that damages to the consumer are equal to the purchase price of any telephone equipment sold in violation of this chapter up to one hundred dollars. Additional damages must be proved. [1984 c 275 § 7.]

19.130.900 Chapter cumulative. The rights, obligations, and remedies under this chapter are in addition to any rights, obligations, or remedies under federal statutes or regulations or other state statutes or rules. [1984 c 275 § 6.]

19.130.901 Short title. This chapter may be known and cited as the telephone buyers' protection act. [1984 c 275 § 8.]

Chapter 19.134

CREDIT SERVICES ORGANIZATION ACT

Sections

- 19.134.010 Definitions.
 19.134.020 Prohibited conduct.
 19.134.030 Surety bond and trust account—Exception to requirement.

- 19.134.040 Information statement—Prerequisite to contract or payment—File maintained.
 19.134.050 Information statement—Contents.
 19.134.060 Contract for purchase of services—Contents—Notice of cancellation—Buyer's copy.
 19.134.070 Waiver of rights—Violations—Enforcement—Unfair business practice.
 19.134.080 Damages—Attorney's fees.
 19.134.900 Short title.

19.134.010 Definitions. As used in this chapter:

- (1) "Buyer" means any individual who is solicited to purchase or who purchases the services of a credit services organization.
- (2)(a) "Credit services organization" means any person who, with respect to the extension of credit by others, sells, provides, performs, or represents that he or she can or will sell, provide, or perform, in return for the payment of money or other valuable consideration any of the following services:
 - (i) Improving, saving, or preserving a buyer's credit record, history, or rating;
 - (ii) Obtaining an extension of credit for a buyer;
 - (iii) Stopping, preventing, or delaying the foreclosure of a deed of trust, mortgage, or other security agreement; or
 - (iv) Providing advice or assistance to a buyer with regard to either (a)(i), (a)(ii), or (a)(iii) of this subsection.
- (b) "Credit services organization" does not include:
 - (i) Any person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States or a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the national housing act;
 - (ii) Any bank, savings bank, or savings and loan institution whose deposits or accounts are eligible for insurance by the federal deposit insurance corporation or the federal savings and loan insurance corporation, or a subsidiary of such bank, savings bank, or savings and loan institution;
 - (iii) Any credit union, federal credit union, or out-of-state credit union doing business in this state under chapter 31.12 RCW;
 - (iv) Any nonprofit organization exempt from taxation under section 501(c)(3) of the internal revenue code;
 - (v) Any person licensed as a real estate broker by this state if the person is acting within the course and scope of that license;
 - (vi) Any person licensed as a collection agency pursuant to chapter 19.16 RCW if acting within the course and scope of that license;
 - (vii) Any person licensed to practice law in this state if the person renders services within the course and scope of his or her practice as an attorney;
 - (viii) Any broker-dealer registered with the securities and exchange commission or the commodity futures trading commission if the broker-dealer is acting within the course and scope of that regulation;
 - (ix) Any consumer reporting agency as defined in the federal fair credit reporting act, 15 U.S.C. Secs. 1681 through 1681t; or
 - (x) Any mortgage broker as defined in RCW 19.146.010 if acting within the course and scope of that definition.

(3) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household purposes. [1989 c 303 § 1; 1986 c 218 § 2.]

19.134.020 Prohibited conduct. A credit services organization, its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit services organization may not do any of the following:

(1) Charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for the buyer, unless the credit services organization has obtained a surety bond of ten thousand dollars issued by a surety company admitted to do business in this state and established a trust account at a federally insured bank or savings and loan association located in this state. The surety bond shall run to the state of Washington and the buyers. The surety bond shall be issued on the condition that the principal comply with all provisions of this chapter and fully perform on all contracts entered into with buyers. The surety bond shall be continuous until canceled and shall remain in full force and unimpaired at all times to comply with this section. The surety's liability for all claims in the aggregate against the continuous bond shall not exceed the penal sum of the bond. An action on the bond may be brought by the state or by any buyer by filing a complaint in a court of competent jurisdiction, including small claims court, within one year of cancellation of the surety bond. A complaint may be mailed by registered or certified mail, return receipt requested, to the surety and shall constitute good and sufficient service on the surety;

(2) Charge or receive any money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is upon substantially the same terms as those available to the general public;

(3) Make or counsel or advise any buyer to make any statement that is untrue or misleading or that should be known by the exercise of reasonable care to be untrue or misleading, to a credit reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit with respect to a buyer's credit worthiness, credit standing, or credit capacity;

(4) Make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization. [1989 c 303 § 2; 1986 c 218 § 3.]

19.134.030 Surety bond and trust account—Exception to requirement. If a credit services organization is in compliance with RCW 19.134.020(1), the salesperson, agent, or representative who sells the services of that organization is not required to obtain a surety bond and establish a trust account. [1986 c 218 § 4.]

19.134.040 Information statement—Prerequisite to contract or payment—File maintained. Before the execution of a contract or agreement between the buyer and a credit services organization or before the receipt by the credit services organization of any money or other valuable consideration, whichever occurs first, the credit services organization shall provide the buyer with a statement in writing, containing all the information required by RCW 19.134.050. The credit services organization shall maintain on file for a period of two years an exact copy of the statement, personally signed by the buyer, acknowledging receipt of a copy of the statement. [1986 c 218 § 5.]

19.134.050 Information statement—Contents. The information statement required under RCW 19.134.040 shall include all of the following:

(1)(a) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by any consumer reporting agency, as provided under the federal Fair Credit Reporting Act, 15 U.S.C. Secs. 1681 through 1681t;

(b) A statement that the buyer may review his or her consumer reporting agency file at no charge if a request is made to the consumer credit reporting agency within thirty days after receiving notice that credit has been denied; and

(c) The approximate price the buyer will be charged by the consumer reporting agency to review his or her consumer reporting agency file;

(2) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of any item contained in any file on the buyer maintained by any consumer reporting agency;

(3) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total amount the buyer will have to pay, or become obligated to pay, for the services;

(4) A statement asserting the buyer's right to proceed against the bond or trust account required under RCW 19.134.020; and

(5) The name and address of the surety company that issued the bond, or the name and address of the depository and the trustee and the account number of the trust account. [1986 c 218 § 6.]

19.134.060 Contract for purchase of services—Contents—Notice of cancellation—Buyer's copy. (1) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, dated, signed by the buyer, and include all of the following:

(a) A conspicuous statement in bold face type, in immediate proximity to the space reserved for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time prior to midnight of the fifth day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right";

(b) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to some other person;

(c) A full and detailed description of the services to be performed by the credit services organization for the buyer,

including all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed, or estimated length of time for performing the services;

(d) The credit services organization's principal business address and the name and address of its agent in the state authorized to receive service of process;

(2) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" that shall be attached to the contract, be easily detachable, and contain in bold face type the following statement written in the same language as used in the contract.

"Notice of Cancellation

You may cancel this contract, without any penalty or obligation within five days from the date the contract is signed.

If you cancel any payment made by you under this contract, it will be returned within ten days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed dated copy of this cancellation notice, or any other written notice to (name of seller) at (address of seller) (place of business) not later than midnight (date)

I hereby cancel this transaction,
(date)
(purchaser's signature) "

The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed. [1986 c 218 § 7.]

19.134.070 Waiver of rights—Violations—Enforcement—Unfair business practice. (1) Any waiver by a buyer of any part of this chapter is void. Any attempt by a credit services organization to have a buyer waive rights given by this chapter is a violation of this chapter.

(2) In any proceeding involving this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(3) Any person who violates this chapter is guilty of a gross misdemeanor. Any district court of this state has jurisdiction in equity to restrain and enjoin the violation of this chapter.

(4) This section does not prohibit the enforcement by any person of any right provided by this or any other law.

(5) A violation of this chapter by a credit services organization is an unfair business practice as provided in chapter 19.86 RCW. [1986 c 218 § 8.]

19.134.080 Damages—Attorney's fees. (1) Any buyer injured by a violation of this chapter may bring any action for recovery of damages. Judgment shall be entered for actual damages, but in no case less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and costs. An award may also be entered for punitive damages.

(2) The remedies provided under this chapter are in addition to any other procedures or remedies for any

violation or conduct provided for in any other law. [1986 c 218 § 9.]

19.134.900 Short title. This chapter may be known and cited as the "credit services organizations act." [1986 c 218 § 1.]

Chapter 19.138

TRAVEL CHARTER AND TOUR OPERATORS

Sections

- 19.138.010 Legislative finding and declaration.
- 19.138.020 Definitions.
- 19.138.030 Advertising—Restrictions.
- 19.138.040 Written statement by travel charter or tour operator—Contents.
- 19.138.050 Cancellation—Material misrepresentation—Refund.
- 19.138.060 Trust account or bond required—Violation—Penalty.
- 19.138.070 Exemption from RCW 19.138.060—Written agreement required—Violation—Penalty.
- 19.138.080 Application of consumer protection act.
- 19.138.090 Application of chapter to public charter operators.
- 19.138.900 Severability—1986 c 283.
- 19.138.901 Effective date—1986 c 283.

19.138.010 Legislative finding and declaration. The legislature finds and declares that advertising, sales, and business practices of certain travel charter or tour operators have worked financial hardship upon the people of this state; that the travel business has a significant impact upon the economy and well-being of this state and its people; that problems have arisen regarding certain segments of the travel charter or tour operator business; and that the public welfare requires regulation of travel charter or tour operators in order to eliminate unfair advertising, sales and business practices. The legislature further finds it necessary to establish standards that will safeguard the people against financial hardship and to encourage fair dealing and prosperity in the travel business. [1986 c 283 § 1.]

19.138.020 Definitions. (1) "Travel charter or tour operator" means a person who sells, provides, furnishes, contracts for, arranges, or advertises in this state that he or she can or may arrange, or has arranged air, sea, or land transportation either separately or in conjunction with other services. "Travel charter or tour operator" does not include:

- (a) An air carrier;
- (b) An ocean carrier;
- (c) A motor carrier;
- (d) A rail carrier;
- (e) A charter party carrier;
- (f) An auto transportation carrier;
- (g) A person who operates a travel agency business and meets standards no less than those required on January 1, 1987, for authorized agents of the airline reporting corporation;

(h) A person who:

- (i) Has operated a travel tour or charter business for at least three years under the same ownership or management;
- (ii) Has total annual revenue, not including airline transportation fares, of at least five hundred thousand dollars;
- (iii) Has a certificate of insurance issued by a company authorized to conduct an insurance business under the laws

of any state for at least one million dollars for errors and omissions; and

(iv) Has in effect a surety bond for at least one hundred thousand dollars to the benefit of any consumer who has made payment to the person operating the travel tour or charter business; or

(i) A person who sells membership in an organization, club, or association that entitles the purchaser to obtain transportation or other services from a travel charter or tour operator and who does not arrange or provide for transportation.

(2) "Advertise" means to make any representation in conjunction with, or to effect the sale of, travel services and includes communication with other members of the same partnership, corporation, joint venture, association, organization, group or other entity.

(3) "Passenger" is a person who purchases travel arrangements in Washington state and on whose behalf money or other consideration has been given or is to be given to another, including another member of the same partnership, corporation, joint venture, association, organization, group or other entity, for procuring transportation or other travel services.

(4) "Adequate bond" means a bond executed by an authorized surety insurer in an amount not less than fifty thousand dollars or an amount equal to ten percent of the total revenue of the two highest consecutive months for the travel charter or tour operator's business during the prior calendar year, whichever is greater, but in no case, more than five hundred thousand dollars, for the benefit of every person for whom services have not been delivered by the wrongful act of the principal acting in the course and scope of his or her occupation or business or by any official, agent, or employee of the principal acting in the course or scope of his or her employment or agency. [1986 c 283 § 2.]

19.138.030 Advertising—Restrictions. A travel charter or tour operator shall not advertise that air, sea, or land transportation either separately or in conjunction with other services is or may be available unless he or she has, prior to such advertisement, received written confirmation with a carrier for the transportation advertised. [1986 c 283 § 3.]

19.138.040 Written statement by travel charter or tour operator—Contents. At or prior to the time of full or partial payment for air, sea, or land transportation or any other services offered by the travel charter or tour operator in conjunction with such transportation, the travel charter or tour operator shall furnish to the person making the payment a written statement conspicuously setting forth the following information:

(1) The name and business address and telephone number of the travel charter or tour operator.

(2) The amount paid, the date of such payment, the purpose of the payment made, and an itemized statement of the balance due, if any.

(3) The location and number of the trust account or bond required by this chapter.

(4) The name of the carrier with whom the travel charter or tour operator has contracted to provide the

transportation, the type of equipment contracted, and the date, time, and place of each departure: PROVIDED, That the information required in this subsection may be provided at the time of final payment.

(5) The conditions, if any, upon which the contract between the travel charter or tour operator and the passenger may be canceled, and the rights and obligations of all parties in the event of such cancellation.

(6) A statement in eight-point boldface type in substantially the following form:

"If transportation or other services are canceled by the travel charter or tour operator, all sums paid to the travel charter or tour operator for services not performed in accordance with the contract between the travel charter or tour operator and the passenger will be refunded within fourteen days after the cancellation by the travel charter or tour operator to the passenger or the party who contracted for the passenger unless mutually acceptable alternative travel arrangements are provided." [1986 c 283 § 4.]

19.138.050 Cancellation—Material misrepresentation—Refund. (1) If the transportation or other services contracted for are canceled the travel charter or tour operator shall return to the passenger within fourteen days after the cancellation all moneys paid for services not performed in accordance with the contract unless mutually acceptable alternative travel arrangements are provided.

(2) Any material misrepresentation with regard to the transportation and other services offered shall be deemed to be a cancellation necessitating the refund required by this section. [1986 c 283 § 5.]

19.138.060 Trust account or bond required—Violation—Penalty. (1) Except as otherwise provided in subsection (3) of this section, a travel charter or tour operator shall deposit ninety percent of all sums received for transportation or any other services offered by the travel charter or tour operator in conjunction with such transportation in a trust account in a federally insured financial institution.

(2) The trust account required by this section shall be created and maintained for the benefit of the passengers paying money to the travel charter or tour operator. The travel charter or tour operator shall not in any manner encumber the corpus of the account and shall not withdraw money therefrom except: (a) In an amount equal to partial or full payment for the services contracted for the passengers to the carrier or person providing the other services offered by the travel charter or tour operator; or (b) to make the refunds as required by RCW 19.138.050 or as provided for by written contract between the travel charter and tour operator and passengers. A travel charter and tour operator may withdraw from the account any interest earned and credited to the trust account for the sole benefit of the travel charter and tour operator after all services have been provided as contracted.

(3) A travel charter and tour operator, instead of maintaining a trust account as provided in subsections (1) and (2) of this section, may maintain an adequate bond.

(4) A violation of any provision of this section shall constitute a gross misdemeanor punishable under RCW 9A.20.021(2). [1986 c 283 § 6.]

19.138.070 Exemption from RCW 19.138.060—Written agreement required—Violation—Penalty. A travel charter or tour operator is not required to comply with RCW 19.138.060 if a written agreement exists between the travel charter or tour operator and a person who meets the requirements of RCW 19.138.020(1)(h) to provide full service in the event the travel charter or tour operator defaults in providing services to passengers, and the travel charter or tour operator states the existence of this agreement in all of its promotional brochures. Any misleading statement is a violation of this section, and shall constitute a gross misdemeanor punishable under RCW 9A.20.021(2). [1986 c 283 § 7.]

19.138.080 Application of consumer protection act. A violation of RCW 19.138.030 through 19.138.070 shall constitute a violation of RCW 19.86.020. [1986 c 283 § 8.]

19.138.090 Application of chapter to public charter operators. This chapter does not apply to the sale of public transportation by a public charter operator who is complying with regulations of the United States department of transportation. [1986 c 283 § 9.]

19.138.900 Severability—1986 c 283. 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 283 § 11.]

19.138.901 Effective date—1986 c 283. This act shall take effect January 1, 1987. [1986 c 283 § 12.]

Chapter 19.142

HEALTH STUDIO SERVICES

Sections

- 19.142.005 Findings and declaration.
- 19.142.010 Definitions.
- 19.142.020 Membership plans—Special offers—Misrepresentations prohibited.
- 19.142.030 Written contract required.
- 19.142.040 Contents of contract.
- 19.142.050 Notice of cancellation—Refund.
- 19.142.060 Trust account—Written receipt—Record of deposits—Buyers' claims.
- 19.142.070 Surety bond in lieu of trust account.
- 19.142.080 Failure to comply with bond or trust account requirements—Class C felony.
- 19.142.090 Waivers of this chapter—Contracts not in compliance with this chapter—Void and unenforceable.
- 19.142.100 Violations—Application of consumer protection act.
- 19.142.110 Attorneys' fees.
- 19.142.900 Chapter cumulative and nonexclusive.
- 19.142.901 Prospective application of chapter.

19.142.005 Findings and declaration. The legislature finds that there exist in connection with a substantial number of contracts for health studio services certain practices and

business methods which have worked undue financial hardship upon some of the citizens of the state and that existing legal remedies are inadequate to correct existing problems in the industry. The legislature declares that it is a matter of public interest that the citizens of our state be assured reasonable protection when contracting for health studio services. [1987 c 317 § 1.]

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

(1) "Business day" means any day except a Sunday or a legal holiday.

(2) "Buyer" or "member" means a person who purchases health studio services.

(3) "Health studio" includes any person or entity engaged in the sale of instruction, training, assistance or use of facilities which purport to assist patrons to improve their physical condition or appearance through physical exercise, body building, weight loss, figure development, the martial arts, or any other similar activity. For the purposes of this chapter, "health studio" does not include: (a) Public common schools, private schools approved under RCW 28A.195.010, and public or private institutions of higher education; (b) persons providing professional services within the scope of a person's license under Title 18 RCW; (c) bona fide nonprofit organizations which have been granted tax-exempt status by the Internal Revenue Service, the functions of which as health studios are only incidental to their overall functions and purposes; (d) a person or entity which offers physical exercise, body building, figure development or similar activities as incidental features of a plan of instruction or assistance relating to diet or control of eating habits; (e) bona fide nonprofit corporations organized under chapter 24.03 RCW which have members and whose members have meaningful voting rights to elect and remove a board of directors which is responsible for the operation of the health club and corporation; and (f) a preexisting facility primarily offering aerobic classes, where the initiation fee is less than fifty dollars and no memberships are sold which exceed one year in duration. For purposes of this subsection, "preexisting facility" means an existing building used for health studio services covered by the fees collected.

(4) "Health studio services" means instruction, services, privileges, or rights offered for sale by a health studio. "Health studio services" do not include: (a) Instruction or assistance relating to diet or control of eating habits not involving substantial on-site physical exercise, body building, figure development, or any other similar activity; or (b) recreational or social programs which either involve no physical exercise or exercise only incidental to the program.

(5) "Initiation or membership fee" means a fee paid either in a lump sum or in installments within twelve months of execution of the health studio services contract on a one-time basis when a person first joins a health studio for the privilege of belonging to the health studio.

(6) "Special offer or discount" means any offer of health studio services at a reduced price or without charge to a prospective member.

(7) "Use fees or dues" means fees paid on a regular periodic basis for use of a health studio. This does not

preclude prepayment of use fees at the buyer's option. [1990 c 55 § 1; 1990 c 33 § 556; 1987 c 317 § 2.]

Reviser's note: This section was amended by 1990 c 33 § 556 and by 1990 c 55 § 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).

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

19.142.020 Membership plans—Special offers—Misrepresentations prohibited. (1) Each health studio shall prepare and provide to each prospective buyer a written comprehensive list of all membership plans of health studio services offered for sale by the health studio. The list shall contain a description and the respective price of each membership plan of health studio services offered.

(2) A health studio is prohibited from selling a membership plan of health studio services not included in the list.

(3) A health studio is prohibited from making a special offer or offering a discount unless such special offer or discount is made in writing and available to all prospective members: PROVIDED, That a special offer or discount offered to groups need not be available to all similarly-situated prospective members.

(4) A health studio is prohibited from making any misrepresentation to any prospective buyer or current member regarding qualifications of staff, availability or quality of facilities or services, or results obtained through exercise, body building, figure development, or weight loss programs, or the present or maximum number of customers who may contract to use the facilities or services. [1987 c 317 § 3.]

19.142.030 Written contract required. A contract for the sale of health studio services shall be in writing. A copy of the contract, as well as the rules of the health studio if not stated in the contract, shall be given to the buyer when the buyer signs the contract. [1987 c 317 § 4.]

19.142.040 Contents of contract. A contract for health studio services shall include all of the following:

(1) The name and address of the health studio facilities operator;

(2) The date the buyer signed the contract;

(3) A description of the health studio services and general equipment to be provided, or acknowledgement in a conspicuous form that the buyer has received a written description of the health studio services and equipment to be provided. If any of the health studio services or equipment are to be delivered at a planned facility, at a facility under construction, or through substantial improvements to an existing facility, the description shall include a date for completion of the facility, construction, or improvement. Health studio services must begin within twelve months from the date the contract is signed unless the completion of the facility, construction, or improvement is delayed due to war, or fire, flood, or other natural disaster;

(4) A statement of the duration of the contract. No contract for health studio services may require payments or financing by the buyer over a period in excess of thirty-six months from the date of the contract, nor may any contract term be measured by or be for the life of the buyer;

(5) The use fees or dues to be paid by the buyer and if such fees are subject to periodic adjustment. Use fees or dues may not be raised more than once in any calendar year;

(6) A complete statement of the rules of the health studio or an acknowledgement in a conspicuous form that the buyer has received a copy of the rules;

(7) Clauses which notify the buyer of the right to cancel:

(a) If the buyer dies or becomes totally disabled. The contract may require that the disability be confirmed by an examination of a physician agreeable to the buyer and the health studio;

(b)(i) Subject to (b)(ii) of this subsection, if the buyer moves his or her permanent residence to a location more than twenty-five miles from the health studio or an affiliated health studio offering the same or similar services and facilities at no additional expense to the buyer and the buyer cancels after one year from signing the contract if the contract extends for more than one year. The health studio may require reasonable evidence of relocation;

(ii) If at the time of signing the contract requiring payment of an initiation or membership fee the buyer lived more than twenty-five miles from the health studio, the buyer may cancel under (7)(b)(i) of this section only if the buyer moves an additional five miles or more from the health studio.

(c) If a contract extends for more than one year, the buyer may cancel the contract for any reason upon thirty days' written notice to the health studio;

(d) If the health studio facilities are permanently closed and comparable facilities owned and operated by the seller are not made available within a ten-mile radius of the closed facility;

(e) If a facility, construction, or improvement is not completed by the date represented by the contract;

(f) If the contract for health studio services was sold prior to the opening of the facility, the buyer may cancel within the first five business days the facility opens for use of the buyer and the health studio begins to provide the agreed upon health studio services;

(8) Clauses explaining the buyer's right to a refund and relief from future payment obligations after cancellation of the contract;

(9) A provision under a conspicuous caption in capital letters and boldface type stating substantially the following:

"BUYER'S RIGHT TO CANCEL

If you wish to cancel this contract without penalty, you may cancel it by delivering or mailing a written notice to the health studio. The notice must say that you do not wish to be bound by the contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The notice must be mailed to (insert name and mailing address of health studio). If you cancel within the three days, the health studio will return to you within thirty days all amounts you have paid."

[1990 c 55 § 2; 1987 c 317 § 5.]

19.142.050 Notice of cancellation—Refund. After receipt of a written notice of cancellation, the health studio shall provide a refund to the buyer within thirty days. The health studio may require the buyer to return any membership card or other materials which evidence membership in the health studio. The buyer is entitled to a refund and relief from future obligations for payments of initiation or membership fees and use fees or dues as follows:

(1) The buyer is entitled to a refund of the unused portion of any prepaid use fees or dues and relief from future obligations to pay use fees or dues concerning use after the date of cancellation.

(2)(a) Subject to (b) of this subsection, if a contract includes a one-time only initiation or membership fee and the buyer cancels pursuant to RCW 19.142.040(7)(a), the buyer is entitled to a pro rata refund of the fee less a predetermined amount not to exceed one-half of the initial initiation or membership fee if the contract clearly states what percentage of the fee is nonrefundable or refundable.

(b) If a contract includes a one-time only initiation or membership fee and the buyer cancels pursuant to RCW 19.142.040(7)(a) three years or more after the signing of the contract requiring payment of such fee, such fee is nonrefundable.

(3) If a contract includes an initiation or membership fee and the buyer cancels pursuant to RCW 19.142.040(7) (b) or (c), the buyer is entitled to a pro rata refund of the fee less a predetermined amount not to exceed one-half of the initial initiation or membership fee unless the following clause is contained in the contract and signed separately by the buyer. The clause shall be placed under a conspicuous caption in capital letters and bold face type stating the following:

NONREFUNDABLE AMOUNT

I UNDERSTAND THAT I HAVE PAID OR AM OBLIGATED TO PAY AS AN INITIATION OR MEMBERSHIP FEE, AND THAT UNDER NO CIRCUMSTANCES IS ANY PORTION OF THIS AMOUNT REFUNDABLE.

.....
(Buyer's Signature)

(4) If a contract includes a one-time only initiation or membership fee and the buyer cancels pursuant to RCW 19.142.040(7)(d), the buyer is entitled to a pro rata refund of the fee.

(5) If a contract includes a one-time only initiation or membership fee and the buyer cancels pursuant to RCW 19.142.040(7) (e) or (f), the buyer is entitled to a full refund of the fee.

If a buyer is entitled to a pro rata refund under this section, the amount shall be computed by dividing the contract price by the number of weeks in the contract term and multiplying the result by the number of weeks remaining in the contract term. If no term is stated in the contract, a term of thirty-six months shall be used. [1990 c 55 § 3; 1987 c 317 § 6.]

19.142.060 Trust account—Written receipt—Record of deposits—Buyers' claims. (1) All moneys paid to a health studio prior to the opening of the facility shall immediately be deposited in a trust account of a federally

insured financial institution located in this state. The trust account shall be designated and maintained for the benefit of health studio members. Moneys maintained in the trust account shall be exempt from execution, attachment, or garnishment. A health studio shall not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds. Withdrawals from the trust account shall be made no sooner than thirty days after the opening of the entire facility.

(2) The health studio shall within seven days of the first deposit notify the office of the attorney general in writing, of the name, address, and location of the depository and any subsequent change thereof.

(3) The health studio shall provide the buyer with a written receipt for the money and shall provide written notice of the name, address, and location of the depository and any subsequent change thereof.

(4) The health studio shall maintain a record of each trust account deposit, including the name and address of each member whose funds are being deposited, the amount paid and the date of the deposit. Upon request of the attorney general's office, upon five days' notice, such records shall be produced for inspection.

(5) If prior to the opening of the facility the status of the health studio is transferred to another, any sums in the trust account affected by the transfer shall simultaneously be transferred to an equivalent trust account of the successor, and the successor shall promptly notify the buyer and the office of the attorney general of the transfer and of the name, address, and location of the new depository.

(6) The buyer's claim to any money under this section is prior to that of any creditor of the health studio, including a trustee in bankruptcy or receiver.

(7) After the health studio receives a notice of cancellation of the contract, or if the health studio fails to open a facility at the stated date of completion and if the buyer so requests, then the health studio shall provide a refund within thirty days. [1987 c 317 § 7.]

19.142.070 Surety bond in lieu of trust account.

The requirements of RCW 19.142.060 do not apply to any health studios which, prior to any preopening sales, have provided a bond guaranteeing the completion or opening of any facility for which contracts for health studio services were sold prior to the opening of the facility. The bond shall be drawn upon a surety in the amount of one hundred fifty thousand dollars, running to the state of Washington. An action on the bond may be brought by the office of the attorney general or by any buyer of a contract for health studio services sold prior to the opening of the facility. [1987 c 317 § 8.]

19.142.080 Failure to comply with bond or trust account requirements—Class C felony.

Failure to furnish a bond as required by RCW 19.142.070 or to maintain a trust account as required by RCW 19.142.060 shall constitute a class C felony punishable as provided in chapter 9A.20 RCW. [1987 c 317 § 9.]

19.142.090 Waivers of this chapter—Contracts not in compliance with this chapter—Void and unenforce-

able. A health studio shall not request a buyer to waive any provision of this chapter. Any contract for health studio services which does not comply with the provisions of this chapter or in which a buyer waives any provision of this chapter is void and unenforceable as contrary to public policy. [1987 c 317 § 10.]

19.142.100 Violations—Application of consumer protection act. A violation of this chapter constitutes an unfair or deceptive act or practice and is a per se violation of the consumer protection act, chapter 19.86 RCW. [1987 c 317 § 11.]

19.142.110 Attorneys' fees. Buyers who prevail in any cause of action under this chapter are entitled to reasonable attorneys' fees. [1987 c 317 § 12.]

19.142.900 Chapter cumulative and nonexclusive. The provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy available at law. [1987 c 317 § 13.]

19.142.901 Prospective application of chapter. The provisions of this chapter shall not apply to any contracts for health studio services entered into before July 26, 1987. [1987 c 317 § 14.]

Chapter 19.146

MORTGAGE BROKER PRACTICES ACT

Sections

19.146.005	Findings and declaration.
19.146.010	Definitions.
19.146.020	Exemptions from chapter.
19.146.030	Written disclosure of fees and costs—Contents—Violations of certain federal requirements.
19.146.040	Written contract required—Written correspondent or loan brokerage agreement required.
19.146.050	Brokers to deposit moneys for third party provider services in trust account—Use of trust account.
19.146.060	Accounting requirements.
19.146.070	Fees, commissions, or compensation—When permitted.
19.146.080	Borrowers unable to obtain loans—Mortgage broker to provide copies of certain documents—Conditions.
19.146.090	Advertising of residential mortgage loans to comply with certain federal requirements.
19.146.100	Violations of chapter—Application of consumer protection act.
19.146.110	Criminal penalties.
19.146.900	Short title.
19.146.901	Severability—1987 c 391.

19.146.005 Findings and declaration. The legislature finds and declares that the brokering of residential real estate loans substantially affects the public interest. The practices of mortgage brokers have had significant impact on the citizens of the state and the banking and real estate industries. It is the intent of the legislature to establish rules of practice and conduct of mortgage brokers to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community. [1987 c 391 § 1.]

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

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

(2) "Mortgage broker" means every person who for compensation or in the expectation of compensation either directly or indirectly makes, negotiates, or offers to make or negotiate a residential mortgage loan.

(3) "Person" means a natural person, corporation, company, partnership, or association.

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

(5) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies. [1987 c 391 § 3.]

19.146.020 Exemptions from chapter. The following are exempt from all provisions of this chapter:

(1) Any person doing business under the laws of this state or the United States relating to banks, bank holding companies, mutual savings banks, trust companies, savings and loan associations, credit unions, consumer finance companies, industrial loan companies, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof;

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

(3) Any person doing any act under order of any court;

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

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

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

(7) Any mortgage broker approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the National Housing Act, 12 U.S.C. Sec. 1701, as now or hereafter amended; and

(8) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection. [1987 c 391 § 4.]

19.146.030 Written disclosure of fees and costs—Contents—Violations of certain federal requirements. Upon receipt of a loan application and before the receipt of any moneys from a borrower, a mortgage broker shall make a full written disclosure to each borrower containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable. The written disclosure shall contain the following information:

(1) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase. Disclosure in compliance with the requirements of the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be deemed to comply with the disclosure requirements of this subsection;

(2) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500, as now or hereafter amended, shall be deemed to comply with the disclosure requirements of this subsection;

(3) If applicable, the cost, terms, and conditions of an agreement to lock-in or commit the mortgage broker or lender to a specific interest rate or other financing term for any period of time up to and including the time the loan is closed;

(4) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(5) The name of the lender and the nature of the business relationship between the lender and the mortgage broker, if any: PROVIDED, That this disclosure may be made at any time up to the time the borrower accepts the lender's commitment; and

(6) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider

services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

A violation of the Truth-in-Lending Act, Regulation Z, the Real Estate Settlement Procedures Act, and Regulation X is a violation of this section for purposes of this chapter. [1987 c 391 § 5.]

19.146.040 Written contract required—Written correspondent or loan brokerage agreement required. Every contract between a mortgage broker and a borrower shall be in writing and shall contain the entire agreement of the parties.

A mortgage broker shall have a written correspondent or loan brokerage agreement with a lender before any solicitation of, or contracting with, the public. [1987 c 391 § 6.]

19.146.050 Brokers to deposit moneys for third party provider services in trust account—Use of trust account. A mortgage broker shall deposit, prior to the end of the next business day, all moneys received from borrowers for third-party provider services in a trust account of a federally insured financial institution located in this state. The trust account shall be designated and maintained for the benefit of borrowers. Moneys maintained in the trust account shall be exempt from execution, attachment, or garnishment. A mortgage broker shall not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds. Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third-party provider or for refunds to borrowers. Any interest earned on the trust account shall be refunded or credited to the borrowers at closing. [1987 c 391 § 7.]

19.146.060 Accounting requirements. A mortgage broker shall use generally accepted accounting principles. A mortgage broker shall maintain accurate, current, and readily available books and records at the mortgage broker's usual business location until at least six years have elapsed following the effective period to which the books and records relate. [1987 c 391 § 8.]

19.146.070 Fees, commissions, or compensation—When permitted. (1) Except as otherwise permitted by this section, a mortgage broker shall not receive a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed upon by the borrower and mortgage broker.

(2) A mortgage broker may:

(a) If the mortgage broker has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed upon by the borrower and the mortgage broker, and the borrower fails to close on the loan through no fault of the mortgage broker, charge a fee not to exceed three hundred dollars for services rendered, preparation of documents, or transfer of documents in the borrower's file which were prepared or paid for by the borrower if the fee is not otherwise prohibited by the Truth-

in-Lending Act, 15 U.S.C. Sec. 1601, and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended; or

(b) Solicit or receive fees for third party provider goods or services in advance. Fees for any goods or services not provided must be refunded to the borrower and the mortgage broker may not charge more for the goods and services than the actual costs of the goods or services charged by the third party provider.

(3) A mortgage broker may not:

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

(b) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting. [1987 c 391 § 9.]

19.146.080 Borrowers unable to obtain loans—Mortgage broker to provide copies of certain documents—Conditions. If a borrower is unable to obtain a loan for any reason and the borrower has paid for an appraisal, title report, or credit report, the mortgage broker shall give a copy of the appraisal, title report, or credit report to the borrower and transmit the originals to any other mortgage broker or lender to whom the borrower directs that the documents be transmitted. The mortgage broker must provide the copies or transmit the documents within five days after the borrower has made the request in writing. [1987 c 391 § 10.]

19.146.090 Advertising of residential mortgage loans to comply with certain federal requirements. All advertising of residential mortgage loans by a mortgage broker shall comply with the requirements of the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended. A violation of the Truth-in-Lending Act or Regulation Z is a violation of this section for purposes of this chapter. [1987 c 391 § 11.]

19.146.100 Violations of chapter—Application of consumer protection act. The commission by any person of any violation of this chapter is an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. [1987 c 391 § 12.]

19.146.110 Criminal penalties. Any person who violates any provision of RCW 19.146.005 through 19.146.040 or 19.146.060 through 19.146.100 shall be guilty of a misdemeanor punishable under chapter 9A.20 RCW. Any person who violates RCW 19.146.050 shall be guilty of a class C felony under chapter 9A.20 RCW. [1987 c 391 § 13.]

19.146.900 Short title. This act shall be known and cited as the "mortgage broker practices act." [1987 c 391 § 2.]

19.146.901 Severability—1987 c 391. 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 391 § 15.]

Chapter 19.148

MORTGAGE LOAN SERVICING

Sections

- 19.148.010 Finding—Purpose.
- 19.148.020 Definitions.
- 19.148.030 Disclosure requirements—Action for damages.
- 19.148.900 Effective date—1989 c 98.

19.148.010 Finding—Purpose. The ability of individuals to obtain information relating to their residential mortgage loans is vital to the financial needs of mortgagors in Washington. The public interest is adversely affected when a residential mortgage loan's servicing is sold or transferred with insufficient notification given to the mortgagor. In addition, mortgagors may experience difficulty in obtaining various mortgage loan information including information concerning mortgage loan prepayments, reserve accounts, and adjustments to monthly payments. The legislature finds that the legitimate interests of mortgagors and mortgage loan servicers are served if the disclosure of the potential sale of loan servicing is made to the mortgagor, reasonable notification of a residential mortgage loan servicing's sale is made, and continued mortgagor access to information regarding the mortgage loan is promoted. [1989 c 98 § 1.]

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

(1) "Lender" shall mean any person in the business of making a loan.

(2) "Loan" shall mean any loan used to finance the acquisition of a one-to-four family owner occupied residence located in this state.

(3) "Purchasing servicing agent" is any person who purchases, receives through transfer or assignment, or otherwise acquires the responsibility of the servicing for a loan.

(4) "Person" shall include an individual, firm, association, partnership, business, trust, corporation, or any other legal entity whether resident or nonresident. [1989 c 98 § 2.]

19.148.030 Disclosure requirements—Action for damages. (1) If the servicing for the loan is subject to sale, transfer, or assignment, a lender shall so disclose in writing at the time of or prior to loan closing and shall also disclose in the same writing that when such servicing is sold, transferred, or assigned, the purchasing servicing agent is required to provide notification to the mortgagor. If a lender, which has not provided the notice required by this subsection, consolidates with, merges with or is acquired by another institution, and thereafter loan servicing becomes subject to sale, transfer, or assignment, that institution shall

within thirty days of such transaction make the disclosure in writing to the obligor primarily responsible for repaying each loan according to the records of the lender.

(2) If the servicing of a loan is sold, assigned, transferred, or otherwise acquired by another person, the purchasing servicing agent shall:

(a)(i) Issue corrected coupon or payment books, if used and necessary;

(ii) Provide notification to the mortgagor at least thirty days prior to the due date of the first payment to the purchasing servicing agent, of the name, address, and telephone number of the division from whom the mortgagor can receive information regarding the servicing of the loan; and

(iii) Inform the mortgagor of changes made regarding the servicing requirements including, but not limited to, interest rate, monthly payment amount, and escrow balance; and

(b) Respond within fifteen business days upon receipt of a written request for information from a mortgagor. A written response must include the telephone number of the company division who can assist the mortgagor.

(3) Any person injured by a violation of this chapter may bring an action for actual damages and reasonable attorneys' fees and costs incurred in bringing the action. [1989 c 98 § 3.]

19.148.900 Effective date—1989 c 98. This act shall take effect on January 1, 1990. [1989 c 98 § 5.]

Chapter 19.150

SELF-SERVICE STORAGE FACILITIES

Sections

- 19.150.010 Definitions.
- 19.150.020 Lien on personal property.
- 19.150.030 Unpaid rent—Denial of access to storage space.
- 19.150.040 Unpaid rent—Termination of occupant's rights—Notice.
- 19.150.050 Form of notice.
- 19.150.060 Attachment of lien—Notice of lien sale or notice of disposal.
- 19.150.070 Sale of property.
- 19.150.080 Manner of sale—Who may not acquire—Excess proceeds—Accounting.
- 19.150.090 Claim by persons with a security interest.
- 19.150.100 Payment prior to sale by persons claiming a right to the property.
- 19.150.110 Good faith purchasers—Repurchase of goods by occupant.
- 19.150.120 Contract for storage space—Alternative address for notice.
- 19.150.130 Owner not obligated to provide insurance.
- 19.150.140 Other rights not impaired.
- 19.150.900 Short title.
- 19.150.901 Application of chapter.
- 19.150.902 Existing rental agreements not affected.
- 19.150.903 Chapter not applicable to owner subject to Article 62A.7 RCW.
- 19.150.904 Severability—1988 c 240.

19.150.010 Definitions. For the purposes of this chapter, the following terms shall have the following meanings:

(1) "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and

removing personal property on a self-service basis, but does not include a garage or other storage area in a private residence. No occupant may use a self-service storage facility for residential purposes.

(2) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his or her agent, or any other person authorized by him or her to manage the facility, or to receive rent from an occupant under a rental agreement.

(3) "Occupant" means a person, or his or her sublessee, successor, or assign, who is entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(4) "Rental agreement" means any written agreement or lease which establishes or modifies the terms, conditions, rules or any other provision concerning the use and occupancy of a self-service storage facility.

(5) "Personal property" means movable property not affixed to land, and includes, but is not limited to, goods, merchandise, furniture, and household items.

(6) "Last known address" means that address provided by the occupant in the latest rental agreement, or the address provided by the occupant in a subsequent written notice of a change of address. [1988 c 240 § 2.]

19.150.020 Lien on personal property. The owner of a self-service storage facility and his or her heirs, executors, administrators, successors, and assigns have a lien upon all personal property located at a self-service storage facility for rent, labor, or other charges, present or future, incurred pursuant to the rental agreement, and for expenses necessary for the preservation, sale, or disposition of personal property subject to this chapter. The lien may be enforced consistent with this chapter. However, any lien on a motor vehicle or boat which has attached and is set forth in the documents of title to the motor vehicle or boat shall have priority over any lien created pursuant to this chapter. [1988 c 240 § 3.]

19.150.030 Unpaid rent—Denial of access to storage space. When any part of the rent or other charges due from an occupant remains unpaid for six consecutive days, and the rental agreement so provides, an owner may deny the occupant access to the storage space at a self-service storage facility. [1988 c 240 § 4.]

19.150.040 Unpaid rent—Termination of occupant's rights—Notice. When any part of the rent or other charges due from an occupant remains unpaid for fourteen consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a notice to the occupant's last known address, and to the alternative address specified in RCW 19.150.120(2), by first class mail, postage prepaid, containing all of the following:

(1) An itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums become due.

(2) A statement that the occupant's right to use the storage space will terminate on a specified date (not less than fourteen days after the mailing of the notice) unless all

(4) The owner is entitled to retain any interest earned on the excess proceeds until the excess proceeds are claimed by another person or are turned over to the state as abandoned property pursuant to RCW 63.29.165.

(5) After the sale or other disposition pursuant to this section has been completed, the owner shall provide an accounting of the disposition of the proceeds of the sale or other disposition to the occupant at the occupant's last known address and at the alternative address. [1988 c 240 § 9.]

19.150.090 Claim by persons with a security interest. Any person who has a perfected security interest under Article 62A.9 RCW of the uniform commercial code may claim any personal property subject to the security interest and subject to a lien pursuant to this chapter by paying the total amount due, as specified in the lien notices, for the storage of the property. Upon payment of the total amount due, the owner shall deliver possession of the particular property subject to the security interest to the person who paid the total amount due. The owner shall not be liable to any person for any action taken pursuant to this section if the owner has fully complied with RCW 19.150.050 and 19.150.060. [1988 c 240 § 10.]

19.150.100 Payment prior to sale by persons claiming a right to the property. Prior to any sale pursuant to RCW 19.150.080, any person claiming a right to the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred for particular actions taken pursuant to this chapter. In that event, the goods shall not be sold, but shall be retained by the owner subject to the terms of this chapter pending a court order directing a particular disposition of the property. [1988 c 240 § 11.]

19.150.110 Good faith purchasers—Repurchase of goods by occupant. (1) Except as provided in subsection (2) of this section, a purchaser in good faith of goods disposed of pursuant to RCW 19.150.080(2) takes the goods free of any rights of persons against whom the lien was claimed, despite noncompliance by the owner of the storage facility with this chapter.

(2) A purchaser or subsequent purchaser shall return the goods to the occupant if the occupant tenders the original purchase price plus any costs incurred by the original purchaser within six months of the date of the purchase, unless the occupant was personally served with notice of the lien sale. If the occupant was personally served, the occupant has no right to repurchase the property.

(3) If the occupant exercises his or her right to repurchase property pursuant to subsection (2) of this section, a subsequent purchaser is entitled to rescind a transaction with a previous purchaser. [1988 c 240 § 12.]

19.150.120 Contract for storage space—Alternative address for notice. (1) Each contract for the rental or lease of individual storage space in a self-service storage facility shall be in writing and shall contain, in addition to the provisions otherwise required or permitted by law to be included, a statement requiring the occupant to disclose any lienholders or secured parties who have an interest in the

property that is or will be stored in the self-service storage facility, a statement that the occupant's property will be subject to a claim of lien and may even be sold to satisfy the lien if the rent or other charges due remain unpaid for fourteen consecutive days, and that such actions are authorized by this chapter.

(2) The lien authorized by this chapter shall not attach, unless the rental agreement requests, and provides space for, the occupant to give the name and address of another person to whom the preliminary lien notice and subsequent notices required to be given under this chapter may be sent. Notices sent pursuant to RCW 19.150.040 or 19.150.060 shall be sent to the occupant's address and the alternative address, if both addresses are provided by the occupant. Failure of an occupant to provide an alternative address shall not affect an owner's remedies under this chapter or under any other provision of law. [1988 c 240 § 13.]

19.150.130 Owner not obligated to provide insurance. Any insurance protecting the personal property stored within the storage space against fire, theft, or damage is the responsibility of the occupant. The owner is under no obligation to provide insurance. [1988 c 240 § 14.]

19.150.140 Other rights not impaired. Nothing in this chapter may be construed to impair or affect the right of the parties to create additional rights, duties, and obligations which do not conflict with the provisions of this chapter. The rights provided by this chapter shall be in addition to all other rights provided by law to a creditor against his or her debtor. [1988 c 240 § 15.]

19.150.900 Short title. This chapter shall be known as the "Washington self-service storage facility act." [1988 c 240 § 1.]

19.150.901 Application of chapter. This chapter shall only apply to rental agreements entered into, extended, or renewed after June 9, 1988. Rental agreements entered into before June 9, 1988, which provide for monthly rental payments but providing no specific termination date shall be subject to this chapter on the first monthly rental payment date next succeeding June 9, 1988. [1988 c 240 § 16.]

19.150.902 Existing rental agreements not affected. All rental agreements entered into before June 9, 1988, and not extended or renewed after that date, or otherwise made subject to this chapter pursuant to RCW 19.150.901, and the rights, duties, and interests flowing from them, shall remain valid, and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this state. [1988 c 240 § 17.]

19.150.903 Chapter not applicable to owner subject to Article 62A.7 RCW. If an owner issues any warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the occupant are subject to Article 62A.7 RCW (commencing with RCW 62A.7-101) of the uniform commercial code and this chapter does not apply. [1988 c 240 § 18.]

19.150.904 Severability—1988 c 240. 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 240 § 23.]

Chapter 19.154

IMMIGRATION ASSISTANT PRACTICES ACT

Sections

- 19.154.010 Findings.
- 19.154.020 Definitions.
- 19.154.030 Exemptions.
- 19.154.040 Registration required.
- 19.154.050 Change of address.
- 19.154.060 Nonlegal assistance permitted.
- 19.154.070 Written contract—Requirements—Right to rescind.
- 19.154.080 Prohibited activities.
- 19.154.090 Unfair and deceptive act—Unfair method of competition.
- 19.154.100 Penalty.
- 19.154.900 Short title.
- 19.154.901 Severability—1989 c 117.
- 19.154.902 Effective date—1989 c 117.

19.154.010 Findings. The legislature finds and declares that assisting persons regarding immigration matters substantially affects the public interest. The practices of immigration assistants have a significant impact on the residents of the state of Washington. It is the intent of the legislature to establish rules of practice and conduct for immigration assistants to promote honesty and fair dealing with residents and to preserve public confidence. [1989 c 117 § 1.]

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

(1) "Immigration assistant" means every person who, for compensation or the expectation of compensation, gives nonlegal assistance on an immigration matter. That assistance is limited to:

(a) Transcribing responses to a government agency form selected by the customer which is related to an immigration matter, but does not include advising a person as to his or her answers on those forms;

(b) Translating a person's answer to questions posed on those forms;

(c) Securing for a person supporting documents currently in existence, such as birth and marriage certificates, which may be needed to submit with those forms;

(d) Making referrals to attorneys who could undertake legal representation for a person in an immigration matter.

(2) "Immigration matter" means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person which arises under immigration and naturalization law, executive order, or presidential proclamation, or which arises under action of the United States immigration and naturalization service, the United States department of labor, or the United States department of state.

(3) "Compensation" means money, property, or anything else of value. [1989 c 117 § 2.]

19.154.030 Exemptions. The following persons are exempt from all provisions of this chapter:

(1) An attorney licensed to practice law in this state where such attorney renders services in the course of his or her practice as an attorney and a legal intern, as described by court rule, or paralegal employed by and under the direct supervision of such an attorney;

(2) A nonprofit corporation or clinic affiliated with a law school in this state that provides immigration consulting services to clients without charge beyond a request for reimbursement of the corporation's or clinic's reasonable costs relating to providing immigration services to that client. "Reasonable costs" include, but are not limited to, the costs of photocopying, telephone calls, document requests, and the filing fees for immigration forms. [1989 c 117 § 3.]

19.154.040 Registration required. Any person who wishes to engage in the business of an immigration assistant must register with the secretary of state's office and provide his or her name, business address, home address, and business and home telephone numbers. [1989 c 117 § 4.]

19.154.050 Change of address. Immigration assistants who have registered must inform the secretary of state of any changes in their name, addresses, or telephone numbers within thirty days of the change. [1989 c 117 § 5.]

19.154.060 Nonlegal assistance permitted. Immigration assistants shall offer or provide only nonlegal assistance in an immigration matter as defined in RCW 19.154.020. [1989 c 117 § 6.]

19.154.070 Written contract—Requirements—Right to rescind. (1) Before providing any assistance, an immigration assistant who has agreed to provide immigration assistance to a customer shall provide the customer with a written contract that includes the following provisions:

(a) An explanation of the services to be performed;

(b) Identification of all compensation and costs to be charged to the customer for the services to be performed;

(c) A statement that documents submitted in support of an application for nonimmigrant, immigrant, or naturalization status may not be retained by the assistant for any purpose, including payment of compensation or costs;

(d) A statement that the immigration assistant is not an attorney and may not perform legal services. This statement shall be on the face of the contract in ten-point bold type print; and

(e) A statement that the customer has seventy-two hours to rescind the contract. This statement shall be conspicuously set forth in the contract.

(2) The written contract shall be stated in both English and in the language of the customer.

(3) A copy of the written contract shall be provided to the customer by the immigration assistant upon execution of the contract.

(4) A customer has the right to rescind a contract within seventy-two hours of the signing of the contract.

(5) Any documents identified in subsection (1)(c) of this section shall be returned upon demand of the customer. [1989 c 117 § 7.]

19.154.080 Prohibited activities. In the course of dealing with customers or prospective customers, an immigration assistant shall not:

(1) Make any statement that the immigration assistant can or will obtain special favors from or has special influence with the United States immigration and naturalization service;

(2) Retain any compensation for services not performed;

(3) Refuse to return documents supplied by, prepared by, or paid for by the customer upon the request of the customer. These documents must be returned upon request even if there is a fee dispute between the immigration assistant and the customer;

(4) Represent or advertise, in connection with the provision of immigration assistance, other titles or credentials, including but not limited to "notary public" or "immigration consultant" that could cause a customer to believe that the immigration assistant possesses special professional skills;

(5) Communicate in any manner, oral or written, that registration under this chapter is an indicator of special skill or expertise or that it allows the person to provide advice on an immigration matter;

(6) Give any legal advice concerning an immigration matter. [1989 c 117 § 8.]

19.154.090 Unfair and deceptive act—Unfair method of competition. The legislature finds and declares that any violation of this chapter substantially affects the public interest and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce as set forth in RCW 19.86.020. [1989 c 117 § 9.]

19.154.100 Penalty. A violation of this chapter shall be punished as a gross misdemeanor according to chapter 9A.20 RCW. [1989 c 117 § 10.]

19.154.900 Short title. This chapter shall be known and cited as the "immigration assistant practices act." [1989 c 117 § 11.]

19.154.901 Severability—1989 c 117. 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 117 § 14.]

19.154.902 Effective date—1989 c 117. 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, 1989. [1989 c 117 § 15.]

Chapter 19.158

COMMERCIAL TELEPHONE SOLICITATION

Sections

- 19.158.010 Findings.
19.158.020 Definitions.
19.158.030 Violation an unfair or deceptive act.

- 19.158.040 Unfair or deceptive acts.
19.158.050 Registration requirements.
19.158.060 Failure to register—Penalty.
19.158.070 Appointment of agent to receive process.
19.158.080 Duties of director.
19.158.090 Injunctive relief—Other applicable law.
19.158.100 Requiring payment by credit card prohibited.
19.158.110 Commercial telephone solicitor—Duties and prohibited acts—Notice to customers.
19.158.120 Cancellation of purchases—Requirements—Notice—Voidable contracts.
19.158.130 Damages, costs, attorneys' fees—Remedies not limited.
19.158.140 Civil penalties.
19.158.150 Registration required—Penalty.
19.158.160 Penalties.
19.158.900 Severability—1989 c 20.
19.158.901 Effective date—1989 c 20.

19.158.010 Findings. The use of telephones for commercial solicitation is rapidly increasing. This form of communication offers unique benefits, but entails special risks and poses potential for abuse. The legislature finds that the widespread practice of fraudulent commercial telephone solicitation is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. For the general welfare of the public and in order to protect the integrity of the telemarketing industry, the commercial use of telephones must be regulated by law. [1989 c 20 § 1.]

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

(1) A "commercial telephone solicitor" is any person who engages in commercial telephone solicitation, including service bureaus.

(2) "Commercial telephone solicitation" means:

(a) An unsolicited telephone call to a person initiated by a salesperson and conversation for the purpose of inducing the person to purchase or invest in property, goods, or services;

(b) Other communication with a person where:

(i) A free gift, award, or prize is offered to a purchaser who has not previously purchased from the person initiating the communication; and

(ii) A telephone call response is invited; and

(iii) The salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call;

(c) Other communication with a person which misrepresents the price, quality, or availability of property, goods, or services and which invites a response by telephone or which is followed by a call to the person by a salesperson;

(d) For purposes of this section, "other communication" means a written or oral notification or advertisement transmitted through any means.

(3) A "commercial telephone solicitor" does not include any of the following:

(a) A person engaging in commercial telephone solicitation where:

(i) The solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature; or

(ii) Less than sixty percent of such person's prior year's sales were made as a result of a commercial telephone solicitation as defined in this chapter. Where more than sixty percent of a seller's prior year's sales were made as a result of commercial telephone solicitations, the service bureau contracting to provide commercial telephone solicitation services to the seller shall be deemed a commercial telephone solicitor.

(b) A person making calls for religious, charitable, political, or other noncommercial purposes.

(c) A person soliciting business solely from purchasers who have previously purchased from the business enterprise for which the person is calling.

(d) A person soliciting:

(i) Without the intent to complete or obtain provisional acceptance of a sale during the telephone solicitation; and

(ii) Who does not make the major sales presentation during the telephone solicitation; and

(iii) Who only makes the major sales presentation or arranges for the major sales presentation to be made at a later face-to-face meeting between the salesperson and the purchaser.

(e) A person selling a security which is exempt from registration under RCW 21.20.310;

(f) A person licensed under RCW 18.85.090 when the solicited transaction is governed by that law;

(g) A person registered under RCW 18.27.060 when the solicited transaction is governed by that law;

(h) A person licensed under RCW 48.17.150 when the solicited transaction is governed by that law;

(i) Any person soliciting the sale of a franchise who is registered under RCW 19.100.140;

(j) A person primarily soliciting the sale of a newspaper of general circulation, a magazine or periodical, or contractual plans, including book or record clubs: (i) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise; and (ii) which is regulated by the federal trade commission trade regulation concerning "use of negative option plans by sellers in commerce";

(k) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and loan association, mutual savings banks, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state or the United States;

(l) A person soliciting the sale of a prearrangement funeral service contract registered under RCW 18.39.240 and 18.39.260;

(m) A person licensed to enter into prearrangement contracts under RCW 68.05.155 when acting subject to that license;

(n) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit;

(o) A person or affiliate of a person whose business is regulated by the utilities and transportation commission or the federal communications commission;

(p) A person soliciting the sale of agricultural products, as defined in RCW 20.01.010 where the purchaser is a business;

(q) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the securities exchange act of 1934 (15 U.S.C. Sec. 781) and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g) of that section;

(r) A commodity broker-dealer as defined in RCW 21.30.010 and registered with the commodity futures trading commission;

(s) A business-to-business sale where:

(i) The purchaser business intends to resell the property or goods purchased, or

(ii) The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing or manufacturing process;

(t) A person licensed under RCW 19.16.110 when the solicited transaction is governed by that law;

(u) A person soliciting the sale of food intended for immediate delivery to and immediate consumption by the purchaser;

(v) A person soliciting the sale of food fish or shellfish when that person is licensed pursuant to the provisions of Title 75 RCW.

(4) "Purchaser" means a person who is solicited to become or does become obligated to a commercial telephone solicitor.

(5) "Salesperson" means any individual employed, appointed, or authorized by a commercial telephone solicitor, whether referred to by the commercial telephone solicitor as an agent, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the commercial telephone solicitor.

(6) "Service bureau" means a commercial telephone solicitor who contracts with any person to provide commercial telephone solicitation services.

(7) "Seller" means any person who contracts with any service bureau to purchase commercial telephone solicitation services.

(8) "Person" includes any individual, firm, association, corporation, partnership, joint venture, sole proprietorship, or any other business entity.

(9) "Free gift, award, or prize" means a gratuity which the purchaser believes of a value equal to or greater than the value of the specific product, good, or service sought to be sold to the purchaser by the seller.

(10) "Solicit" means to initiate contact with a purchaser for the purpose of attempting to sell property, goods or services, where such purchaser has expressed no previous interest in purchasing, investing in, or obtaining information regarding the property, goods, or services attempted to be sold. [1989 c 20 § 3.]

19.158.030 Violation an unfair or deceptive act. Unfair and deceptive telephone solicitation is not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1989 c 20 § 2.]

19.158.040 Unfair or deceptive acts. (1) It shall be unlawful for any person to engage in unfair or deceptive commercial telephone solicitation.

(2) A commercial telephone solicitor shall not place calls to any residence which will be received before 8:00 a.m. or after 9:00 p.m. at the purchaser's local time.

(3) A commercial telephone solicitor may not engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the telephone call. [1989 c 20 § 4.]

19.158.050 Registration requirements. (1) In order to maintain or defend a lawsuit or do any business in this state, a commercial telephone solicitor must be registered with the department of licensing. Prior to doing business in this state, a commercial telephone solicitor shall register with the department of licensing. Doing business in this state includes both commercial telephone solicitation from a location in Washington and solicitation of purchasers located in Washington.

(2) The department of licensing, in registering commercial telephone solicitors, shall have the authority to require the submission of information necessary to assist in identifying and locating a commercial telephone solicitor, including past business history, prior judgments, and such other information as may be useful to purchasers.

(3) The department of licensing shall issue a registration number to the commercial telephone solicitor.

(4) It is a violation of this chapter for a commercial telephone solicitor to:

(a) Fail to maintain a valid registration;

(b) Advertise that one is registered as a commercial telephone solicitor or to represent that such registration constitutes approval or endorsement by any government or governmental office or agency;

(c) Provide inaccurate or incomplete information to the department of licensing when making a registration application; or

(d) Represent that a person is registered or that such person has a valid registration number when such person does not.

(5) An annual registration fee shall be assessed by the department of licensing, the amount of which shall be determined at the discretion of the director of the department of licensing, and which shall be reasonably related to the cost of administering the provisions of this chapter. [1989 c 20 § 5.]

19.158.060 Failure to register—Penalty. If the director of the department of licensing determines that a commercial telephone solicitor has failed to register, the director may issue an order in accordance with chapter 34.05 RCW imposing a civil penalty in an amount which may not exceed five thousand dollars. [1989 c 20 § 6.]

19.158.070 Appointment of agent to receive process. Each commercial telephone solicitor shall appoint the director of the department of licensing as an agent to receive civil process under this chapter if the commercial telephone solicitor has no properly registered agent, if the agent has

resigned, or if the agent cannot, after reasonable diligence, be found. [1989 c 20 § 7.]

19.158.080 Duties of director. The director of the department of licensing may make rules, create forms, and issue orders as necessary to carry out the provisions of this chapter, pursuant to chapter 34.05 RCW. [1989 c 20 § 8.]

19.158.090 Injunctive relief—Other applicable law. The director of the department of licensing may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, in addition to any other action they might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice herein prohibited or declared unlawful: PROVIDED, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW and the powers and duties of the attorney general and the prosecuting attorney as they may appear in chapters 9.04 and 19.86 RCW shall apply against all persons subject to this chapter. [1989 c 20 § 9.]

19.158.100 Requiring payment by credit card prohibited. It is a violation of this chapter for a commercial telephone solicitor to require that payment be by credit card authorization or otherwise to announce a preference for that method of payment over any other for unfair or deceptive reasons. [1989 c 20 § 10.]

19.158.110 Commercial telephone solicitor—Duties and prohibited acts—Notice to customers. (1) Within the first minute of the telephone call, a commercial telephone solicitor or salesperson shall:

(a) Identify himself or herself, the company on whose behalf the solicitation is being made, the property, goods, or services being sold; and

(b) Terminate the telephone call within ten seconds if the purchaser indicates he or she does not wish to continue the conversation.

(2) If at any time during the telephone contact, the purchaser states or indicates that he or she does not wish to be called again by the commercial telephone solicitor or wants to have his or her name and individual telephone number removed from the telephone lists used by the commercial telephone solicitor:

(a) The commercial telephone solicitor shall not make any additional commercial telephone solicitation of the called party at that telephone number within a period of at least one year; and

(b) The commercial telephone solicitor shall not sell or give the called party's name and telephone number to another commercial telephone solicitor: PROVIDED, That the commercial telephone solicitor may return the list, including the called party's name and telephone number, to the company or organization from which it received the list.

(3) The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section. The notification may be made by:

(a) Annual inserts in the billing statements mailed to residential customers; or

(b) Conspicuous publication of the notice in the consumer information pages of local telephone directories.

(4) If a sale or an agreement to purchase is completed, the commercial telephone solicitor must inform the purchaser of his or her cancellation rights as enunciated in this chapter, state the registration number issued by the department of licensing, and give the street address of the seller.

(5) If, at any time prior to sale or agreement to purchase, the commercial telephone solicitor's registration number is requested by the purchaser, it must be provided.

(6) All oral disclosures required by this section shall be made in a clear and intelligible manner. [1989 c 20 § 11.]

19.158.120 Cancellation of purchases—Requirements—Notice—Voidable contracts. (1) A purchase of property, goods, or services ordered as a result of a commercial telephone solicitation as defined in this chapter, if not followed by a written confirmation, is not final. The confirmation must contain an explanation of the consumer's rights under this section and a statement indicating where notice of cancellation should be sent. The purchaser may give notice of cancellation to the seller in writing within three business days after receipt of the confirmation. If the commercial telephone solicitor has not provided an address for receipt of such notice, cancellation is effective by mailing the notice to the department of licensing.

(2) Notice of cancellation shall be given by certified mail, return receipt requested, and shall be effective when mailed. Notice of cancellation given by the purchaser need not take a particular form and is sufficient if it indicates by any form of written expression the name, address, and telephone number of the purchaser and the purchaser's stated intention not to be bound by the sale.

(3) If a commercial telephone solicitor or a seller, if different, violates this chapter in making a sale, or fails to deliver an item within forty-two calendar days, the contract is voidable by giving written notice to the seller and the purchaser is entitled to a return from the seller within fourteen days of all consideration paid. Upon receipt by the purchaser of the consideration paid to the seller, the purchaser shall make available to the seller, at a reasonable time and place, the items received by the purchaser. Any cost of returning the items received by the purchaser shall be borne by the seller, by providing or guaranteeing payment for return shipping. If such payment is not provided or guaranteed, the purchaser may keep without further obligation the items received.

(4) Any contract, agreement to purchase, or written confirmation executed by a seller which purports to waive the purchaser's rights under this chapter is against public policy and shall be unenforceable: PROVIDED, That an agreement between a purchaser and seller to extend the delivery time of an item to more than forty-two days shall be enforceable if the seller has a reasonable basis to expect that he or she will be unable to ship the item within forty-two days and if the agreement is included in the terms of the written confirmation.

(5) Where a contract or agreement to purchase confers on a purchaser greater rights to cancellation, refund, or return than those enumerated in this chapter, such contract shall be enforceable, and not in violation of this chapter: PROVIDED, That all rights under such a contract or agreement to purchase must be specifically stated in a written confirmation sent pursuant to this section.

(6) The provisions of this section shall not reduce, restrict, or eliminate any existing rights or remedies available to purchasers. [1989 c 20 § 12.]

19.158.130 Damages, costs, attorneys' fees—Remedies not limited. In addition to any other penalties or remedies under chapter 19.86 RCW, a person who is injured by a violation of this chapter may bring an action for recovery of actual damages, including court costs and attorneys' fees. No provision in this chapter shall be construed to limit any right or remedy provided under chapter 19.86 RCW. [1989 c 20 § 13.]

19.158.140 Civil penalties. A civil penalty shall be imposed by the court for each violation of this chapter in an amount not less than five hundred dollars nor more than two thousand dollars per violation. [1989 c 20 § 14.]

19.158.150 Registration required—Penalty. No salesperson shall solicit purchasers on behalf of a commercial telephone solicitor who is not currently registered with the department of licensing pursuant to this chapter. Any salesperson who violates this section is guilty of a misdemeanor. [1989 c 20 § 15.]

19.158.160 Penalties. (1) Except as provided in RCW 19.158.150, any person who knowingly violates any provision of this chapter or who knowingly, directly or indirectly employs any device, scheme or artifice to deceive in connection with the offer or sale by any commercial telephone solicitor shall be guilty of the following:

If the value of a transaction made in violation of RCW 19.158.040(1) is:

(a) Less than fifty dollars, the person shall be guilty of a misdemeanor;

(b) Fifty dollars or more, then such person shall be guilty of a gross misdemeanor; and

(c) Two hundred fifty dollars or more, then such person shall be guilty of a class C felony.

(2) When any series of transactions which constitute a violation of this section would, when considered separately, constitute a series of misdemeanors or gross misdemeanors because of the value of the transactions, and the series of transactions are part of a common scheme or plan, the transactions may be aggregated in one count and the sum of the value of all the transactions shall be the value considered in determining whether the violations are to be punished as a class C felony or a gross misdemeanor. [1989 c 20 § 16.]

19.158.900 Severability—1989 c 20. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 20 § 19.]

19.158.901 Effective date—1989 c 20. The effective date of this act shall be January 1, 1990. [1989 c 20 § 20.]

Chapter 19.162

PAY-PER-CALL INFORMATION DELIVERY SERVICES

Sections

- 19.162.010 Application of consumer protection act—Scope.
- 19.162.020 Definitions.
- 19.162.030 Program message preamble.
- 19.162.040 Advertisement of services.
- 19.162.050 Services directed at children.
- 19.162.060 Nonpayment of charges.
- 19.162.070 Violations—Action for damages.

Information delivery services through exclusive number prefix or service access code: RCW 80.36.500.

19.162.010 Application of consumer protection act—Scope. (1) The legislature finds that the deceptive use of pay-per-call information delivery services is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) The deceptive use of pay-per-call information delivery services is not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW, and constitutes an act of deceptive pay-per-call information delivery service.

(3) This chapter applies to a communication made by a person in Washington or to a person in Washington. [1991 c 191 § 1.]

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

(1) "Person" means an individual, corporation, the state or its subdivisions or agencies, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

(2) "Information delivery services" means telephone-recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix or service access code.

(3) "Information provider" means the person who provides the information, prerecorded message, or interactive program for the information delivery service. The information provider generally receives a portion of the revenue from the calls. "Information provider" does not include the medium for advertising information delivery services.

(4) "Interactive program" means a program that allows an information delivery service caller, once connected to the information provider's delivery service, to use the caller's telephone device to access more specific information or further information or to talk to other callers during the call.

(5) "Telecommunications company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town owning, operating, or managing any facilities used to provide

telecommunications for hire, sale, or resale to the general public within the state of Washington.

(6) "Interexchange carrier" means a carrier providing transmissions between local access and transport areas interstate or intrastate.

(7) "Billing services" means billing and collection services provided to information providers whether by the local exchange company or the interexchange carrier.

(8) "Program message" means the information that a caller hears or receives upon placing a call to an information provider.

(9) "Advertisement" includes all radio, television, or other broadcast, video, newspaper, magazine, or publication, billboard, direct mail, print media, telemarketing, or any promotion of an information delivery service, program, or number, and includes brochures, pamphlets, fliers, coupons, promotions, or the labeling of products or in-store communications circulated or distributed in any manner whatsoever. "Advertisement" does not include any listing in a white page telephone directory. In a yellow page telephone directory, "advertisement" includes only yellow page display advertising.

(10) "Subscriber" means the person in whose name an account is billed.

(11) "Does business in Washington" includes providing information delivery services to Washington citizens, advertising information delivery services in Washington, entering into a contract for billing services in Washington, entering into a contract in Washington with a telecommunications company or interexchange carrier for transmission services, or having a principal place of business in Washington. [1991 c 191 § 2.]

19.162.030 Program message preamble. (1) An information provider that does business in Washington must include a preamble in all program messages for:

(a) Programs costing more than five dollars per minute; or

(b) Programs having a total potential cost of greater than ten dollars.

(2) The preamble must:

(a) Accurately describe the service that will be provided by the program;

(b) Advise the caller of the price of the call, including:

(i) Any per minute charge;

(ii) Any flat rate charge; and

(iii) Any minimum charge;

(c) State that billing will begin shortly after the end of the introductory message; and

(d) Be clearly articulated, at a volume equal to that of the program message, in plain English or the language used to promote the information delivery service, and spoken in a normal cadence.

(3) Mechanisms that provide for the option of bypassing the preamble are only permitted when:

(a) The caller has made use of the information provider's service in the past, at which time the preamble required by this section was part of the program message; and

(b) The cost of the call has not changed during the thirty-day period before the call.

(4) When an information provider's program message consists of a polling application that permits the caller to register an opinion or vote on a matter by completing a call, this section does not apply. [1991 c 191 § 3.]

19.162.040 Advertisement of services. An information provider that does business in Washington shall comply with the following provisions in its advertisement of information delivery services:

(1) Advertisements for information delivery services that are broadcast by radio or television, contained in home videos, or that appear on movie screens must include a voice-over announcement that is clearly audible and articulates the price of the service provided. The announcement must be made at a volume equal to that used to announce the telephone number, spoken in a normal cadence, and in plain English or the language used in the advertisement.

(2) Advertisements for information delivery services that are broadcast by television, contained in home videos, or that appear on movie screens must include, in clearly visible letters and numbers, the cost of calling the advertised number. This visual disclosure of the cost of the call must be displayed adjacent to the number to be called whenever the number is shown in the advertisement, and the lettering of the visual disclosure of the cost must be in the same size and typeface as that of the number to be called.

(3)(a) Except as otherwise provided in (b) of this subsection, advertisements for information delivery services that appear in print must include, in clearly visible letters and numbers, the cost of calling the advertised number. The printed disclosure of the cost of the call must be displayed adjacent to the number to be called wherever the number is shown in the advertisement.

(b) In telephone directory yellow page display advertising and in printed materials published not more than three times a year, instead of disclosing the cost of the service, advertisements for information delivery services, shall include the conspicuous disclosure that the call is a pay-per-call service.

(4) The advertised price or cost of the information delivery service must include:

- (a) Any per minute charge;
- (b) Any flat rate charge; and
- (c) Any minimum charge. [1991 c 191 § 4.]

19.162.050 Services directed at children. An information provider that does business in the state of Washington shall not direct information delivery services to children under the age of twelve years unless the information provider complies with the following provisions:

(1) Interactive calls where children under the age of twelve years can speak to other children under the age of twelve years are prohibited.

(2) Programs directed to children under the age of twelve where the children are asked to provide their names, addresses, telephone numbers, or other identifying information are prohibited.

(3) Advertisements for information delivery services that are directed to children under the age of twelve years must contain a visual disclosure that clearly and conspicuously in the case of print and broadcast advertising, and audibly in

the case of broadcast advertising, states that children under the age of twelve years must obtain parental consent before placing a call to the advertised number.

(4) Program messages that encourage children under the age of twelve years to make increased numbers of calls in order to obtain progressively more valuable prizes, awards, or similarly denominated items are prohibited.

(5) Advertisements for information delivery services that are directed to children under the age of twelve years must contain, in age-appropriate language, an accurate description of the services being provided. In the case of print advertising, the information must be clear and conspicuous and in the case of broadcast advertising, it must be visually displayed clearly and conspicuously and verbally disclosed in an audible, clearly articulated manner.

(6) Program messages that are directed to children under the age of twelve years that employ broadcast advertising where an electronic tone signal is emitted during the broadcast of the advertisement that automatically dials the program message are prohibited. [1991 c 191 § 5.]

19.162.060 Nonpayment of charges. An information provider's failure to substantially comply with any of the provisions of RCW 19.162.030 through 19.162.050 is a defense to the nonpayment of charges accrued as a result of using the information provider's services, billed by any entity, including but not limited to telecommunications companies and interexchange carriers. [1991 c 191 § 6.]

19.162.070 Violations—Action for damages. A person who suffers damage from a violation of this chapter may bring an action against an information provider. In an action alleging a violation of this chapter, the court may award the greater of three times the actual damages sustained by the person or five hundred dollars; equitable relief, including but not limited to an injunction and restitution of money and property; attorneys' fees and costs; and any other relief that the court deems proper. For purposes of this section, a telecommunications company or interexchange carrier is a person. [1991 c 191 § 7.]

Chapter 19.166

INTERNATIONAL STUDENT EXCHANGE

Sections

- 19.166.010 Intent.
- 19.166.020 Definitions.
- 19.166.030 Organization registration.
- 19.166.040 Organization application for registration.
- 19.166.050 Standards.
- 19.166.060 Rules—Fee.
- 19.166.070 Informational document.
- 19.166.080 Complaints.
- 19.166.090 Violations—Misdemeanor.
- 19.166.100 Violations—Consumer protection act.
- 19.166.900 Severability—1991 c 128.
- 19.166.901 Effective date—1991 c 128.

19.166.010 Intent. It is the intent of the legislature to:

(1) Promote the health, safety, and welfare of international student exchange visitors in Washington in accordance with uniform national standards;

(2) Promote quality education and living experiences for international student exchange visitors living in Washington;

(3) Promote international awareness among Washington residents, by encouraging Washington residents to interact with international student exchange visitors;

(4) Encourage public confidence in international student exchange visitor placement organizations operating in Washington;

(5) Encourage and assist with compliance with United States information agency regulations and nationally established standards; and

(6) Promote the existence and quality of international student visitor exchange programs operating in Washington. [1991 c 128 § 1.]

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

(1) "International student exchange visitor placement organization" or "organization" means a person, partnership, corporation, or other entity that regularly arranges the placement of international student exchange visitors for the purpose, in whole or in part, of allowing the student an opportunity to attend school in the United States.

(2) "International student exchange visitor" or "student" means any person eighteen years of age or under, or up to age twenty-one if enrolled or to be enrolled in high school in this state, placed by an international student exchange visitor placement organization, who enters the United States with a nonimmigrant visa. [1991 c 128 § 2.]

19.166.030 Organization registration. (1) All international student exchange visitor placement organizations that place students in public schools in the state shall register with the secretary of state.

(2) Failure to register is a violation of this chapter.

(3) Information provided to the secretary of state under this chapter is a public record.

(4) Registration shall not be considered or be represented as an endorsement of the organization by the secretary of state or the state of Washington. [1991 c 128 § 3.]

19.166.040 Organization application for registration. (1) An application for registration as an international student exchange visitor placement organization shall be submitted in the form prescribed by the secretary of state. The application shall include:

(a) Evidence that the organization meets the standards established by the secretary of state under RCW 19.166.050;

(b) The name, address, and telephone number of the organization, its chief executive officer, and the person within the organization who has primary responsibility for supervising placements within the state;

(c) The organization's unified business identification number, if any;

(d) The organization's United States Information Agency number, if any;

(e) Evidence of council on standards for international educational travel listing, if any;

(f) Whether the organization is exempt from federal income tax; and

(g) A list of the organization's placements in Washington for the previous academic year including the number of students placed, their home countries, the school districts in which they were placed, and the length of their placements.

(2) The application shall be signed by the chief executive officer of the organization and the person within the organization who has primary responsibility for supervising placements within Washington. If the secretary of state determines that the application is complete, the secretary of state shall file the application and the applicant is registered.

(3) International student exchange visitor placement organizations that have registered shall inform the secretary of state of any changes in the information required under subsection (1) of this section within thirty days of the change.

(4) Registration under this chapter is valid for one year. The registration may be renewed annually. [1991 c 128 § 5.]

19.166.050 Standards. The secretary of state shall adopt standards for international student exchange visitor placement organizations. In adopting the standards, the secretary of state shall strive to adopt standards established by the United States Information Agency and the council on standards for international educational travel and strive to achieve uniformity with national standards. The secretary of state may incorporate standards established by the United States Information Agency or the council on standards for international educational travel by reference and may accept an organization's designation by the United States Information Agency or acceptance for listing by the council on standards for international educational travel as evidence of compliance with such standards. [1991 c 128 § 4.]

19.166.060 Rules—Fee. The secretary of state may adopt rules as necessary to carry out its duties under this chapter. The rules may include providing for a reasonable registration fee, not to exceed fifty dollars, to defray the costs of processing registrations. [1991 c 128 § 6.]

19.166.070 Informational document. International student exchange organizations that have agreed to provide services to place students in the state shall provide an informational document, in English, to each student, host family, and superintendent of the school district in which the student is being placed. The document shall be provided before placement and shall include the following:

(1) An explanation of the services to be performed by the organization for the student, host family, and school district;

(2) A summary of this chapter prepared by the secretary of state;

(3) Telephone numbers that the student, host family, and school district may call for assistance. The telephone numbers shall include, at minimum, an in-state telephone number for the organization, and the telephone numbers of the organization's national headquarters, if any, the United

States Information Agency, and the office of the secretary of state. [1991 c 128 § 7.]

19.166.080 Complaints. The secretary of state may, upon receipt of a complaint regarding an international student exchange organization, report the matter to the organization involved, the United States Information Agency, or the council on standards for international education travel, as he or she deems appropriate. [1991 c 128 § 8.]

19.166.090 Violations—Misdemeanor. Any person who violates any provision of this chapter or who willfully and knowingly gives false or incorrect information to the secretary [of state], attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified, is guilty of a misdemeanor punishable under chapter 9A.20 RCW. [1991 c 128 § 9.]

19.166.100 Violations—Consumer protection act. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1991 c 128 § 10.]

19.166.900 Severability—1991 c 128. 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 128 § 16.]

19.166.901 Effective date—1991 c 128. Sections 1 through 11 and 13 through 16 of this act shall take effect January 1, 1992. [1991 c 128 § 17.]

Reviser's note: For codification of this act [1991 c 128], see Codification Tables, Volume 0.

Chapter 19.170

PROMOTIONAL ADVERTISING OF PRIZES

Sections

- 19.170.010 Finding—Violations—Consumer protection act—Application.
- 19.170.020 Definitions.
- 19.170.030 Disclosures required.
- 19.170.040 Disclosures—Prizes awarded—Rain checks.
- 19.170.050 Simulated checks—Continuing obligation checks—Notice.
- 19.170.060 Damages—Penalties.
- 19.170.070 Violation—Penalty.
- 19.170.080 Remedies not exclusive.
- 19.170.900 Severability—1991 c 227.

19.170.010 Finding—Violations—Consumer protection act—Application. (1) The legislature finds that deceptive promotional advertising of prizes is a matter vitally

affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) Deceptive promotional advertising of prizes is not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW, and constitutes an act of deceptive promotional advertising.

(3) This chapter applies to a promotion offer:

- (a) Made to a person in Washington;
- (b) Used to induce or invite a person to come to the state of Washington to claim a prize, attend a sales presentation, meet a promoter, sponsor, salesperson, or their agent, or conduct any business in this state; or
- (c) Used to induce or invite a person to contact by any means a promoter, sponsor, salesperson, or their agent in this state. [1991 c 227 § 1.]

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

(1) "Person" means an individual, corporation, the state or its subdivisions or agencies, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

(2) "Prize" means a gift, award, travel coupon or certificate, free item, or any other item offered in a promotion that is different and distinct from the goods, service, or property promoted by a sponsor. "Prize" does not include an item offered in a promotion where all of the following elements are present:

(a) No element of chance is involved in obtaining the item offered in the promotion;

(b) The recipient has the right to review the merchandise offered for sale without obligation for at least seven days, and has a right to obtain a full refund in thirty days for the return of undamaged merchandise;

(c) The recipient may keep the item offered in the promotion without obligation; and

(d) The recipient is not required to attend any sales presentation or spend any sum in order to receive the item offered in the promotion.

(3) "Promoter" means a person conducting a promotion.

(4) "Promotion" means an advertising program, sweepstakes, contest, direct giveaway, or solicitation directed to specific named individuals, that includes the award of or chance to be awarded a prize.

(5) "Offer" means a written notice delivered by hand, mail, or other print medium offering goods, services, or property made as part of a promotion to a person based on a representation that the person has been awarded, or will be awarded, a prize.

(6) "Sponsor" means a person on whose behalf a promotion is conducted to promote or advertise goods, services, or property of that person.

(7) "Simulated check" means a document that is not currency or a check, draft, note, bond, or other negotiable instrument but has the visual characteristics thereof. "Simulated check" does not include a nonnegotiable check, draft, note, or other instrument that is used for soliciting orders for the purchase of checks, drafts, notes, bonds, or

other instruments and that is clearly marked as a sample, specimen, or nonnegotiable.

(8) "Continuing obligation check" means a document that is a check, draft, note, bond, or other negotiable instrument that, when cashed, deposited, or otherwise used, imposes on the payee an obligation to enter into a loan transaction. This definition does not include checks, drafts, or other negotiable instruments that are used by consumers to take advances on revolving loans, credit cards, or revolving credit accounts.

(9) "Verifiable retail value" means:

(a) A price at which a promoter or sponsor can demonstrate that a substantial number of prizes have been sold at retail in the local market by a person other than the promoter or sponsor; or

(b) If the prize is not available for retail sale in the local market, the retail fair market value in the local market of an item substantially similar in each significant aspect, including size, grade, quality, quantity, ingredients, and utility; or

(c) If the value of the prize cannot be established under (a) or (b) of this subsection, then the prize may be valued at no more than three times its cost to the promoter or sponsor.

(10) "Financial institution" means any bank, trust company, savings bank, savings and loan association, credit union, industrial loan company, or consumer finance lender subject to regulation by an official agency of this state or the United States, and any subsidiary or affiliate thereof. [1991 c 227 § 2.]

19.170.030 Disclosures required. (1) The offer must identify the name and address of the promoter and the sponsor of the promotion.

(2) The offer must state the verifiable retail value of each prize offered in it.

(3)(a) If an element of chance is involved, each offer must state the odds the participant has of being awarded each prize. The odds must be expressed in Arabic numerals, in ratio form, based on the total number of prizes to be awarded and the total number of offers distributed.

(b) If the promotion identified in the offer is part of a collective promotion with more than one participating sponsor, that fact must be clearly and conspicuously disclosed.

(c) The odds must be stated in a manner that will not deceive or mislead a person about that person's chance of being awarded a prize.

(4) The verifiable retail value and odds for each prize must be stated in immediate proximity on the same page with the first listing of each prize in type at least as large as the typeface used in the standard text of the offer.

(5) If a person is required or invited to view, hear, or attend a sales presentation in order to claim a prize that has been awarded, may have been awarded, or will be awarded, the requirement or invitation must be conspicuously disclosed to the person in the offer in type at least as large as the typeface used in the standard text of the offer on the first page of the offer.

(6) No item in an offer may be denominated a prize, gift, award, premium, or similar term that implies the item is free if, in order to receive the item or use the item for its intended purpose the intended recipient is required to spend

any sum of money, including but not limited to shipping fees, deposits, handling fees, payment for one item in order to receive another at no charge, or the purchase of another item or the expenditure of funds in order to make meaningful use of the item awarded in the promotion. The payment of any applicable state or federal taxes by a recipient directly to a government entity is not a violation of this section.

(7) If the receipt of the prize is contingent upon certain restrictions or qualifications that the recipient must meet, or if the use or availability of the prize is restricted or qualified in any way, including, but not limited to restrictions on travel dates, travel times, classes of travel, airlines, accommodations, travel agents, or tour operators, the restrictions or qualifications must be disclosed on the offer in immediate proximity on the same page with the first listing of the prize in type at least as large as the typeface used in the standard text of the offer or, in place thereof, the following statement printed in direct proximity to the prize or prizes awarded in type at least as large as the typeface used in the standard text of the offer:

"Major restrictions may apply to the use, availability, or receipt of the prize(s) awarded."

This statement must be followed by a disclosure, in the same size type as the statement, indicating where in the offer the restrictions may be found. The restrictions must be printed in type at least as large as the typeface used in the standard text of the offer.

(8) If a prize will not be awarded or given unless a winning ticket, the offer itself, a token, number, lot, or other device used to determine winners in a particular promotion is presented to a promoter or a sponsor, this fact must be clearly stated on the first page of the offer. [1991 c 227 § 3.]

19.170.040 Disclosures—Prizes awarded—Rain checks. (1) Before a demonstration, seminar, or sales presentation begins, the promoter shall inform the person of the prize, if any, the person will receive.

(2) A prize or a voucher, certificate, or other evidence of obligation given instead of a prize shall be given to a person at the time the person is informed of the prize, if any, the person will receive.

(3) A copy of the offer shall be returned to the person receiving the prize at the time the prize is awarded.

(4) It is a violation of this chapter for a promoter or sponsor to include a prize in an offer when the promoter or sponsor knows or has reason to know that the prize will not be available in a sufficient quantity based upon the reasonably anticipated response to the offer.

(5)(a) If the prize is not available for immediate delivery to the recipient, the recipient shall be given, at the promoter or sponsor's option, a rain check for the prize, the verifiable retail value of the prize in cash, or a substitute item of equal or greater verifiable retail value.

(b) If the rain check cannot be honored within thirty days, the promoter or sponsor shall mail to the person a valid check or money order for the verifiable retail value of the prize described in this chapter.

(6) A sponsor shall fulfill the rain check within thirty days if the person named as being responsible fails to honor it.

(7) The offer shall contain the following clear and conspicuous statement of recipients' rights printed in type at least as large as the typeface used in the standard text of the offer:

"If you receive a rain check in lieu of the prize, you are entitled by law to receive the prize, an item of equal or greater value, or the cash equivalent of the offered prize within thirty days of the date on which you claimed the prize."

(8) It is a violation of this chapter to misrepresent the quality, type, value, or availability of a prize. [1991 c 227 § 4.]

19.170.050 Simulated checks—Continuing obligation checks—Notice. (1) No person may produce, advertise, offer for sale, sell, distribute, or otherwise transfer for use in this state a simulated check unless the document bears the phrase "THIS IS NOT A CHECK," diagonally printed in type at least as large as the predominant typeface in the simulated check on the front of the check itself.

(2) No person, other than a financial institution, may produce, advertise, offer for sale, sell, distribute, or otherwise transfer for use in this state a continuing obligation check unless the document bears the phrase "THIS IS A LOAN" or "CASHING THIS REQUIRES REPAYMENT," diagonally printed in type at least as large as the predominant typeface in the continuing obligation check on the front of the check itself. [1991 c 227 § 5.]

19.170.060 Damages—Penalties. (1) A person who suffers damage from an act of deceptive promotional advertising may bring an action against the sponsor or promoter of the advertising, or both. Damages include, but are not limited to, fees paid in violation of RCW 19.170.030(6) and the dollar value of a prize represented to be awarded to a person, but not received by that person.

(2) In an action for deceptive promotional advertising, the court may award the greater of five hundred dollars or three times the actual damages sustained by the person, not to exceed ten thousand dollars; equitable relief, including, but not limited to an injunction and restitution of money and property; attorneys' fees and costs; and any other relief that the court deems proper. [1991 c 227 § 6.]

19.170.070 Violation—Penalty. A person who knowingly violates any provision of this chapter is guilty of a gross misdemeanor. [1991 c 227 § 7.]

19.170.080 Remedies not exclusive. The remedies prescribed in this chapter do not limit or bar any existing remedies at law or equity. [1991 c 227 § 8.]

19.170.900 Severability—1991 c 227. 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 227 § 11.]

Title 20

COMMISSION MERCHANTS— AGRICULTURAL PRODUCTS

Chapters

20.01 Agricultural products—Commission merchants, dealers, brokers, buyers, agents.

Sales of personal property: Title 62A RCW.

Washington wholesome eggs and egg products act: Chapter 69.25 RCW.

Chapter 20.01

AGRICULTURAL PRODUCTS— COMMISSION MERCHANTS, DEALERS, BROKERS, BUYERS, AGENTS

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revocation, suspension of licenses, probationary orders—Hearing, investigation—Findings required—Notices.</p> <p>20.01.360 Order of revocation, suspension.</p> <p>20.01.370 Commission merchants—Recordkeeping.</p> <p>20.01.380 Dealers, cash buyers, livestock dealers—Recordkeeping.</p> <p>20.01.385 Failure to comply—Construction of transaction.</p> <p>20.01.390 When dealer must pay for products delivered to him.</p> <p>20.01.400 Broker's memorandum of sale.</p> <p>20.01.410 Manifest of cargo.</p> <p>20.01.420 Commission merchant's report of sale to consignor.</p> <p>20.01.430 Commission merchant's remittance to consignor.</p> <p>20.01.440 Commission merchant's copy of records to be retained—Inspection—Department's certificate of condition, quality, etc.</p> <p>20.01.450 Claims against seller by dealer, cash buyer—Credit to dealer, cash buyer against consignor—Certificate of proof.</p> <p>20.01.460 Prohibited acts—Penalties.</p> <p>20.01.465 Time of sale requirement—Unlawful.</p> 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20.01.010 Definitions. As used in this title the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Director" means the director of agriculture or his duly authorized representative.

(2) "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.

(3) "Agricultural product" means any unprocessed horticultural, vermicultural and its byproducts, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products, and includes mint or mint oil processed by or for the producer thereof and hay and straw baled or prepared for market in any manner or form and livestock.

(4) "Producer" means any person engaged in the business of growing or producing any agricultural product, whether as the owner of the products, or producing the products for others holding the title thereof.

(5) "Consignor" means any producer, person, or his agent who sells, ships, or delivers to any commission merchant, dealer, cash buyer, or agent, any agricultural product for processing, handling, sale, or resale.

(6) "Commission merchant" means any person who receives on consignment for sale or processing and sale from the consignor thereof any agricultural product for sale on commission on behalf of the consignor, or who accepts any farm product in trust from the consignor thereof for the purpose of resale, or who sells or offers for sale on commission any agricultural product, or who in any way handles for the account of or as an agent of the consignor thereof, any agricultural product.

(7) "Dealer" means any person other than a cash buyer, as defined in subsection (10) of this section, who solicits, contracts for, or obtains from the consignor thereof for reselling or processing, title, possession, or control of any agricultural product, or who buys or agrees to buy any agricultural product from the consignor thereof for sale or processing and includes any person, other than one who acts solely as a producer, who retains title in an agricultural product and delivers it to a producer for further production or increase. For the purposes of this chapter, the term dealer includes any person who purchases livestock on behalf of and for the account of another, or who purchases cattle in another state or country and imports these cattle into this state for resale.

(8) "Limited dealer" means any person operating under the alternative bonding provision in RCW 20.01.211.

(9) "Broker" means any person other than a commission merchant, dealer, or cash buyer who negotiates the purchase or sale of any agricultural product, but no broker may handle the agricultural products involved or proceeds of the sale.

(10) "Cash buyer" means any person other than a commission merchant, dealer, or broker, who obtains from the consignor thereof for the purpose of resale or processing, title, possession, or control of any agricultural product or who contracts for the title, possession, or control of any

agricultural product, or who buys or agrees to buy for resale any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product, in coin or currency, lawful money of the United States. However, a cashier's check, certified check, or bankdraft may be used for the payment. For the purposes of this subsection, "agricultural product," does not include hay, grain, straw, or livestock.

(11) "Agent" means any person who, on behalf of any commission merchant, dealer, broker, or cash buyer, acts as liaison between a consignor and a principal, or receives, contracts for, or solicits any agricultural product from the consignor thereof or who negotiates the consignment or purchase of any agricultural product on behalf of any commission merchant, dealer, broker, or cash buyer and who transacts all or a portion of that business at any location other than at the principal place of business of his employer. With the exception of an agent for a commission merchant or dealer handling horticultural products, an agent may operate only in the name of one principal and only to the account of that principal.

(12) "Retail merchant" means any person operating from a bona fide or established place of business selling agricultural products twelve months of each year.

(13) "Fixed or established place of business" for the purpose of this chapter means any permanent warehouse, building, or structure, at which necessary and appropriate equipment and fixtures are maintained for properly handling those agricultural products generally dealt in, and at which supplies of the agricultural products being usually transported are stored, offered for sale, sold, delivered, and generally dealt with in quantities reasonably adequate for and usually carried for the requirements of such a business, and that is recognized as a permanent business at such place, and carried on as such in good faith and not for the purpose of evading this chapter, and where specifically designated personnel are available to handle transactions concerning those agricultural products generally dealt in, which personnel are available during designated and appropriate hours to that business, and shall not mean a residence, barn, garage, tent, temporary stand or other temporary quarters, any railway car, or permanent quarters occupied pursuant to any temporary arrangement.

(14) "Processor" means any person, firm, company, or other organization that purchases agricultural crops from a consignor and that cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner whatsoever for eventual resale.

(15) "Pooling contract" means any written agreement whereby a consignor delivers a horticultural product to a commission merchant under terms whereby the commission merchant may commingle the consignor's horticultural products for sale with others similarly agreeing, which must include all of the following:

(a) A delivery receipt for the consignor that indicates the variety of horticultural product delivered, the number of containers, or the weight and tare thereof;

(b) Horticultural products received for handling and sale in the fresh market shall be accounted for to the consignor with individual pack-out records that shall include variety, grade, size, and date of delivery. Individual daily packing

summaries shall be available within forty-eight hours after packing occurs. However, platform inspection shall be acceptable by mutual contract agreement on small deliveries to determine variety, grade, size, and date of delivery;

(c) Terms under which the commission merchant may use his judgment in regard to the sale of the pooled horticultural product;

(d) The charges to be paid by the consignor as filed with the state of Washington;

(e) A provision that the consignor shall be paid for his pool contribution when the pool is in the process of being marketed in direct proportion, not less than eighty percent of his interest less expenses directly incurred, prior liens, and other advances on the grower's crop unless otherwise mutually agreed upon between grower and commission merchant.

(16) "Date of sale" means the date agricultural products are delivered to the person buying the products.

(17) "Conditioner" means any person, firm, company, or other organization that receives turf, forage, or vegetable seeds from a consignor for drying or cleaning.

(18) "Seed bailment contract" means any contract meeting the requirements of chapter 15.48 RCW.

(19) "Proprietary seed" means any seed that is protected under the Federal Plant Variety Protection Act.

(20) "Licensed public weighmaster" means any person, licensed under the provisions of chapter 15.80 RCW, who weighs, measures, or counts any commodity or thing and issues therefor a signed certified statement, ticket, or memorandum of weight, measure, or count upon which the purchase or sale of any commodity or upon which the basic charge of payment for services rendered is based.

(21) "Certified weight" means any signed certified statement or memorandum of weight, measure or count issued by a licensed public weighmaster in accordance with the provisions of chapter 15.80 RCW. [1991 c 174 § 1; 1989 c 354 § 37; 1986 c 178 § 6; 1985 c 412 § 8; 1983 c 305 § 1; 1982 c 194 § 1; 1981 c 296 § 30; 1979 ex.s. c 115 § 1; 1977 ex.s. c 304 § 1; 1974 ex.s. c 102 § 2; 1971 ex.s. c 182 § 1; 1967 c 240 § 40; 1963 c 232 § 1; 1959 c 139 § 1.]

Severability—1989 c 354: See note following RCW 15.32.010.

Severability—1983 c 305: "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." [1983 c 305 § 78.]

Severability—1981 c 296: See note following RCW 15.04.020.

20.01.020 Rules and regulations—Enforcement of chapter—Interference prohibited. 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, 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, rules and regulations adopted hereunder. [1959 c 139 § 2.]

20.01.030 Exemptions. This chapter does not apply to:

(1) Any cooperative marketing associations or federations incorporated under, or whose articles of incorporation and bylaws are equivalent to, the requirements of chapter 23.86 RCW, except as to that portion of the activities of the association or federation that involve the handling or dealing in the agricultural products of nonmembers of the organization: PROVIDED, That the associations or federations may purchase up to fifteen percent of their gross from nonmembers for the purpose of filling orders: PROVIDED FURTHER, That if the cooperative or association acts as a processor as defined in RCW 20.01.500(2) and markets the processed agricultural crops on behalf of the grower or its own behalf, the association or federation is subject to the provisions of RCW 20.01.500 through 20.01.560 and the license provision of this chapter excluding bonding provisions: PROVIDED FURTHER, That none of the foregoing exemptions in this subsection apply to any such cooperative or federation dealing in or handling grain in any manner, and not licensed under the provisions of chapter 22.09 RCW;

(2) Any person who sells exclusively his or her own agricultural products as the producer thereof;

(3) Any public livestock market operating under a bond required by law or a bond required by the United States to secure the performance of the public livestock market's obligation. However, any such market operating as a livestock dealer or order buyer, or both, is subject to all provisions of this chapter except for the payment of the license fee required in RCW 20.01.040;

(4) Any retail merchant having a bona fide fixed or permanent place of business in this state, but only for the retail merchant's retail business conducted at such fixed or established place of business;

(5) Any person buying farm products for his or her own use or consumption;

(6) Any warehouseman or grain dealer licensed under the state grain warehouse act, chapter 22.09 RCW, with respect to his or her handling of any agricultural product as defined under that chapter;

(7) Any nurseryman who is required to be licensed under the horticultural laws of the state with respect to his or her operations as such licensee;

(8) Any person licensed under the now existing dairy laws of the state with respect to his or her operations as such licensee;

(9) Any producer who purchases less than fifteen percent of his or her volume to complete orders;

(10) Any person, association, or corporation regulated under chapter 67.16 RCW and the rules adopted thereunder while performing acts regulated by that chapter and the rules adopted thereunder. [1989 c 354 § 38; 1989 c 307 § 37; 1988 c 254 § 10; 1983 c 305 § 2; 1982 c 194 § 2; 1981 c 296 § 31; 1979 ex.s. c 115 § 2; 1977 ex.s. c 304 § 2; 1975 1st ex.s. c 7 § 18; 1971 ex.s. c 182 § 2; 1969 ex.s. c 132 § 1; 1967 c 240 § 41; 1959 c 139 § 3.]

Reviser's note: This section was amended by 1989 c 307 § 37 and by 1989 c 354 § 38, 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.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Application—1989 c 307: See RCW 23.86.900.

Severability—1983 c 305: See note following RCW 20.01.010.

Severability—1981 c 296: See note following RCW 15.04.020.

20.01.038 License required of persons dealing in livestock, hay, grain, or straw. Any person who deals in livestock, hay, grain or straw, other than the producer or grower thereof, shall license as a dealer or commission merchant and shall be subject to all the provisions of this chapter regulating such a licensee. [1963 c 232 § 9.]

20.01.040 License—Generally. No person may act as a commission merchant, dealer, broker, cash buyer, or agent without a license. Any person applying for such a license shall file an application with the director prior to conducting business pursuant to this chapter. No application shall be considered complete unless an effective bond or other acceptable form of security is also filed with the director, as provided under RCW 20.01.210, 20.01.211, or 20.01.212. Each license issued under this chapter shall require renewal on or before the renewal date prescribed by the director by rule. License fees shall be prorated where necessary to accommodate staggered renewals of a license or licenses. The application shall be accompanied by a license fee as prescribed by the director by rule. [1991 c 109 § 16; 1989 c 354 § 39; 1987 c 393 § 13; 1983 c 305 § 3; 1979 ex.s. c 115 § 3; 1974 ex.s. c 102 § 3; 1971 ex.s. c 182 § 3; 1959 c 139 § 4.]

Severability—1989 c 354: See note following RCW 15.32.010.

Severability—1983 c 305: See note following RCW 20.01.010.

20.01.050 License renewals. If an application for renewal of a commission merchant, dealer, broker or cash buyer license is not filed prior to the prescribed renewal date a penalty of twenty-five percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued. [1991 c 109 § 17; 1959 c 139 § 5.]

20.01.060 Licensee in one class may obtain license in another—Additional fee. Any person licensed as a commission merchant, dealer, or broker, in the manner prescribed in this chapter, may apply for and secure a license in any or all of the remaining such classifications upon payment of an additional fee of twenty-five dollars for each such additional classification: PROVIDED, That the applicant's principal license shall be in that classification requiring the greatest license fee. Such applicant shall further comply with those parts of this chapter regulating the licensing of the other particular classifications involved. [1979 ex.s. c 115 § 4; 1977 ex.s. c 304 § 3; 1974 ex.s. c 102 § 4; 1971 ex.s. c 182 § 4; 1959 c 139 § 6.]

20.01.070 Application for license—Contents. Application for a license shall be on a form prescribed by the director and shall state the full name of the person applying for such license and if the applicant is an individual, receiver, trustee, firm, exchange, partnership, association or corporation, the full name of each member of the firm or partnership, or the names of the officers of the exchange, association or corporation shall be given in the application. Such application shall further state the principal business

address of the applicant in the state and elsewhere and the name or names of the person authorized to receive and accept service of summons and legal notices of all kinds for the applicant and any other necessary information prescribed by the director. [1959 c 139 § 7.]

20.01.080 Commission merchant's schedule of commissions and charges—Changes, posting. Any person applying for a commission merchant's license shall include in his or her application a schedule of commissions, together with an itemized list of all charges for services to be rendered to a consignor and shall post a copy of such charges on his or her premises in a conspicuous place where it is clearly visible and available to consignors. In addition to the posting of the itemized list of charges, such list shall be distributed to each consignor along with each contract entered into between the consignor and the commission merchant. Such commissions and charges shall not be changed or varied for the license period except by written contract between the consignor or his or her agent and the licensee or thirty days after written notice to the director, and proper posting of such changes, as prescribed by the director, on the licensee's premises. Charges for services rendered and not listed on the schedule of commissions and charges filed with the director, or for increases in charges listed and filed which are directly caused by increases in labor rates or in cost of materials which occur after the signing of the contract by the grower, shall be rendered only on an actual cost to the licensee basis. [1988 c 254 § 16; 1977 ex.s. c 304 § 4; 1971 ex.s. c 182 § 5; 1959 c 139 § 8.]

20.01.086 Waiver of reporting, accounting, and record-keeping requirements prohibited. Except where specifically provided in this chapter, the reporting, accounting, and record-keeping requirements of this chapter, being matters of public interest, may not be waived by contract between the consignor and/or the commission merchant or dealer. [1977 ex.s. c 304 § 5; 1974 ex.s. c 102 § 8.]

20.01.090 Agent to disclose principal licensee and his endorsement. Any person applying for an agent's license shall include the name and address of the principal licensee represented or sought to be represented by such agent and the written endorsement or nomination of such principal licensee. [1959 c 139 § 9.]

20.01.100 Issuance of license—Expiration date—Fraudulent application grounds for refusal, revocation. The director, upon his satisfaction that the applicant has met the requirements of this chapter and rules and regulations adopted hereunder, shall issue a license entitling the applicant to carry on the business described on the application. Such license shall expire on December 31st following the issuance of the license, provided that it has not been revoked or suspended prior thereto, by the director, after due notice and hearing. Fraud and misrepresentation in making an application for a license shall be cause for refusal to grant a license or revocation of license granted pursuant to a fraudulent application after due notice and hearing. [1959 c 139 § 10.]

20.01.110 Publication of list of licensees and rules—Posting license. The director may publish a list, as often as he deems necessary, of all persons licensed under this chapter together with all the necessary rules and regulations concerning the enforcement of this chapter. Each person licensed under [the] provisions of this chapter shall post his license or a copy thereof in his place or places of business in plain view of the public. [1959 c 139 § 11.]

20.01.120 Vehicle license plates. The licensee shall prominently display license plates issued by the director on the front and back of any vehicle used by the licensee to transport upon public highways unprocessed agricultural products which he has not produced as a producer of such agricultural products. If the licensee operates more than one vehicle to transport unprocessed agricultural products on public highways he shall apply to the director for license plates for each such additional vehicle. Such additional license plates shall be issued to the licensee at the actual cost to the department for such license plates and necessary handling charges. Such license plates are not transferable to any other person and may be used only on the licensee's vehicle or vehicles. The display of such license plates on the vehicle or vehicles of a person whose license has been revoked, or the failure to surrender such license plates forthwith to the department after such revocation, shall be deemed a violation of this chapter. [1959 c 139 § 12.]

20.01.125 Hay or straw—Certified vehicle tare and load weights—Violations. Every dealer and commission merchant dealing in hay or straw shall obtain a certified vehicle tare weight and a certified vehicle gross weight for each load hauled and shall furnish the consignor with a copy of such certified weight ticket within seventy-two hours after taking delivery. It shall be a violation of this chapter for any licensee to transport hay or straw which has been purchased by weight without having obtained a certified weight ticket from the first licensed public weighmaster which would be encountered on the ordinary route to the destination where the hay or straw is to be unloaded. [1986 c 178 § 7; 1971 ex.s. c 182 § 6; 1963 c 232 § 8.]

20.01.130 Disposition of moneys. All fees and other moneys received by the department under the provisions of this chapter shall be paid to the director and shall be used solely for the purpose of carrying out the provisions of this chapter and rules adopted hereunder. All civil fines received by the courts as the result of notices of infractions issued by the director shall be paid to the director, less any mandatory court costs and assessments. [1986 c 178 § 8; 1973 c 142 § 1; 1971 ex.s. c 182 § 7; 1959 c 139 § 13.]

20.01.140 Change in organization of firm to be reported. Any change in the organization of any firm, association, exchange, corporation, or partnership licensed under the provisions of this chapter shall be reported to the director and the licensee's surety or sureties. [1959 c 139 § 14.]

20.01.150 Denial, suspension, revocation of licenses, probationary orders—Authority. The director is autho-

rized to deny, suspend, or revoke a license or issue conditional or probationary orders in the manner prescribed herein, in any case in which he finds that there has been a failure and/or refusal to comply with the requirements of this chapter, rules or regulations adopted hereunder. [1959 c 139 § 15.]

20.01.160 Denial, suspension, revocation of licenses, probationary orders—Procedure. In all proceedings for revocation, suspension, or denial of a license, or the issuance of a conditional or probationary order, the licensee or applicant shall be given an opportunity to be heard and may be represented by counsel. The director shall give the licensee or applicant twenty days' notice in writing and such notice shall specify the charges or reasons for the hearing for such revocation, suspension, denial or the issuance of a conditional or probationary order. The notice shall also state the date, time and place where such hearing is to be held. A copy of such notice shall be mailed to the licensee's surety. Such hearings shall be held in the city of Olympia, unless a different place is fixed by the director. [1959 c 139 § 16.]

20.01.170 Denial, suspension, revocation of licenses, probationary orders—Subpoenas, witnesses, testimony, fees. The director may issue subpoenas to compel the attendance of witnesses, and/or the production of books or documents, anywhere in the state. The licensee or applicant 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. Testimony shall be recorded and may be taken by deposition under such rules as the director may prescribe. 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. [1963 c 232 § 2; 1959 c 139 § 17.]

20.01.180 Denial, suspension, revocation of licenses, probationary orders—Findings and conclusions—Record. 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. [1959 c 139 § 18.]

20.01.190 Denial, suspension, revocation of licenses, probationary orders—Final action in writing—Appeal to superior court. The revocation, suspension or denial of a license, or the issuance of conditional or probationary orders, shall be in writing signed by the director, stating the grounds upon which such order is based and the aggrieved person shall have the right to appeal from such order within fifteen days after a copy thereof is served upon him, to the superior court of Thurston county or the county in which the hearing was held. A copy of such findings shall be mailed to the licensee's surety. In such appeal the entire record shall be certified by the director to the court, and the review on appeal shall be confined to the evidence adduced at the hearing before the director. [1959 c 139 § 19.]

20.01.200 Denial, suspension, revocation of licenses, probationary orders—Appellate review. Appellate review of the judgment of the superior court may be sought as provided in other civil cases. [1988 c 202 § 24; 1971 c 81 § 66; 1959 c 139 § 20.]

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

20.01.210 Commission merchants, dealers—Bonds.

(1) Before the license is issued to any commission merchant or dealer, or both, the applicant 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. Said bond shall be to the state for the benefit of qualified consignors of agricultural products in this state. All such sureties on a bond, as provided herein, shall be released and discharged from all liability to the state accruing on such bond by giving notice to the principal and the director by certified mail. Upon receipt of such notice the director shall notify the surety and the principal of the effective date of termination which shall be thirty days from the receipt of such notice by the director, but this shall not relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration period provided for above.

(2) The bond for a commission merchant or dealer in hay, straw or turf, forage or vegetable seed shall be not less than fifteen thousand dollars. The actual amount of such bond shall be determined by dividing the annual dollar volume of the licensee's net proceeds or net payments due consignors by twelve and increasing that amount to the next multiple of five thousand dollars, except that the bond amount for dollar volume arising from proprietary seed bailment contracts shall be computed as provided in subsection (4) of this section. Such bond for a new commission merchant or dealer in hay, straw or turf, forage or vegetable seed shall be subject to increase at any time during the licensee's first year of operation based on the average of business volume for any three months. Except as provided in subsection (3) of this section, the bond shall be not less than ten thousand dollars for any other dealer.

(3) The bond for a commission merchant or dealer in livestock shall be not less than ten thousand dollars. The actual amount of such bond shall be determined in accordance with the formula set forth in the packers and stockyard act of 1921 (7 U.S.C. 181), except that a commission merchant or dealer in livestock shall increase the commission merchant's or dealer's bond by five thousand dollars for each agent the commission merchant or dealer has endorsed under RCW 20.01.090. A dealer who also acts as an order buyer for other persons who are also licensed and bonded under this chapter or under the packers and stockyards act (7 U.S.C. 181) may subtract that amount of business from the annual gross volume of purchases reported to the director in determining the amount of bond coverage that must be provided and maintained for the purposes of this chapter.

(4) The bond for a commission merchant handling agricultural products other than livestock, hay, straw or turf, forage or vegetable seed shall not be less than ten thousand dollars. The bond for a dealer handling agricultural products other than livestock, hay, straw or turf, forage or vegetable seed shall not be less than ten thousand dollars. The actual

amount of such bond shall be determined by dividing the annual dollar volume of the licensee's net proceeds or net payments due consignors by fifty-two and increasing that amount to the next multiple of two thousand dollars. However, bonds above twenty-six thousand dollars shall be increased to the next multiple of five thousand dollars.

(5) When the annual dollar volume of any commission merchant or dealer reaches two million six hundred thousand dollars, the amount of the bond required above this level shall be on a basis of ten percent of the amount arrived at by applying the appropriate formula. [1991 c 109 § 18; 1986 c 178 § 9; 1983 c 305 § 4; 1982 c 194 § 3; 1977 ex.s. c 304 § 6; 1974 ex.s. c 102 § 5; 1971 ex.s. c 182 § 8; 1963 c 232 § 5. Prior: 1959 c 139 § 21.]

Severability—1983 c 305: See note following RCW 20.01.010.

Cash or other security in lieu of surety bond: RCW 20.01.570.

20.01.211 Alternative bonding provision for certain dealers. In lieu of the bonding provision required by RCW 20.01.210, any dealer who buys, agrees to buy, or pays for the production or increase of any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product may file a bond in an amount equal to the dealer's maximum monthly purchases, divided by fifteen, but the minimum bond provided by this section shall be in a minimum of seven thousand five hundred dollars.

Any dealer using the bonding provisions of this section shall file an affidavit with the director that sets forth the dealer's maximum monthly purchases from or payments to consignors. The affidavit shall be filed at the time of application and with each renewal.

Any dealer bonded under this section who is found to be in violation of this chapter shall be required to comply with the bonding requirements of RCW 20.01.210 for a minimum of two years. [1983 c 305 § 5; 1977 ex.s. c 304 § 16.]

Severability—1983 c 305: See note following RCW 20.01.010.

20.01.212 Livestock dealers bonded under federal law. If an applicant for a commission merchant's and/or dealer's license is bonded as a livestock dealer or packer under the provisions of the Packers and Stockyards Act of 1921 (7 U.S.C. 181), as amended, on June 13, 1963, and acts as a commission merchant, packer, and/or a dealer only in livestock as defined in said Packers and Stockyards Act of 1921 (7 U.S.C. 181), the director may accept such bond in lieu of the bond required in RCW 20.01.210 as good and sufficient and issue the applicant a license limited solely to dealing in livestock. A dealer buying and selling livestock who has furnished a bond as required by the packers and stockyards administration to cover acting as order buyer as well as dealer may also act as an order buyer for others under the provisions of this chapter, and all persons who act as order buyers of livestock shall license under this chapter as a livestock dealer: PROVIDED, That the applicant shall furnish the director with a bond approved by the United States secretary of agriculture. Such bond shall be in a minimum amount of ten thousand dollars. It shall be a violation for the licensee to act as a commission merchant and/or dealer in any other agricultural commodity without

first having notified the director and furnishing him with a bond as required under the provisions of RCW 20.01.210, and failure to furnish the director with such bond shall be cause for the immediate suspension of the licensee's license, and revocation subject to a hearing. [1991 c 109 § 19; 1977 ex.s. c 304 § 7; 1971 ex.s. c 182 § 9; 1963 c 232 § 6.]

20.01.214 Appeal from rejected bond claim. Upon any bond claim being denied by the director the claimant must appeal such action to the superior court in the county where this claimant resides in this state or Thurston county, within sixty days after receipt of written notice of such rejection or such rejection shall become final and binding upon the claimant. [1971 ex.s. c 182 § 10; 1963 c 232 § 7.]

20.01.220 Action on bond for fraud. Any consignor of an agricultural product claiming to be injured by the fraud of any commission merchant and/or dealer or their agents may bring action upon said bond against principal, surety, and agent in any court of competent jurisdiction to recover the damages caused by such fraud. Any consignor undertaking such an action shall name the director as a party. [1986 c 178 § 10; 1982 c 194 § 4; 1959 c 139 § 22.]

20.01.230 Action on bond for failure to comply with chapter. The director or any consignor of an agricultural product 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 or the rules adopted hereunder. Any consignor undertaking such an action shall name the director as a party. [1986 c 178 § 11; 1959 c 139 § 23.]

20.01.240 Claims against commission merchant, dealer. (1) Except as provided in subsection (2) of this section, any consignor who believes he or she has a valid claim against the bond of a commission merchant or dealer shall file a claim with the director. Upon the filing of a claim under this subsection against any commission merchant or dealer handling any agricultural product, the director may, after investigation, proceed to ascertain the names and addresses of all consignor creditors of such commission merchant and dealer, together with the amounts due and owing to them by such commission merchant and dealer, and shall request all such consignor creditors to file a verified statement of their respective claims with the director. Such request shall be addressed to each known consignor creditor at his last known address.

(2) Any consignor who believes he or she has a valid claim against the bond of a commission merchant or dealer in hay or straw, shall file a claim with the director within twenty days of the licensee's default. In the case of a claim against the bond of a commission merchant or unlimited dealer in hay or straw, default occurs when the licensee fails to make payment within thirty days of the date the licensee took possession of the hay or straw. In the case of a claim against a limited dealer in hay or straw, default occurs when the licensee fails to make payment upon taking possession of the hay or straw. Upon verifying the consignor's claim either through investigation or, if necessary, an administrative action, the director shall, within ten working days of the

filing of the claim, make demand for payment of the claim by the licensee's surety without regard to any other potentially valid claim. Any subsequent claim will likewise result in a demand against the licensee's surety, subject to the availability of any remaining bond proceeds. [1986 c 178 § 12; 1959 c 139 § 24.]

20.01.250 Failure of consignor to file claim, time limitation. If a 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 consignor creditor. [1959 c 139 § 25.]

20.01.260 Director not liable if circumstances prevent ascertainment of creditors—Demand on bond. 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 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 139 § 26.]

20.01.270 Demand on bond after claims ascertained—Power of director to settle, compromise. 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 139 § 27.]

20.01.280 Action on bond after refusal to pay—New bond, 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 consignor creditors. Upon any action being commenced on said bond the director may require the filing of a new bond and immediately upon the recovery in any action on such bond such commission merchant and/or dealer shall file a new bond and 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 139 § 28.]

20.01.300 Verified complaints of consignor—Investigations. For the purpose of enforcing the provisions of this chapter the director is authorized to receive verified complaints from any consignor against any commission merchant, dealer, broker, cash buyer, or agent or any person, assuming or attempting to act as such, and upon receipt of such verified complaint shall have full authority to make any and all necessary investigations relative to the said complaint. [1959 c 139 § 30.]

20.01.310 Oaths, testimony, witnesses, subpoenas—Contempt proceedings—Records as evidence. The director or his authorized agents are empowered to administer oaths of verification on said complaints. He shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas in the manner prescribed in RCW 20.01.170 requiring attendance of witnesses before him, together with all books, memoranda, papers, and other documents, articles or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation, and all parties disobeying the orders or subpoenas of said director shall be guilty of contempt and shall be certified to the superior court of the state for punishment for such contempt. Copies of records, audits and reports of audits, inspection certificates, certified reports, findings and all papers on file in the office of the director shall be prima facie evidence of the matters therein contained, and may be admitted into evidence in any hearing provided in this chapter. [1959 c 139 § 31.]

20.01.320 Investigations, examinations, inspections. The director on his own motion or upon the verified complaint of any interested party may investigate, examine or inspect (1) any transaction involving solicitation, receipt, sale or attempted sale of agricultural products by any person or persons acting or assuming to act as a commission merchant, dealer, broker, cash buyer, or agent; (2) failure to make proper and true account of sales and settlement thereof as required under this chapter and/or rules and regulations adopted hereunder; (3) the intentional making of false statements as to conditions and quantity of any agricultural products received or in storage; (4) the intentional making of false statements as to market conditions; (5) the failure to make payment for products within the time required by this chapter; (6) any and all other injurious transactions. In furtherance of any such investigation, examination, or inspection, the director or his authorized representative, may examine that portion of the ledgers, books, accounts, memoranda and other documents, agricultural products, scales, measures and other articles and things used in connection with the business of such person relating to the transactions involved. For the purpose of such investigation the director shall at all times have free and unimpeded access to all buildings, yards, warehouses, storage, and transportation facilities or any other place where agricultural products are kept, stored, handled or transported. The director may also, for the purpose of such investigation, issue subpoenas to compel the attendance of witnesses, as provided in RCW 20.01.170, and/or the production of books or documents, anywhere in the state. [1959 c 139 § 32.]

20.01.330 Denial, revocation, suspension, or condition of licenses, probationary orders—Grounds. The director may refuse to grant a license or renew a license and may revoke or suspend a license or issue a conditional or probationary order if he is satisfied after a hearing, as herein provided, of the existence of any of the following facts, which are hereby declared to be a violation of this chapter:

(1) That fraudulent charges or returns have been made by the applicant, or licensee, for the handling, sale or storage

of, or for rendering of any service in connection with the handling, sale or storage of any agricultural product.

(2) That the applicant, or licensee, has failed or refused to render a true account of sales, or to make a settlement thereon, or to pay for agricultural products received, within the time and in the manner required by this chapter.

(3) That the applicant, or licensee, has made any false statement as to the condition, quality or quantity of agricultural products received, handled, sold or stored by him.

(4) That the applicant, or licensee, directly or indirectly has purchased for his own account agricultural products received by him upon consignment without prior authority from the consignor together with the price fixed by consignor or without promptly notifying the consignor of such purchase. This shall not prevent any commission merchant from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of agricultural products remaining unsold, if such commission merchant shall forthwith enter such transaction on his account of sales.

(5) That the applicant, or licensee, has intentionally made any false or misleading statement as to the conditions of the market for any agricultural products.

(6) That the applicant, or licensee, has made fictitious sales or has been guilty of collusion to defraud the consignor.

(7) That a commission merchant to whom any consignment is made has reconsigned such consignment to another commission merchant and has received, collected, or charged by such means more than one commission for making the sale thereof, for the consignor, unless by written consent of such consignor.

(8) That the licensee was guilty of fraud or deception in the procurement of such license.

(9) That the licensee or applicant has failed or refused to file with the director a schedule of his charges for services in connection with agricultural products handled on account of or as an agent of another, or that the applicant, or licensee, has indulged in any unfair practice.

(10) That the licensee has rejected, without reasonable cause, or has failed or refused to accept, without reasonable cause, any agricultural product bought or contracted to be bought from a consignor by such licensee; or failed or refused, without reasonable cause, to furnish or provide boxes or other containers, or hauling, harvesting, or any other service contracted to be done by licensee in connection with the acceptance, harvesting, or other handling of said agricultural products bought or handled or contracted to be bought or handled; or has used any other device to avoid acceptance or unreasonably to defer acceptance of agricultural products bought or handled or contracted to be bought or handled.

(11) That the licensee has otherwise violated any provision of this chapter and/or rules and regulations adopted hereunder.

(12) That the licensee has knowingly employed an agent, as defined in this chapter, without causing said agent to comply with the licensing requirements of this chapter applicable to agents.

(13) That the applicant or licensee has, in the handling of any agricultural products, been guilty of fraud, deceit, or negligence.

(14) That the licensee has failed or refused, upon demand, to permit the director or his agents to make the investigations, examination or audits, as provided in this chapter, or that the licensee has removed or sequestered any books, records, or papers necessary to any such investigations, examination, or audits, or has otherwise obstructed the same.

(15) That the licensee, without reasonable cause, has failed or refused to execute or carry out a lawful contract with a consignor.

(16) That the licensee has failed or refused to keep and maintain the records as required by this chapter and/or rules and regulations adopted hereunder.

(17) That the licensee has attempted payment by a check the licensee knows not to be backed by sufficient funds to cover such check.

(18) That the licensee has been guilty of fraud or deception in his dealings with purchasers including misrepresentation of goods as to grade, quality, weights, quantity, or any other essential fact in connection therewith.

(19) That the licensee has permitted a person to in fact operate his own separate business under cover of the licensee's license and bond.

(20) That a commission merchant or dealer has failed to furnish additional bond coverage within fifteen days of when it was requested in writing by the director.

(21) That the licensee has discriminated in the licensee's dealings with consignors on the basis of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap. [1989 c 354 § 40; 1982 c 20 § 1; 1981 c 296 § 32; 1977 ex.s. c 304 § 8; 1971 ex.s. c 182 § 11; 1959 c 139 § 33.]

Severability—1989 c 354: See note following RCW 15.32.010.

Severability—1981 c 296: See note following RCW 15.04.020.

20.01.340 Denial, revocation, suspension of licenses, probationary orders—Previous violations as grounds. Previous violation by the applicant or licensee, or by any person connected with him, of any of the provisions of this chapter and/or rules and regulations adopted hereunder, shall be good and sufficient ground for denial, suspension or revocation of a license, or the issuance of a conditional or probationary order. [1959 c 139 § 34.]

20.01.350 Denial, revocation, suspension of licenses, probationary orders—Hearing, investigation—Findings required—Notices. The director, after hearing or investigation, may refuse to grant a license or renewal thereof and may revoke or suspend any license or issue a conditional or probationary order, as the case may require, when he is satisfied that the licensee has executory or executed contracts for the purchase of agricultural products, or for the handling of agricultural products on consignment.

In such cases, if the director is satisfied that to permit the dealer or commission merchant to continue to purchase or to receive further shipments or deliveries of agricultural products would be likely to cause serious and irreparable loss to said consignor-creditors, or to consignors with whom the said dealer or commission merchant has said contracts, then the director within his discretion may thereupon and forthwith shorten the time herein provided for hearing upon

an order to show cause why the license of said dealer or commission merchant should not be forthwith suspended, or revoked: PROVIDED, That the time of notice of said hearing, shall in no event be less than twenty-four hours, and the director shall, within that period, call a hearing at which the dealer or commission merchant proceeded against shall be ordered to show cause why the license should not be suspended, or revoked, or continued under such conditions and provisions, if any, as the director may consider just and proper and for the protection of the best interests of the producer-creditors involved. Said hearing, in the case of such emergency, may be called upon written notice, said notice to be served personally or by mail on the dealer or commission merchant involved, and may be held at the nearest office of the director or at such place as may be most convenient at the discretion of the director, for the attendance of all parties involved. [1959 c 139 § 35.]

20.01.360 Order of revocation, suspension. Any order revoking or suspending a license may, within the discretion of the director, be made conditional upon the settlement, adjustment or satisfaction of the consequence of the violation or violations as specified, and the operation of such an order may be deferred for such purpose. Any such order may contain provisions for modification or dismissal thereof upon presentation to the director of evidence that the matter of complaint has been settled, adjusted or withdrawn at any time before such order becomes final. [1959 c 139 § 36.]

20.01.370 Commission merchants—Recordkeeping. Every commission merchant taking control of any agricultural products for sale as such commission merchant, shall promptly make and keep for a period of three years, beginning on the day the sale of the product is complete, a correct record showing in detail the following with reference to the handling, sale, or storage of such agricultural products:

- (1) The name and address of the consignor.
- (2) The date received.
- (3) The quality and quantity delivered by the consignor, and where applicable the dockage, tare, grade, size, net weight, or quantity.
- (4) An accounting of all sales, including dates, terms of sales, quality and quantity of agricultural products sold, and proof of payments received on behalf of the consignor.
- (5) The terms of payment to the producer.
- (6) An itemized statement of the charges to be paid by consignor in connection with the sale.
- (7) The names and addresses of all purchasers if said commission merchant has any financial interest in the business of said purchasers, or if said purchasers have any financial interest in the business of said commission merchant, directly or indirectly, as holder of the other's corporate stock, as copartner, as lender or borrower of money to or from the other, or otherwise. Such interest shall be noted in said records following the name of any such purchaser.
- (8) A lot number or other identifying mark for each consignment, which number or mark shall appear on all sales tags and other essential records needed to show what the agricultural products actually sold for.

(9) Any claim or claims which have been or may be filed by the commission merchant against any person for overcharges or for damages resulting from the injury or deterioration of such agricultural products by the act, neglect or failure of such person and such records shall be open to the inspection of the director and the consignor of agricultural products for whom such claim or claims are made.

Before a commission merchant may handle an agricultural product in a pooling arrangement or accounting, the consignor must have agreed in writing to allow the pooling.

Where a pooling arrangement is agreed to in writing between the consignor and commission merchant, the reporting requirements of subsections (4), (5), (6), and (8) of this section shall apply to the pool rather than to the individual consignor or consignment and the records of the pool shall be available for inspection by any consignor to that pool.

For individual accounting, the commission merchant shall transmit a copy of the record required by this section to the consignor on the same day the final remittance is made to the consignor as required by RCW 20.01.430. For a consignor who is participating in a pooling arrangement, the commission merchant shall, on the same day final remittance and accounting are made to the consignor as required by RCW 20.01.430, transmit to the consignor a summary of the records which are available for inspection by any consignor to that pool. [1991 c 109 § 20; 1989 c 354 § 41; 1988 c 254 § 18; 1979 ex.s. c 115 § 5; 1977 ex.s. c 304 § 9; 1974 ex.s. c 102 § 6; 1963 c 232 § 3; 1959 c 139 § 37.]

Severability—1989 c 354: See note following RCW 15.32.010.

20.01.380 Dealers, cash buyers, livestock dealers—Recordkeeping. Every dealer or cash buyer purchasing any agricultural products from the consignor thereof shall promptly make and keep for three years a correct record showing in detail the following:

- (1) The name and address of the consignor.
- (2) The date received.
- (3) The terms of the sale.
- (4) The quality and quantity delivered by the consignor, and where applicable the dockage, tare, grade, size, net weight, or quantity.

(5) An itemized statement of any charges paid by the dealer or cash buyer for the account of the consignor.

(6) The name and address of the purchaser: PROVIDED, That the name and address of the purchaser may be deleted from the record furnished to the consignor.

A copy of such record containing the above matters shall be forwarded to the consignor forthwith.

Livestock dealers must also maintain individual animal identification and disposition records as may be required by law, or regulation adopted by the director. [1991 c 109 § 21; 1989 c 354 § 42; 1988 c 254 § 17; 1981 c 296 § 33; 1963 c 232 § 4; 1959 c 139 § 38.]

Severability—1989 c 354: See note following RCW 15.32.010.

Severability—1981 c 296: See note following RCW 15.04.020.

20.01.385 Failure to comply—Construction of transaction. Whenever a commission merchant or dealer handling any agricultural products fails to carry out the provisions of RCW 20.01.370 as now or hereafter amended

or RCW 20.01.380, whichever is applicable, it shall be prima facie evidence that the transaction involving the handling of any agricultural products between the consignor and the commission merchant or dealer was either a commission type transaction, or dealer transaction constituting an outright sale by the consignor, whichever is most favorable to the consignor. Such determination in favor of the consignor shall be based on the market price of the agricultural product in question at the time the complaint is filed against said commission merchant or dealer by the consignor: PROVIDED, That if the return to the consignor is determined most favorably on a commission basis, the total commission shall not exceed ten percent, and all other charges for handling the agricultural product in question shall be figured on the basis of the actual cost of said handling. [1977 ex.s. c 304 § 10; 1974 ex.s. c 102 § 7; 1967 c 240 § 42.]

20.01.390 When dealer must pay for products delivered to him. (1) Every dealer must pay for agricultural products, except livestock, delivered to him at the time and in the manner specified in the contract with the producer, but if no time is set by such contract, or at the time of said delivery, then within thirty days from the delivery or taking possession of such agricultural products.

(2) Every dealer must pay for livestock delivered to him at the time and in the manner specified in the contract, but if no time is set by such contract, or at the time of said delivery, then within seven days from the delivery or taking possession of such livestock. Where payment for livestock is made by mail, payment is timely if mailed within seven days of the date of sale. [1982 c 20 § 2; 1959 c 139 § 39.]

20.01.400 Broker's memorandum of sale. Every broker, upon negotiating the sale of agricultural products, shall issue to both buyer and seller a written memorandum of sale, showing price, date of delivery, quality, and other details concerned in the transaction. A copy of this memorandum shall be retained by the broker for a period of one year. [1959 c 139 § 40.]

20.01.410 Manifest of cargo. A copy of a manifest of cargo, on a form prescribed by the director, shall be carried on any vehicle transporting agricultural products purchased by a dealer or cash buyer, or consigned to a commission merchant from the consignor thereof when prescribed by the director. The commission merchant, dealer or cash buyer shall issue a copy of such manifest to the consignor of such agricultural products and the original shall be retained by the licensee for a period of one year during which time it shall be surrendered upon request to the director. Such manifest of cargo shall be valid only when signed by the licensee or his agent and the consignor of such agricultural products. [1971 ex.s. c 182 § 12; 1959 c 139 § 41.]

20.01.420 Commission merchant's report of sale to consignor. When requested by a consignor, a commission merchant shall promptly make available to the consignor or to the director all records of the ongoing sales of the consignor's agricultural products showing the amount sold,

the selling price, and any other information required under RCW 20.01.370. [1991 c 109 § 22; 1959 c 139 § 42.]

20.01.430 Commission merchant's remittance to consignor. Every commission merchant shall remit to the consignor of any agricultural product the full price for which such agricultural product was sold within thirty days of the date of sale, or in the case of livestock within seven days of the date of sale unless otherwise mutually agreed between grower and commission merchant. The remittance to the consignor shall include all collections, overcharges, and damages, less the agreed commission and other charges and advances, and a complete account of the sale. Where payment for livestock is made by mail, payment is timely if mailed within seven days of the date of sale unless otherwise specified in an agreement between the producer and the dealer in livestock. [1982 c 20 § 3; 1977 ex.s. c 304 § 11; 1974 ex.s. c 102 § 9; 1959 c 139 § 43.]

20.01.440 Commission merchant's copy of records to be retained—Inspection—Department's certificate of condition, quality, etc. Every commission merchant shall retain a copy of all records covering each transaction for a period of three years from the date thereof, which copy shall at all times be available for, and open to, the confidential inspection of the director and the consignor, or authorized representative of either. In the event of any dispute or disagreement between a consignor and a commission merchant arising at the time of delivery as to condition, quality, grade, pack, quantity, or weight of any lot, shipment or consignment of agricultural products, the department shall furnish, upon the payment of a reasonable fee therefor by the requesting party, a certificate establishing the condition, quality, grade, pack, quantity, or weight of such lot, shipment or consignment. Such certificate shall be prima facie evidence in all courts of this state as to the recitals thereof. The burden of proof shall be upon the commission merchant to prove the correctness of his accounting as to any transaction which may be questioned. [1991 c 109 § 23; 1959 c 139 § 44.]

20.01.450 Claims against seller by dealer, cash buyer—Credit to dealer, cash buyer against consignor—Certificate of proof. No claim may be made as against the seller of agricultural products by a dealer or cash buyer under this chapter, and no credit may be allowed to such dealer or cash buyer as against a consignor of agricultural products by reason of damage to, or loss, dumping, or disposal of agricultural products sold to said dealer or cash buyer, in any payment, accounting or settlement made by said dealer or cash buyer to said consignor, unless said dealer or cash buyer has secured and is in possession of a certificate, issued by an agricultural inspector, county health officer, director, a duly authorized officer of the state department of social and health services, or by some other official now or hereafter authorized by law, to the effect that the agricultural products involved have been damaged, dumped, destroyed or otherwise disposed of as unfit for the purpose intended. Such certificate will not be valid as proof of proper claim, credit or offset unless issued within twenty-four hours, or a reasonable time as prescribed by the

director, of the receipt by the dealer or cash buyer of the agricultural products involved. [1979 c 141 § 33; 1959 c 139 § 45.]

20.01.460 Prohibited acts—Penalties. (1) Any person who violates the provisions of this chapter or fails to comply with the rules adopted under this chapter is guilty of a gross misdemeanor, except as provided in subsections (2) and (3) of this section.

(2) Any commission merchant, dealer, or cash buyer, or any person assuming or attempting to act as a commission merchant, dealer, or cash buyer without a license is guilty of a class C felony who:

(a) Imposes false charges for handling or services in connection with agricultural products.

(b) Makes fictitious sales or is guilty of collusion to defraud the consignor.

(c) Intentionally makes false statement or statements as to the grade, conditions, markings, quality, or quantity of goods shipped or packed in any manner.

(d) With the intent to defraud the consignor, fails to comply with the requirements set forth under RCW 20.01.010(10), 20.01.390 or 20.01.430.

(3) Any person who violates the provisions of RCW 20.01.040, 20.01.080, 20.01.120, 20.01.125, 20.01.410 or 20.01.610 has committed a civil infraction. [1989 c 354 § 43; 1988 c 254 § 19; 1986 c 178 § 13; 1982 c 20 § 4; 1959 c 139 § 46.]

Severability—1989 c 354: See note following RCW 15.32.010.

20.01.465 Time of sale requirement—Unlawful. In the preparation and use of written contracts, it is unlawful for a commission merchant to include in such contracts a requirement that a consignor give up all involvement in determining the time the consignor's agricultural products will be sold. This provision does not apply to agricultural products consigned to a commission merchant under a written pooling agreement. [1991 c 109 § 24.]

20.01.470 Action to enjoin violation of chapter. The director may bring an action to enjoin the violation or the threatened violation of any provision of this chapter or of any order made pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur. [1959 c 139 § 47.]

20.01.475 Licensee under chapter—Prima facie evidence acting as licensee handling agricultural products. It shall be prima facie evidence that a licensee licensed under the provisions of *this 1971 amendatory act is acting as such in the handling of any agricultural product. [1971 ex.s. c 182 § 13; 1967 c 240 § 43.]

***Reviser's note:** The term "this 1971 amendatory act" [1971 ex.s. c 182] refers to the 1971 amendments to RCW 20.01.010, 20.01.030, 20.01.040, 20.01.060, 20.01.080, 20.01.125, 20.01.130, 20.01.210, 20.01.212, 20.01.214, 20.01.330, 20.01.410, 20.01.475, and the enactment of RCW 20.01.480, 20.01.500 through 20.01.560.

20.01.480 Violations resulting in improper or nonpayment—Charges. When a violation has occurred which results in improper payment or nonpayment and a

claim is made to the department and the payment is secured through the actions of the department, the charges made to the consignor for the action of the department in the matter will depend upon the delay of reporting after such improper payment or nonpayment would normally become obvious to the consignor as follows:

- (1) When reported within thirty days, no charge.
- (2) When reported thirty days to one hundred eighty days, five percent.
- (3) When reported after one hundred eighty days, ten percent. [1977 ex.s. c 304 § 13; 1971 ex.s. c 182 § 14.]

20.01.482 Civil infractions—Notice—Promise to appear or respond—Misdemeanors. The director shall have the authority to issue a notice of civil infraction if an infraction is committed in his or her presence or, if after investigation, the director has reasonable cause to believe an infraction has been committed. It shall be a misdemeanor for any person to refuse to properly identify himself or herself for the purpose of issuance of a notice of infraction or to refuse to sign the written promise to appear or respond to 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. [1986 c 178 § 1.]

20.01.484 Civil infractions—Response to notice. (1) Any person who receives a notice of infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) Any employee or agent of a licensee under this chapter is fully authorized to accept a notice of infraction on behalf of the licensee. The director shall also furnish a copy of the notice of infraction to the licensee 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 must be submitted with the response. When a response, which does not contest the determination, is received, an appropriate order shall be entered into the courts record and a record of the response shall be furnished to the director.

(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 submitted 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 the date of the hearing which shall not be sooner than fifteen days from the date of 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 speci-

fied 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 in assessing the monetary penalty prescribed in the schedule of penalties submitted to the court by the director and shall notify the director of the failure to respond to the notice of infraction or to appear at a requested hearing. [1986 c 178 § 2.]

20.01.486 Civil infractions—Hearing to contest charge—Order—Appeal. 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 director. 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 state 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. When 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 director. Appeal from the court's determination or order shall be to the superior court and must be appealed within ten days. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the rules of appellate procedure. [1986 c 178 § 3.]

20.01.488 Civil infractions—Informal hearing on mitigating circumstances—Order—No appeal. 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 director. There may be no appeal from the court's determination or order. [1986 c 178 § 4.]

20.01.490 Civil infractions—Monetary penalty—Failure to pay, misdemeanor. 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 director 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 proper courts. Whenever 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 mone-

tary penalties imposed under this chapter shall be punishable as a misdemeanor. [1986 c 178 § 5.]

20.01.500 "Grower," "processor" defined—Application of exemption contained in RCW 20.01.030(1). Notwithstanding any other provision of law, for the purposes of RCW 20.01.510 through 20.01.550 the term "grower" and the term "processor" shall have the meanings ascribed thereto by this section:

(1) "Grower" means any person, firm, company, or other organization that is engaged in the production of agricultural crops which must be planted, cultivated, and harvested within a twelve month period.

(2)(a) "Processor" means any person, firm, company, or other organization that purchases agricultural crops from a grower and who cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes such crops in any manner whatsoever for eventual resale.

(b) The exemption provided for in RCW 20.01.030(1) shall not apply to a cooperative or association as defined therein, which acts as a processor defined herein, and markets such agricultural crops on behalf of the grower or on its own behalf. [1977 ex.s. c 304 § 14; 1971 ex.s. c 182 § 15.]

20.01.510 Processor's form showing maximum processing capacity. In order to carry out the purposes of *this 1971 amendatory act, the director may require a processor to annually complete a form prescribed by the director, which, when completed, will show the maximum processing capacity of each plant operated by the processor in the state of Washington. Such completed form shall be returned to the director by a date prescribed by him. [1971 ex.s. c 182 § 16.]

*Reviser's note: For "this 1971 amendatory act," see note following RCW 20.01.475.

20.01.520 Processor to have grower contracts and commitments on file. By a date or dates prescribed prior to planting time by the director, the director, in order to carry out the purposes of *this 1971 amendatory act, may require a processor to have filed with him:

(1) A copy of each contract he has entered into with a grower for the purchase of acres of crops and/or quantity of crops to be harvested during the present or next growing season; and

(2) A notice of each oral commitment he has given to growers for the purchase of acres of crops and/or quantity of crops to be harvested during the present or next growing season, and such notice shall disclose the amount of acres and/or quantity to which the processor has committed himself. [1971 ex.s. c 182 § 17.]

*Reviser's note: For "this 1971 amendatory act," see note following RCW 20.01.475.

20.01.530 Grower may file form showing crops processor is committed to purchase. Any grower may file with the director on a form prescribed by him the acres of crops and/or quantity of crops to be harvested during the present or next growing season, which he understands a

processor has orally committed himself to purchase. [1971 ex.s. c 182 § 18.]

20.01.540 Committing to purchase more crops than plants can process—Violation. Any processor who, from the information filed with the director, appears to or has committed himself either orally or in writing to purchase more crops than his plants are capable of processing shall be in violation of this chapter and his dealer's license subject to denial, suspension, or revocation as provided for in RCW 20.01.330. [1971 ex.s. c 182 § 19.]

20.01.550 Discrimination by processor. Any processor who discriminates between growers with whom he contracts as to price, conditions for production, harvesting, and delivery of crops which is not supportable by economic cost factors shall be in violation of this chapter and the director may subsequent to a hearing deny, suspend, or revoke such processor's license to act as a dealer. [1977 ex.s. c 304 § 15; 1971 ex.s. c 182 § 20.]

20.01.560 Effective date of RCW 20.01.500 through 20.01.550. RCW 20.01.500 through 20.01.550 shall take effect beginning on September 1, 1972. [1971 ex.s. c 182 § 21.]

20.01.570 Cash or other security in lieu of surety bond. In lieu of the surety bond required under the provisions 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 § 2.]

20.01.610 Authority to stop vehicle violating chapter—Failure to stop, civil infraction. The director or his appointed officers may stop a vehicle transporting hay or straw upon the public roads of this state if there is reasonable cause to believe the carrier, seller, or buyer may be in violation of this chapter. Any operator of a vehicle failing or refusing to stop when directed to do so has committed a civil infraction. [1986 c 178 § 14; 1983 c 305 § 8.]

Severability—1983 c 305: See note following RCW 20.01.010.

20.01.900 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1959 c 139 § 48.]

20.01.910 Severability—1959 c 139. 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 139 § 49.]

20.01.911 Severability—1963 c 232. See RCW 15.61.900.

20.01.912 Severability—1967 c 240. See note following RCW 43.23.010.

20.01.913 Severability—1979 ex.s. c 115. 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 115 § 7.]

20.01.920 Effective date—1959 c 139. The effective date of this chapter shall be January 1, 1960. [1959 c 139 § 50.]

20.01.930 Repealer. Chapter 14, Laws of 1955 as amended by section 4, chapter 262, Laws of 1955, section 3, chapter 262, Laws of 1955, sections 1 and 2, chapter 262, Laws of 1955 and RCW 20.04.010 through 20.04.120, 20.08.010 through 20.08.110, 20.12.020 through 20.12.040, 20.16.010 through 20.16.040, 20.20.010 through 20.20.060, 20.24.010 through 20.24.070 and 20.98.010 through 20.98.060 are hereby repealed. [1959 c 139 § 51.]

20.01.940 Repealer—Savings—1979 ex.s. c 115. Section 10, chapter 102, Laws of 1974 ex. sess., section 12, chapter 304, Laws of 1977 ex. sess. and RCW 20.01.445 are each repealed.

Such repeals shall not be construed as affecting any existing right acquired under the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor any administrative action taken thereunder. [1979 ex.s. c 115 § 6.]

Title 21

SECURITIES AND INVESTMENTS

Chapters

- 21.17 Uniform act for simplification of fiduciary security transfers.**
- 21.20 Securities act of Washington.**
- 21.30 Commodity transactions.**

Department of licensing, division of securities in the business and professions administration: RCW 46.01.050.

The Washington Principal and Income Act: Chapter 11.104 RCW.

Chapter 21.17

UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

Sections

- 21.17.010 Definitions.
- 21.17.020 Registration in the name of a fiduciary.
- 21.17.030 Assignment by a fiduciary.
- 21.17.040 Evidence of appointment or incumbency.
- 21.17.050 Adverse claims.
- 21.17.060 Nonliability of corporation and transfer agent.
- 21.17.070 Nonliability of third persons.
- 21.17.080 Territorial application.
- 21.17.090 Tax obligations.
- 21.17.900 Uniformity of interpretation.
- 21.17.910 Short title.

This act controls over Article 8 of the Uniform Commercial Code: RCW 62A.10-104(2).

21.17.010 Definitions. In this chapter, unless the context otherwise requires:

(1) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.

(2) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(3) "Corporation" means a private or public corporation, association or trust issuing a security.

(4) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.

(5) "Person" includes an individual, 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.

(6) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation

which is registered as to ownership on the books of the corporation.

(7) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(8) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation. [1961 c 150 § 1.]

21.17.020 Registration in the name of a fiduciary.

A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security. [1961 c 150 § 2.]

21.17.030 Assignment by a fiduciary. Except as otherwise provided in this chapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary

(1) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(2) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession. [1961 c 150 § 3.]

21.17.040 Evidence of appointment or incumbency.

A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(1) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the transfer; or

(2) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the

corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection (2) provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection (2) except to the extent that the contents relate directly to the appointment or incumbency. [1961 c 150 § 4.]

21.17.050 Adverse claims. (1) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this chapter relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (2).

(2) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty days after the mailing and shall then make the transfer unless restrained by a court order. [1961 c 150 § 5.]

21.17.060 Nonliability of corporation and transfer agent. A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this chapter. [1961 c 150 § 6.]

21.17.070 Nonliability of third persons. (1) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(2) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this chapter incurs no liability.

(3) This section does not impose any liability upon the corporation or its transfer agent. [1961 c 150 § 7.]

21.17.080 Territorial application. (1) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer

of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized, or in the case of a security issued by a corporation organized under the laws of the United States of America, by the law of the state in which such corporation has its principal place of business.

(2) This chapter applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction. [1967 c 208 § 1; 1961 c 150 § 8.]

21.17.090 Tax obligations. This chapter does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession or other taxes imposed by the laws of this state. [1961 c 150 § 9.]

21.17.900 Uniformity of interpretation. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1961 c 150 § 10.]

21.17.910 Short title. This chapter may be cited as the uniform act for simplification of fiduciary security transfers. [1961 c 150 § 11.]

Chapter 21.20

SECURITIES ACT OF WASHINGTON

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DEFINITIONS

21.20.005 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context otherwise requires:

- (1) "Director" means the director of licensing of this state.
 (2) "Salesperson" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but "salesperson" does not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by RCW 21.20.310(1), (2), (3), (4), (9), (10), (11), (12), or (13), as now or hereafter amended, (b) effecting transactions exempted by RCW 21.20.320, or (c) effecting transactions with existing employees, partners, or directors of the issuer

if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for that person's own account. "Broker-dealer" does not include (a) a salesperson, issuer, bank, savings institution, or trust company, (b) a person who has no place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (c) a person who has no place of business in this state if during any period of twelve consecutive months that person does not direct more than fifteen offers to sell or to buy into this state in any manner to persons other than those specified in subsection (b) above.

(4) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(5) "Full business day" means all calendar days, excluding therefrom Saturdays, Sundays, and all legal holidays, as defined by statute.

(6) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, (a) provide the foregoing investment advisory services to others for compensation as part of a business or (b) hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser shall also include any person who holds himself out as a financial planner.

"Investment adviser" does not include (a) a bank, savings institution, or trust company, (b) a lawyer, accountant, certified public accountant licensed under chapter 18.04 RCW, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (c) a broker-dealer, (d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation, (e) a radio or television station, (f) a person whose advice, analyses, or reports relate only to securities exempted by RCW 21.20.310(1), (g) a person who has no place of business in this state if (i) that person's only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during any period of twelve consecutive months that person does not direct business communications into this state in any manner to more than five clients other than those specified in clause (i) above, or

(h) such other persons not within the intent of this paragraph as the director may by rule or order designate.

(7) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type; the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(8) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(9) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(10) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(11) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" means the federal statutes of those names as amended before or after June 10, 1959.

(12) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; investment of money or other consideration in the risk capital of a venture with the expectation of some valuable benefit to the investor where the investor does not receive the right to exercise practical and actual control over the managerial decisions of the venture; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; charitable gift annuity; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing; or any sale of or indenture, bond or contract for the conveyance of land or any interest therein where such land is situated outside of the state of Washington and such sale or its offering is not conducted by

a real estate broker licensed by the state of Washington. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

(13) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(14) "Investment adviser salesperson" means a person retained or employed by an investment adviser to solicit clients or offer the services of the investment adviser or manage the accounts of said clients.

(15) "Relatives", as used in RCW 21.20.310(11) as now or hereafter amended, shall include:

(a) A member's spouse;

(b) Parents of the member or the member's spouse;

(c) Grandparents of the member or the member's spouse;

(d) Natural or adopted children of the member or the member's spouse;

(e) Aunts and uncles of the member or the member's spouse; and

(f) First cousins of the member or the member's spouse. [1989 c 391 § 1; 1979 ex.s. c 68 § 1; 1979 c 130 § 3; 1977 ex.s. c 188 § 1; 1975 1st ex.s. c 84 § 1; 1967 c 199 § 1; 1961 c 37 § 1; 1959 c 282 § 60.]

Severability—1979 c 130: See note following RCW 28B.10.485.

FRAUDULENT AND OTHER PROHIBITED PRACTICES

21.20.010 Unlawful offers, sales, purchases. It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

(1) To employ any device, scheme, or artifice to defraud;

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. [1959 c 282 § 1.]

21.20.020 Unlawful acts of person advising another. It is unlawful for any person who receives any consideration from another party primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(1) To employ any device, scheme, or artifice to defraud the other person; or

(2) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person. [1959 c 282 § 2.]

21.20.030 Unlawful acts of investment adviser. It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital

appreciation of the funds or any portion of the funds of the client;

(2) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

Subsection (1) above does not prohibit an investment advisory contract which provides for compensation based upon the total of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (2) above, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business. [1959 c 282 § 3.]

**REGISTRATION OF BROKER-DEALERS,
SALESPERSONS, INVESTMENT
ADVISERS, AND INVESTMENT ADVISER
SALESPERSONS**

21.20.040 Registration required—Exemptions. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesperson, unless he or she is registered under this chapter: PROVIDED, That an exemption from registration as a broker-dealer or salesperson to sell or resell condominium units sold in conjunction with an investment contract, may be provided by rule or regulation of the director as to persons who are licensed pursuant to the provisions of chapter 18.85 RCW. It is unlawful for any broker-dealer or issuer to employ a salesperson unless the salesperson is registered or exempted from registration. It is unlawful for any person to transact business in this state as an investment adviser unless (a) the person is so registered under this chapter, or (b) the person is registered as a broker-dealer under this chapter, or (c) the person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, or insurance companies. It is unlawful for any person to transact business in this state as an investment adviser salesperson or for any investment adviser to employ an investment adviser salesperson unless such person is registered.

(2) It is unlawful for any person to hold himself out as, or otherwise represent that he or she is a "financial planner", "investment counselor", or other similar term, as may be specified in rules adopted by the director, unless the person is registered as an investment adviser or investment adviser salesperson, is exempt from registration under RCW 21.20.040(1), or is excluded from the definition of investment adviser under RCW 21.20.005(6). [1989 c 391 § 2;

1979 ex.s. c 68 § 2; 1975 1st ex.s. c 84 § 2; 1974 ex.s. c 77 § 1; 1959 c 282 § 4.]

Effective date—1974 ex.s. c 77: "This 1974 amendatory act shall take effect on July 1, 1974." [1974 ex.s. c 77 § 14.] For codification of 1974 ex.s. c 77, see Codification Tables, Volume 0.

Insurance, solicitation permits for sale of securities: RCW 48.06.090.

21.20.050 Application for registration—Consent to service of process. A broker-dealer, salesperson, investment adviser, or investment adviser salesperson may apply for registration by filing with the director or his authorized agent an application together with a consent to service of process in such form as the director shall prescribe and payment of the fee prescribed in RCW 21.20.340. [1981 c 272 § 1; 1979 ex.s. c 68 § 3; 1975 1st ex.s. c 84 § 3; 1961 c 37 § 2; 1959 c 282 § 5.]

21.20.060 Contents of application for registration—Capital requirements. The application shall contain whatever information the director requires concerning such matters as:

- (1) The applicant's form and place of organization;
- (2) The applicant's proposed method of doing business;
- (3) The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director;
- (4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and
- (5) The applicant's financial condition and history.

The director of licenses or the duly appointed administrator may by rule require a minimum capital for registered broker-dealers and investment advisers or prescribe a ratio between net capital and aggregate indebtedness by type or classification. [1965 c 17 § 1; 1959 c 282 § 6.]

21.20.070 When registration effective—Written examinations. If no denial order is in effect and no proceeding is pending under RCW 21.20.110, registration becomes effective when the applicant has successfully passed a written examination as prescribed by rule or order of the director with the advice of the advisory committee, or has satisfactorily demonstrated that the applicant is exempt from the written examination requirements of this section. [1981 c 272 § 2; 1979 ex.s. c 68 § 4; 1975 1st ex.s. c 84 § 4; 1974 ex.s. c 77 § 2; 1959 c 282 § 7.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

21.20.080 Duration of registration—Association with issuer, broker-dealer, or investment adviser—Extension of licensing period. Registration of a broker-dealer, salesperson, investment adviser salesperson, or investment adviser shall be effective for a one-year period unless the director by rule or order provides otherwise. The director by rule or order may schedule registration or renewal so that all registrations and renewals expire December 31st. The director may adjust the fee for registration or renewal proportionately. The registration of a salesperson or investment adviser salesperson is not effective during any period when the salesperson is not associated with an issuer or a registered broker-dealer or when the investment adviser

salesperson is not associated with a registered investment adviser. To be associated with an issuer, broker-dealer, or investment adviser within the meaning of this section written notice must be given to the director. When a salesperson begins or terminates an association with an issuer or registered broker-dealer, the salesperson and the issuer or broker-dealer shall promptly notify the director. When an investment adviser salesperson begins or terminates an association with a registered investment adviser, the investment adviser salesperson and registered investment adviser shall promptly notify the director.

Notwithstanding any provision of law to the contrary, the director may, from time to time, extend the duration of a licensing period for the purpose of staggering renewal periods. Such extension of a licensing period shall be by rule or regulation adopted in accordance with the provisions of chapter 34.05 RCW. Such rules and regulations may provide a method for imposing and collecting such additional proportional fee as may be required for the extended period. [1981 c 272 § 3; 1979 ex.s. c 68 § 5; 1975 1st ex.s. c 84 § 5; 1959 c 282 § 8.]

21.20.090 Renewal of registration—Financial statement—Application for a successor. Registration of a broker-dealer, salesperson, investment adviser salesperson, or investment adviser may be renewed by filing with the director or his authorized agent prior to the expiration thereof an application containing such information as the director may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesperson, investment adviser salesperson, or investment adviser filed with the director or his authorized agent by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety days. A registered broker-dealer or investment adviser may file an application for registration of a successor, and the administrator may at his or her discretion grant or deny the application. [1981 c 272 § 4; 1979 ex.s. c 68 § 6; 1975 1st ex.s. c 84 § 6; 1961 c 37 § 3; 1959 c 282 § 9.]

21.20.100 Accounts and records—Examination. Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under RCW 21.20.310(1), which accounts and other records shall be prescribed by the director. All records so required shall be preserved for three years unless the director prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors. [1959 c 282 § 10.]

21.20.110 Denial, suspension, revocation of registration—Grounds. The director may by order deny, suspend, or revoke registration of any broker-dealer, salesperson, investment adviser salesperson, or investment adviser if the

director finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(1) Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false, or misleading with respect to any material fact;

(2) Has wilfully violated or wilfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act, or any provision of chapter 21.30 RCW or any rule or order thereunder;

(3) Has been convicted, within the past five years, of any misdemeanor involving a security, or a commodity contract or commodity option as defined in RCW 21.30.010, or any aspect of the securities or investment commodities business, or any felony involving moral turpitude;

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or investment commodities business;

(5) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, salesperson, investment adviser, or investment adviser salesperson;

(6) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesperson, or a commodity broker-dealer or sales representative, or the substantial equivalent of those terms as defined in this chapter or by the commodity futures trading commission denying or revoking registration as a commodity merchant as defined in RCW 21.30.010, or is the subject of an order of suspension or expulsion from membership in or association with a self-regulatory organization registered under the securities exchange act of 1934 or the federal commodity exchange act, or is the subject of a United States post office fraud order; but (a) the director may not institute a revocation or suspension proceeding under this clause more than one year from the date of the order relied on, and (b) the director may not enter any order under this clause on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(7) Has engaged in dishonest or unethical practices in the securities or investment commodities business;

(8) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature; but the director may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser;

(9) Has not complied with a condition imposed by the director under RCW 21.20.100, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(10) Has failed to supervise reasonably his or her salespersons if he or she is a broker-dealer or his or her

investment adviser salesperson if he or she is an investment adviser.

The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. [1986 c 14 § 45; 1979 ex.s. c 68 § 7; 1975 1st ex.s. c 84 § 7; 1965 c 17 § 2; 1959 c 282 § 11.]

Severability—Effective date—1986 c 14: See RCW 21.30.900 and 21.30.901.

21.20.120 Denial, suspension, revocation of registration—Order—Request for, notice of hearing—Findings and conclusions. Upon the entry of an order under RCW 21.20.110, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesperson or investment adviser salesperson, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within fifteen days after the receipt of the director's notification the matter will be promptly set down for hearing. If no hearing is requested and none is ordered by the director, the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination. No order may be entered under RCW 21.20.110 denying or revoking registration without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is a salesperson or an investment adviser salesperson), opportunity for hearing, and written findings of fact and conclusions of law. [1979 ex.s. c 68 § 8; 1975 1st ex.s. c 84 § 8; 1959 c 282 § 12.]

21.20.130 Cancellation of registration or application—Grounds. If the director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, investment adviser salesperson, or salesperson, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application. [1979 ex.s. c 68 § 9; 1975 1st ex.s. c 84 § 9; 1959 c 282 § 13.]

21.20.135 License as salesperson or broker-dealer prerequisite to suit for commission. No suit or action shall be brought for the collection of a commission for the sale of a security, as defined within this chapter without alleging and proving that the plaintiff was a duly licensed salesperson for an issuer or a broker-dealer, or exempt under the provisions of RCW 21.20.040, or a duly licensed broker-dealer in this state or another state at the time the alleged cause of action arose. [1979 ex.s. c 68 § 10; 1974 ex.s. c 77 § 3; 1961 c 37 § 10.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

REGISTRATION OF SECURITIES

21.20.140 Unlawful to offer or sell unregistered securities—Exceptions. It is unlawful for any person to offer or sell any security in this state, except securities exempt under RCW 21.20.310 or when sold in transactions exempt under RCW 21.20.320, unless such security is registered by coordination or qualification under this chapter. [1975 1st ex.s. c 84 § 10; 1959 c 282 § 14.]

REGISTRATION BY COORDINATION

21.20.180 Registration by coordination—Requirements—Statement, contents. Any security for which a registration statement has been filed under the securities act of 1933 or any securities for which filings have been made pursuant to rules and regulations A and A-M pursuant to subsection (b) of Sec. 3 of said securities act in connection with the same offering may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in RCW 21.20.340 and, if required under RCW 21.20.330, a consent to service of process meeting the requirements of that section:

(1) One copy of the prospectus, offering circular and/or letters of notification, filed under the securities act of 1933 together with all amendments thereto;

(2) The amount of securities to be offered in this state;

(3) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(4) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(5) If the director, by rule or otherwise, requires a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(6) If the director requests, any other information, or copies of any other documents, filed under the securities act of 1933;

(7) An undertaking to forward promptly all amendments to the federal registration statement, offering circular and/or letters of notification, other than an amendment which merely delays the effective date; and

(8) If the aggregate sales price of the offering exceeds five hundred thousand dollars, audited financial statements and other financial information prepared as to form and content under rules adopted by the director. [1979 ex.s. c 68 § 11; 1961 c 37 § 4; 1959 c 282 § 18.]

21.20.190 Time of taking effect of registration statement by coordination—Conditions—"Price amendment", notification. A registration statement by coordination under RCW 21.20.180 automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(1) No stop order is in effect and no proceeding is pending under RCW 21.20.280 and 21.20.300;

(2) The registration statement has been on file with the director for at least ten full business days; and

(3) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the director permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the director by telephone or telegram of the date and time when the federal registration statement or other filing became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. [1961 c 37 § 5; 1959 c 282 § 19.]

21.20.200 Failure to notify of price amendment, proof of compliance—Stop order—Waiver of certain conditions. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment referred to in RCW 21.20.190, the director may enter a stop order, without notice of hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with RCW 21.20.190, if the director promptly notified the registrant by telephone or telegram (and promptly confirms by letter or telegram when the director notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements as to notice and post-effective amendment, the stop order is void as of the time of its entry. The director may by rule or otherwise waive either or both of the conditions specified in RCW 21.20.190(2) and (3). If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the director of the date when the federal registration statement or other filing is expected to become effective the director shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether the director then contemplates the institution of a proceeding under RCW 21.20.280 and 21.20.300; but this advice by the director does not preclude the institution of such a proceeding at any time. [1979 ex.s. c 68 § 12; 1959 c 282 § 20.]

REGISTRATION BY QUALIFICATION

21.20.210 Registration by qualification—Statements—Requirements—Audits. Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in RCW 21.20.340, and, if required under RCW 21.20.330, a consent

to service of process meeting the requirements of that section:

(1) With respect to the issuer and any significant subsidiary: Its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; and a description of its physical properties and equipment.

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: His or her name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him or her as of a specified date within ninety days of the filing of the registration statement; the remuneration paid to all such persons in the aggregate during the past twelve months, and estimated to be paid during the next twelve months, directly or indirectly, by the issuer (together with all predecessors, parents and subsidiaries).

(3) With respect to any person not named in RCW 21.20.210(2), owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: The information specified in RCW 21.20.210(2) other than his or her occupation.

(4) With respect to every promoter, not named in RCW 21.20.210(2), if the issuer was organized within the past three years: The information specified in RCW 21.20.210(2), any amount paid to that person by the issuer within that period or intended to be paid to that person, and the consideration for any such payment.

(5) The capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.

(6) The kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a finders' fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

(7) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds; and, if any part of the

proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price.

(8) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in RCW 21.20.210(2), (3), (4), (5) or (7) and by any person who holds or will hold ten percent or more in the aggregate of any such options.

(9) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed.

(10) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission; a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities).

(11) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering.

(12) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.

(13) A signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered.

(14) (a) If the issuer is a commercial, industrial or extractive company in the promotional, exploratory or development stage, the following statements:

(i) Separate statements of (A) assets, (B) liabilities, and (C) capital shares, as of a date within one hundred twenty days prior to the filing of the registration statement.

(ii) A statement of cash receipts and disbursements for each of at least three full fiscal years prior to the date of the statements furnished pursuant to paragraph (i) above, and for the period, if any, between the close of the last full fiscal year and the date of such statements, or for the period of the issuer's existence if less than the period specified above.

(iii) In such statements, dollar amounts shall be extended only for cash transactions and transactions involving amounts receivable or payable in cash.

(b) If paragraph (a) does not apply to the issuer, there shall be furnished:

(i) Financial statements consisting of a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, and as of the date of the end of the last fiscal year if more than four months prior to such filing.

(ii) Statements of income, shareholders' equity, and changes in financial position for each of the three fiscal years preceding the date of the latest balance sheet and for any period between the close of the last fiscal year and the date of the latest balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years.

(iii) If any part of the proceeds of the offering is to be applied to the purchase of any business whose annual sales or revenues are in excess of fifteen percent of the

registrant's sales or revenues or involves acquisition of assets in excess of fifteen percent of the registrant's assets, except as specifically exempted by the director, financial statements shall be filed which would be required if that business were the registrant.

(c) If the estimated proceeds to be received from the offering, together with the proceeds from securities registered under this section during the year preceding the date of the filing of this registration statement, exceed one hundred thousand dollars, the statements described in subsection (14)(a)(i) or (b)(i) of this section as of the date of the close of the last fiscal year and the related financial statements specified in subsections (14)(a)(ii) and (b)(ii) of this section for the last fiscal year shall be audited. For registration statements filed after December 31, 1975, and if such proceeds exceed five hundred thousand dollars, the financial statements specified in subsections (14)(a)(ii) and (b)(ii) of this section for the last two fiscal years shall be audited. For registration statements filed after December 31, 1979, and if such proceeds exceed five hundred thousand dollars, the statements described in subsection (14)(a)(i) or (b)(i) of this section as of the date of the close of the last fiscal year and the related financial statements specified in subsection (14)(a)(ii) and (b)(ii) of this section for the last fiscal year shall be audited. If such proceeds exceed seven hundred fifty thousand dollars, the financial statements specified in subsection (14)(a)(ii) and (b)(ii) of this section for the last two fiscal years shall be audited.

(d) The financial statements of this subsection and such other financial information as may be prescribed by the director shall be prepared as to form and content in accordance with the rules and regulations prescribed by the director, and as provided in paragraph (c) above, shall be audited by an independent certified public accountant who is authorized to practice under the laws of the state of Washington and who is not an employee, officer, or member of the board of directors of the issuer or a holder of the securities of the issuer. The report of such independent certified public accountant shall be based upon an audit made in accordance with generally accepted auditing standards with no limitations on its scope. The director may also verify such statements by examining the issuer's books and records.

(15) The written consent of any accountant, engineer, appraiser, attorney, or any person whose profession gives authority to a statement made by him or her, who is named as having prepared or audited any part of the registration statement or is named as having prepared or audited a report or valuation for use in connection with the registration statement. [1979 ex.s. c 68 § 13; 1973 1st ex.s. c 171 § 1; 1959 c 282 § 21.]

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.220 Information not required when nonissuer distribution. In the case of a nonissuer distribution, information may not be required under RCW 21.20.210 unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense. [1959 c 282 § 22.]

21.20.230 Time of taking effect of registration statement by qualification—Conditions. A registration statement by qualification under RCW 21.20.210 becomes effective if no stop order is in effect and no proceeding is pending under RCW 21.20.280 and 21.20.300, at three o'clock Pacific standard time in the afternoon of the fifteenth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the director determines. The director may require as a condition of registration under this section that a prospectus containing any information necessary for complete disclosure of any material fact relating to the security offering be sent or given to each person to whom an offer is made before or concurrently with (1) the first written offer made to him or her (other than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs; but the director may accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder. [1979 ex.s. c 68 § 14; 1975 1st ex.s. c 84 § 11; 1974 ex.s. c 77 § 4; 1961 c 37 § 6; 1959 c 282 § 23.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

GENERAL PROVISIONS REGARDING REGISTRATION OF SECURITIES

21.20.240 Registration statements—Generally. A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. The director may by rule or otherwise permit the omission of any item of information or document from any registration statement. [1975 1st ex.s. c 84 § 12; 1959 c 282 § 24.]

21.20.250 Registration by qualification or coordination—Escrow—Impounding proceeds. The director may by rule or order require as a condition of registration by qualification or coordination (1) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The director may by rule or order determine the conditions of any escrow or impounding required hereunder but the director may not reject a depository solely because of location in another state. [1979 ex.s. c 68 § 15; 1959 c 282 § 25.]

21.20.260 Registration by coordination or qualification—Offer and sale—Duration of effectiveness. When

securities are registered by coordination or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer or any person acting within the exemption provided in RCW 21.20.040. Every registration shall remain effective until its expiration date or until revoked by the director or until terminated upon request of the registrant with the consent of the director. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction. [1975 1st ex.s. c 84 § 13; 1974 ex.s. c 77 § 5; 1959 c 282 § 26.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

21.20.270 Reports by filer of statement—Fee—Annual financial statements. (1) The director may require the person who filed the registration statement to file reports, not more often than quarterly to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the investment company act of 1940, or (b) are being offered and sold directly by or for the account of the issuer. A ten dollar fee shall accompany each such report.

(2) During the period of public offering of securities registered under the provisions of this chapter by qualification financial data or statements corresponding to those required under the provisions of RCW 21.20.210 and to the issuer's fiscal year shall be filed with the director annually, not more than one hundred twenty days after the end of each such year. Such statements at the discretion of the director or administrator shall be certified by a certified public accountant who is not an employee of the issuer, and the director may verify them by examining the issuer's books and records. The certificate of such independent certified public accountant shall be based upon an audit of not less in scope or procedures followed than that which independent public accountants would ordinarily make for the purpose of presenting comprehensive and dependable financial statements, and shall contain such information as the director may prescribe, by rules and regulations in the public interest or for the protection of investors, as to the nature and scope of the audit and the findings and opinions of the accountants. Each such report shall state that such independent certified public accountant has verified securities owned, either by actual examination, or by receipt of a certificate from the custodian, as the director may prescribe by rules and regulations. [1975 1st ex.s. c 84 § 14; 1965 c 17 § 3; 1961 c 37 § 7; 1959 c 282 § 27.]

21.20.275 Pending registration—Notice of termination—Application for continuation. The director may in his or her discretion mail notice to the registrant in any pending registration in which no action has been taken for nine months immediately prior to the mailing of such notice, advising such registrant that the pending registration will be terminated thirty days from the date of mailing unless on or before said termination date the registrant makes application

in writing to the director showing good cause why it should be continued as a pending registration. If such application is not made or good cause shown, the director shall terminate the pending registration. [1979 ex.s. c 68 § 16; 1974 ex.s. c 77 § 12.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

DENIAL, SUSPENSION AND REVOCATION OF REGISTRATION OF SECURITIES

21.20.280 Stop orders—Grounds. The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the director finds that the order is in the public interest and that:

(1) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been wilfully violated, in connection with the offering by (a) the person filing the registration statement, (b) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (c) any underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (a) the director may not institute a proceeding against an effective registration statement under this clause more than one year from the date of the injunction relied on, and (b) the director may not enter an order under this clause on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(5) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by RCW 21.20.180(7), or

(7) The applicant or registrant has failed to pay the proper registration fee; but the director may enter only a denial order under this subsection and shall vacate any such order when the deficiency has been corrected;

(8) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or compensation or promoters' profits or participation, or unreasonable amounts or kinds of options. [1979 ex.s. c 68 § 17; 1975 1st ex.s. c 84 § 15; 1959 c 282 § 28.]

21.20.290 Stop order prohibited if facts known on effective date of statement. The director may not enter a stop order against an effective registration statement on the basis of a fact or transaction known to the director when the registration statement became effective. [1979 ex.s. c 68 § 18; 1959 c 282 § 29.]

21.20.300 Notification of entry of stop order—Hearing—Findings, conclusions, modification, etc. Upon the entry of a stop order under any part of RCW 21.20.280, the director shall promptly notify the issuer of the securities and the applicant or registrant that the order has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen days and none is ordered by the director, the director shall enter written findings of fact and conclusions of law and the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearings to the issuer and to the applicant or registrant, shall enter written findings of fact and conclusions of law and may modify or vacate the order. The director may modify or vacate a stop order if the director finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so. [1979 ex.s. c 68 § 19; 1959 c 282 § 30.]

EXEMPT SECURITIES

21.20.310 Securities exempt from registration. RCW 21.20.140 through 21.20.300, inclusive, do not apply to any of the following securities:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments are made or unconditionally guaranteed by a person whose securities are exempt from registration by subsections (7) or (8) of this section: PROVIDED, That the director, by rule or order, may exempt any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise if the director finds that registration with respect to such securities is not necessary in the public interest and for the protection of investors.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments shall be made or unconditionally guaranteed by a person whose securities are exempt from registration by subsections (7) or (8) of this section.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank or trust company organized or supervised under the laws of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of this state and authorized to do and actually doing business in this state.

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) subject to the jurisdiction of the interstate commerce commission; (b) a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (d) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect of equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection.

(8) Any security which meets the criteria for investment grade securities that the director may adopt by rule.

(9) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies.

(10) Any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if the director is notified in writing with a copy of the plan thirty days before offering the plan to employees in this state. In the event of late filing of notification the director may upon application, for good cause excuse such late filing if he or she finds it in the public interest to grant such relief.

(11) Any security issued by any person organized and operated as a nonprofit organization as defined in RCW 84.36.800(4) exclusively for religious, educational, or charitable purposes and which nonprofit organization also possesses a current tax exempt status under the laws of the United States, which security is offered or sold only to persons who, prior to their solicitation for the purchase of said securities, were members of, contributors to, or listed as participants in, the organization, or their relatives, if such nonprofit organization first files a notice specifying the terms of the offering and the director does not by order disallow the exemption within the next ten full business days:

PROVIDED, That no offerings may be made until expiration of the ten full business days. Every such nonprofit organization which files a notice of exemption of such securities shall pay a filing fee as set forth in RCW 21.20.340(12) as now or hereafter amended.

The notice shall consist of the following:

(a) The name and address of the issuer;

(b) The names, addresses, and telephone numbers of the current officers and directors of the issuer;

(c) A short description of the security, price per security, and the number of securities to be offered;

(d) A statement of the nature and purposes of the organization as a basis for the exemption under this section;

(e) A statement of the proposed use of the proceeds of the sale of the security; and

(f) A statement that the issuer shall provide to a prospective purchaser written information regarding the securities offered prior to consummation of any sale, which information shall include the following statements: (i) "ANY PROSPECTIVE PURCHASER IS ENTITLED TO REVIEW FINANCIAL STATEMENTS OF THE ISSUER WHICH SHALL BE FURNISHED UPON REQUEST."; (ii) "RECEIPT OF NOTICE OF EXEMPTION BY THE WASHINGTON ADMINISTRATOR OF SECURITIES DOES NOT SIGNIFY THAT THE ADMINISTRATOR HAS APPROVED OR RECOMMENDED THESE SECURITIES, NOR HAS THE ADMINISTRATOR PASSED UPON THE OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."; and (iii) "THE RETURN OF THE FUNDS OF THE PURCHASER IS DEPENDENT UPON THE FINANCIAL CONDITION OF THE ORGANIZATION."

(12) Any charitable gift annuities issued by a board of a state university, regional university, or of the state college.

(13) Any charitable gift annuity issued by an insurer or institution holding a certificate of exemption under RCW 48.38.010. [1981 c 272 § 5; 1979 ex.s. c 68 § 20; 1979 c 130 § 4; 1979 c 8 § 1. Prior: 1977 ex.s. c 188 § 2; 1977 ex.s. c 172 § 1; 1975 1st ex.s. c 84 § 16; 1959 c 282 § 31.]

Severability—1979 c 130: See note following RCW 28B.10.485.

EXEMPT TRANSACTIONS

21.20.320 Exempt transactions. The following transactions are exempt from RCW 21.20.040 through 21.20.300 except as expressly provided:

(1) Any isolated transaction, or sales not involving a public offering, whether effected through a broker-dealer or not; or any transaction effected in accordance with any rule by the director establishing a nonpublic offering exemption pursuant to this subsection where registration is not necessary or appropriate in the public interest or for the protection of investors.

(2) Any nonissuer distribution of an outstanding security by a registered broker-dealer if (a) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default

during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security.

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the director may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit. A bond or other evidence of indebtedness is not offered and sold as a unit if the transaction involves:

(a) A partial interest in one or more bonds or other evidences of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels; or

(b) One of multiple bonds or other evidences of indebtedness secured by one or more real or chattel mortgages or deeds of trust, or agreements for the sale of real estate or chattels, sold to more than one purchaser as part of a single plan of financing; or

(c) A security including an investment contract other than the bond or other evidence of indebtedness.

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(9) Any transaction pursuant to an offering not exceeding five hundred thousand dollars effected in accordance with any rule by the director if the director finds that registration is not necessary in the public interest and for the protection of investors.

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber.

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (b) the issuer first files a notice specifying the terms of the offer and the

director does not by order disallow the exemption within the next five full business days.

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets.

(15) The offer or sale by a registered broker-dealer, or a person exempted from the registration requirements pursuant to RCW 21.20.040, acting either as principal or agent, of securities previously sold and distributed to the public: PROVIDED, That:

(a) Such securities are sold at prices reasonably related to the current market price thereof at the time of sale, and, if such broker-dealer is acting as agent, the commission collected by such broker-dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(b) Such securities do not constitute the whole or a part of an unsold allotment to or subscription or participation by such broker-dealer as an underwriter of such securities or as a participant in the distribution of such securities by the issuer, by an underwriter or by a person or group of persons in substantial control of the issuer or of the outstanding securities of the class being distributed; and

(c) The security has been lawfully sold and distributed in this state or any other state of the United States under this or any act regulating the sale of such securities.

(16) Any transaction by a mutual or cooperative association meeting the requirements of (a) and (b) of this subsection:

(a) The transaction:

(i) Does not involve advertising or public solicitation; or

(ii) Involves advertising or public solicitation, and:

(A) The association first files a notice of claim of exemption on a form prescribed by the director specifying the terms of the offer and the director does not by order deny the exemption within the next ten full business days; or

(B) The association is an employee cooperative and identifies itself as an employee cooperative in advertising or public solicitation.

(b) The transaction involves an instrument or interest, that:

(i)(A) Qualifies its holder to be a member or patron of the association;

(B) Represents a contribution of capital to the association by a person who is or intends to become a member or patron of the association;

(C) Represents a patronage dividend or other patronage allocation; or

(D) Represents the terms or conditions by which a member or patron purchases, sells, or markets products, commodities, or services from, to, or through the association; and

(ii) Is nontransferable except in the case of death, operation of law, bona fide transfer for security purposes only to the association, a bank, or other financial institution, intrafamily transfer, or transfer to an existing member or person who will become a member and, in the case of an instrument, so states conspicuously on its face.

(17) Any transaction effected in accordance with any rule adopted by the director establishing a limited offering exemption which furthers objectives of compatibility with federal exemptions and uniformity among the states, provided that in adopting any such rule the director may require that no commission or other remuneration be paid or given to any person, directly or indirectly, for effecting sales unless the person is registered under this chapter as a broker-dealer or salesperson. [1989 c 307 § 34. Prior: 1987 c 457 § 13; 1987 c 421 § 9; 1986 c 90 § 1; 1981 c 272 § 6; 1979 ex.s. c 68 § 21; 1977 ex.s. c 172 § 2; 1975 1st ex.s. c 84 § 17; 1974 ex.s. c 77 § 6; 1972 ex.s. c 79 § 1; 1961 c 37 § 8; 1959 c 282 § 32.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Application—1989 c 307: See RCW 23.86.900.

Severability—1987 c 457: See RCW 23.78.902.

Application—Severability—1987 c 421: See notes following RCW 21.20.705.

Effective date—1986 c 90: "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 July 1, 1986." [1986 c 90 § 3.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

EXEMPT SECURITIES AND TRANSACTIONS

21.20.325 Denial, revocation, condition, of exemptions—Authority—Procedure. The director or administrator may by order deny, revoke, or condition any exemption specified in subsections (10), (11), (12) or (13) of RCW 21.20.310 or in RCW 21.20.320, as now or hereafter amended, with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the director or administrator may by order summarily deny, revoke, or condition any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the director or administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the director or administrator, the order will remain in effect until it is modified or vacated by the director or administrator. If a hearing is requested or ordered, the director or administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this section may operate retroactively. No person may be considered to have violated RCW 21.20.140

as now or hereafter amended by reason of any offer or sale effected after the entry of an order under this section if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order. [1979 ex.s. c 68 § 22; 1979 c 130 § 14; 1977 ex.s. c 188 § 3; 1975 1st ex.s. c 84 § 18; 1974 ex.s. c 77 § 7; 1967 c 199 § 3.]

Severability—1979 c 130: See note following RCW 28B.10.485.

CONSENT TO SERVICE OF PROCESS

21.20.330 Consent to service of process—Service, how made. Every applicant for registration as a broker-dealer, investment adviser, investment adviser salesperson, or salesperson under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common law sense shall file with the director, in such form as the director by rule prescribes, an irrevocable consent appointing the director or the director's successor in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless (1) the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant on file with the director, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows. [1979 ex.s. c 68 § 23; 1975 1st ex.s. c 84 § 19; 1959 c 282 § 33.]

FEES

21.20.340 Fees—Disposition. The following fees shall be paid in advance under the provisions of this chapter:

(1) For registration of all securities other than investment trusts and securities registered by coordination the fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered during that year: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty dollar fee renew for one additional twelve-month period only the unsold portion for which the registration fee has been paid.

(2) For registration of securities issued by a face-amount certificate company or redeemable security issued by an open-end management company or investment trust, as those terms are defined in the Investment Company Act of 1940, the fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this

state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered in this state during that year: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty dollar fee renew for an additional twelve-month period the unsold portion for which the registration fee has been paid.

(3) For registration by coordination, other than investment trusts, the initial filing fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-fortieth of one percent for any excess over one hundred thousand dollars for the first twelve-month period plus one hundred dollars for each additional twelve months in which the same offering is continued.

(4) For filing annual financial statements, the fee shall be twenty-five dollars.

(5) For filing an amended offering circular after the initial registration permit has been granted the fee shall be ten dollars.

(6) For registration of a broker-dealer or investment adviser, the fee shall be one hundred fifty dollars for original registration and seventy-five dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one-half of the fee.

(7) For registration of a salesperson or investment adviser salesperson, the fee shall be forty dollars for original registration with each employer and twenty dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one-half of the fee.

(8) For written examination for registration as a salesperson or investment adviser salesperson, the fee shall be fifteen dollars. For examinations for registration as a broker-dealer or investment adviser, the fee shall be fifty dollars.

(9) If a registration of a broker-dealer, salesperson, investment adviser, or investment adviser salesperson is not renewed on or before December 31st of each year the renewal is delinquent. The director by rule or order may set and assess a fee for delinquency not to exceed two hundred dollars. Acceptance by the director of an application for renewal after December 31st is not a waiver of delinquency. A delinquent application for renewal will not be accepted for filing after March 1st.

(10) (a) For the transfer of a broker-dealer license to a successor, the fee shall be fifty dollars.

(b) For the transfer of a salesperson license from a broker-dealer or issuer to another broker-dealer or issuer, the transfer fee shall be twenty-five dollars.

(c) For the transfer of an investment adviser salesperson license from an investment adviser to another investment adviser, the transfer fee shall be twenty-five dollars.

(d) For the transfer of an investment adviser license to a successor, the fee shall be fifty dollars.

(11) The director may provide by rule for the filing of notice of claim of exemption under RCW 21.20.320 (1), (9), and (17) and set fees accordingly not to exceed three hundred dollars.

(12) For filing of notification of claim of exemption from registration pursuant to RCW 21.20.310(11), as now or hereafter amended, the fee shall be fifty dollars for each filing.

(13) For rendering interpretative opinions, the fee shall be thirty-five dollars.

(14) For certified copies of any documents filed with the director, the fee shall be the cost to the department.

(15) For a duplicate license the fee shall be five dollars.

All fees collected under this chapter shall be turned in to the state treasury and are not refundable, except as herein provided. [1988 c 244 § 17; 1986 c 90 § 2; 1981 c 272 § 7; 1979 ex.s. c 68 § 24. Prior: 1977 ex.s. c 188 § 4; 1977 ex.s. c 172 § 3; 1975 1st ex.s. c 84 § 20; 1974 ex.s. c 77 § 8; 1965 c 17 § 4; 1961 c 37 § 9; 1959 c 282 § 34.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

Effective date—1986 c 90: See note following RCW 21.20.320.

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

Effective date—1965 c 17: "Section 4 of this amendatory act shall take effect July 1, 1965." [1965 c 17 § 6.]

MISLEADING FILINGS

21.20.350 False or misleading statements in filed documents. It is unlawful for any person to make or cause to be made, in any document filed with the director or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect. [1959 c 282 § 35.]

UNLAWFUL REPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION

21.20.360 Filing, registration, statement, exemption not conclusive as to truth or completeness—Unlawful representations. Neither the fact that an application for registration under RCW 21.20.050, a registration statement under RCW 21.20.180 or 21.20.210 has been filed, nor the fact that a person or security is effectively registered, constitutes a finding by the director that any document filed under this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the director has passed in any way upon the merits of qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section. [1975 1st ex.s. c 84 § 21; 1959 c 282 § 36.]

INVESTIGATIONS AND SUBPOENAS

21.20.370 Investigations—Statement of facts relating to investigation may be permitted—Publication of information. The director in his or her discretion (1) may annually, or more frequently, make such public or private investigations within or without this state as the director deems necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder, (2) may require or permit any person to

file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated, and (3) shall publish information concerning any violation of this chapter or any rule or order hereunder. [1979 ex.s. c 68 § 25; 1973 1st ex.s. c 171 § 2; 1959 c 282 § 37.]

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

Investigations, additional authority, scope: RCW 21.20.700.

21.20.380 Oaths—Subpoenas—Compelling obedience—Punishment. For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of disobedience on the part of any person to comply with any subpoena lawfully issued by the director, or on the refusal of any witness to testify to any matters regarding which the witness may be lawfully interrogated, the superior court of any county or the judge thereof, on application of the director, and after satisfactory evidence of wilful disobedience, may compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such a court on a refusal to testify therein. [1979 ex.s. c 68 § 26; 1975 1st ex.s. c 84 § 22; 1974 ex.s. c 77 § 9; 1959 c 282 § 38.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

INJUNCTIONS AND OTHER REMEDIES

21.20.390 Injunction, cease and desist order, restraining order, mandamus—Appointment of receiver or conservator for insolvent—Restitution or damages. Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the director may in his or her discretion:

(1) Issue an order directing the person to cease and desist from continuing the act or practice: PROVIDED, That reasonable notice of and opportunity for a hearing shall be given: PROVIDED, FURTHER, That the director may issue a temporary order pending the hearing which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within fifteen days after the receipt of notice; or

(2) The director may without issuing a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The director may not be required to post a bond. If the director prevails, the director shall be entitled to a reasonable attorney's fee to be fixed by the court.

(3) Whenever it appears to the director that any person who has received a permit to issue, sell, or otherwise dispose of securities under this chapter, whether current or otherwise, has become insolvent, the director may petition a court of competent jurisdiction to appoint a receiver or conservator for the defendant or the defendant's assets. The director may not be required to post a bond.

(4) The director may bring an action for restitution or damages on behalf of the persons injured by a violation of this chapter, if the court finds that private civil action would be so burdensome or expensive as to be impractical. [1981 c 272 § 8; 1979 ex.s. c 68 § 27; 1975 1st ex.s. c 84 § 23; 1974 ex.s. c 77 § 10; 1959 c 282 § 39.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

CRIMINAL LIABILITIES

21.20.400 Penalty for violation of chapter—Limitation of actions. Any person who wilfully violates any provision of this chapter except RCW 21.20.350, or who wilfully violates any rule or order under this chapter, or who wilfully violates RCW 21.20.350 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than five thousand dollars or imprisoned not more than ten years, or both; but no person may be imprisoned for the violation of any rule or order if that person proves that he or she had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation. [1979 ex.s. c 68 § 28; 1965 c 17 § 5; 1959 c 282 § 40.]

21.20.410 Attorney general, prosecuting attorney may institute criminal proceeding—Referral of evidence by director. The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, institute the appropriate criminal proceedings under this chapter. [1979 ex.s. c 68 § 29; 1959 c 282 § 41.]

21.20.420 Criminal punishment, chapter not exclusive. Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law. [1959 c 282 § 42.]

CIVIL LIABILITIES

21.20.430 Civil liabilities—Survival, limitation of actions—Waiver of chapter void—Scienter. (1) Any person, who offers or sells a security in violation of any provisions of RCW 21.20.010 or 21.20.140 through 21.20.230, is liable to the person buying the security from him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at eight percent per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security. Damages are the amount that would be recoverable

upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at eight percent per annum from the date of disposition.

(2) Any person who buys a security in violation of the provisions of RCW 21.20.010 is liable to the person selling the security to him or her, who may sue either at law or in equity to recover the security, together with any income received on the security, upon tender of the consideration received, costs, and reasonable attorneys' fees, or if the security cannot be recovered, for damages. Damages are the value of the security when the buyer disposed of it, and any income received on the security, less the consideration received for the security, plus interest at eight percent per annum from the date of disposition, costs, and reasonable attorneys' fees.

(3) Every person who directly or indirectly controls a seller or buyer liable under subsection (1) or (2) above, every partner, officer, director or person who occupies a similar status or performs a similar function of such seller or buyer, every employee of such a seller or buyer who materially aids in the transaction, and every broker-dealer, salesperson, or person exempt under the provisions of RCW 21.20.040 who materially aids in the transaction is also liable jointly and severally with and to the same extent as the seller or buyer, unless such person sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(4)(a) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(b) No person may sue under this section more than three years after the contract of sale for any violation of the provisions of RCW 21.20.140 through 21.20.230, or more than three years after a violation of the provisions of RCW 21.20.010, either was discovered by such person or would have been discovered by him or her in the exercise of reasonable care. No person may sue under this section if the buyer or seller receives a written rescission offer, which has been passed upon by the director before suit and at a time when he or she owned the security, to refund the consideration paid together with interest at eight percent per annum from the date of payment, less the amount of any income received on the security in the case of a buyer, or plus the amount of income received on the security in the case of a seller.

(5) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void.

(6) Any tender specified in this section may be made at any time before entry of judgment.

(7) Notwithstanding subsections (1) through (6) of this section, if an initial offer or sale of securities that are exempt

from registration under RCW 21.20.310 is made by this state or its agencies, political subdivisions, municipal or quasi-municipal corporations, or other instrumentality of one or more of the foregoing and is in violation of RCW 21.20.010(2), and any such issuer, member of the governing body, committee member, public officer, director, employee, or agent of such issuer acting on its behalf, or person in control of such issuer, member of the governing body, committee member, public officer, director, employee, or agent of such person acting on its behalf, materially aids in the offer or sale, such person is liable to the purchaser of the security only if the purchaser establishes scienter on the part of the defendant. The word "employee" or the word "agent," as such words are used in this subsection, do not include a bond counsel or an underwriter. Under no circumstances whatsoever shall this subsection be applied to require purchasers to establish scienter on the part of bond counsels or underwriters. The provisions of this subsection are retroactive and apply to any action commenced but not final before July 27, 1985. In addition, the provisions of this subsection apply to any action commenced on or after July 27, 1985. [1986 c 304 § 1; 1985 c 171 § 1; 1981 c 272 § 9; 1979 ex.s. c 68 § 30; 1977 ex.s. c 172 § 4; 1975 1st ex.s. c 84 § 24; 1974 ex.s. c 77 § 11; 1967 c 199 § 2; 1959 c 282 § 43.]

Severability—1986 c 304: "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 304 § 2.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

DISCONTINUANCE OF VIOLATIONS

21.20.435 Assurance of discontinuance of violations—Acceptance—Filing. In the enforcement of this chapter, the director may accept an assurance of discontinuance of violations of the provisions of this chapter from any person deemed by the director to be in violation hereof. Any such assurance shall be in writing, may state that the person giving such assurance does not admit to any violation of this chapter, and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in Thurston county. Proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter. [1979 ex.s. c 68 § 31; 1974 ex.s. c 77 § 13.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

JUDICIAL REVIEW OF ORDERS

21.20.440 Judicial review of order—Modification of order by director on additional evidence. Any person aggrieved by a final order of the director may obtain a review of the order in the county in which that person resides or in any other court of competent jurisdiction by filing in court, within sixty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the director, and thereupon the director shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was

entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. No objection to the order may be considered by the court unless it was urged before the director or there were reasonable grounds for failure to do so. The findings of the director as to the facts, if supported by substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the director, the court may order the additional evidence to be taken before the director and to be adduced upon the hearing in such manner and upon such conditions as the court may consider proper. The director may modify his or her findings by reason of the additional evidence so taken; and the director shall file any modified or new findings, which if supported by substantial evidence shall be conclusive, and any recommendation for the modification or setting aside of the original order. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the director's order. [1979 ex.s. c 68 § 32; 1959 c 282 § 44.]

ADMINISTRATION OF CHAPTER

21.20.450 Administration of chapter—Rules and forms, publication—Cooperation with other state and federal authorities. The administration of the provisions of this chapter shall be under the department of licensing. The director may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the provisions of this chapter, including rules defining any term, whether or not such term is used in the Washington securities law. The director may classify securities, persons, and matters within the director's jurisdiction, and prescribe different requirements for different classes. No rule or form, may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter. In prescribing rules and forms the director may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and forms of the director shall be published. [1979 ex.s. c 68 § 33; 1979 c 158 § 86; 1975 1st ex.s. c 84 § 25; 1959 c 282 § 45.]

21.20.460 Administrator of securities—Appointment, qualifications, term, etc. The director shall appoint a competent person to administer this chapter who shall be designated administrator of securities. The director shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this chapter. The administrator shall hold office at the pleasure of the director. [1959 c 282 § 46.]

21.20.470 Compensation, travel expenses of administrator and employees. The administrator, and any person employed by the administrator, shall be paid, in addition to regular compensation, travel expenses incurred by each of them 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. [1979 ex.s. c 68 § 34; 1975-'76 2nd ex.s. c 34 § 64; 1959 c 282 § 47.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

21.20.480 Unlawful use or disclosure of filed information. It is unlawful for the director or any of the director's officers or employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. The director or any of the director's officers or employees shall not disclose any such information or the fact that any investigation is being made except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of the director's officers or employees. [1979 ex.s. c 68 § 35; 1959 c 282 § 48.]

21.20.490 No liability under chapter for act in good faith. No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the director, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason. [1959 c 282 § 49.]

21.20.500 Administrative hearings public—Exception. Every hearing in an administrative proceeding shall be public unless the director in his or her discretion grants a request joined in by all the respondents that the hearing be conducted privately. [1979 ex.s. c 68 § 36; 1959 c 282 § 50.]

21.20.510 Document filed when received—Register—Inspection of register, information, etc. A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under this chapter and all denial, suspension, or revocation orders which have ever been entered under this chapter. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the director prescribes. [1959 c 282 § 51.]

21.20.520 Copies of entries, documents to be furnished—Copies as prima facie evidence. Upon request and at such reasonable charges as the director prescribes, the director shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of

public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified. [1979 ex.s. c 68 § 37; 1959 c 282 § 52.]

21.20.530 Interpretative opinions by director. The director in his or her discretion may honor requests from interested persons for interpretative opinions. [1979 ex.s. c 68 § 38; 1959 c 282 § 53.]

PROOF OF EXEMPTION

21.20.540 Exemptions and exceptions, burden of proof. In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it. [1959 c 282 § 54.]

ADVISORY COMMITTEE

21.20.550 State advisory committee—Composition, appointment, qualifications. There is hereby created a state advisory committee which shall consist of seven members to be appointed by the governor on the basis of their experience and qualifications. The membership shall be selected, insofar as possible, on the basis of giving both geographic representation and representation to all phases of the securities business including the legal and accounting professions. [1973 1st ex.s. c 171 § 3; 1959 c 282 § 55.]

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.560 State advisory committee—Chairperson, secretary—Meetings. (1) The committee shall select a chairperson and a secretary from their group.

(2) Regular meetings may be held quarterly, or semiannually, and special meetings may be called by the chairperson upon at least seven days' written notice to each committee member sent by regular mail. [1979 ex.s. c 68 § 39; 1973 1st ex.s. c 171 § 4; 1959 c 282 § 56.]

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.570 State advisory committee—Terms—Vacancies. The first members of the committee shall hold office as follows: Two members to serve two years; two members to serve three years; and three members to serve four years. Upon the expiration of said original terms subsequent appointment shall be for four years except in the case of a vacancy, in which event appointment shall be only for the remainder of the unexpired term in which the vacancy occurs. [1959 c 282 § 57.]

21.20.580 State advisory committee—Duties. The advisory committee shall:

(1) Serve in an advisory capacity to the director on all matters pertaining to this chapter.

(2) Acquaint themselves fully with the operations of the director's office as to the administration of securities, broker-dealers, salespersons, and investment advisers, and periodically recommend to the director such changes in the rules

and regulations of the department in connection therewith as they deem advisable.

(3) Prepare and publish a mimeographed report on their recommendations. [1981 c 272 § 10; 1979 ex.s. c 68 § 40; 1959 c 282 § 58.]

21.20.590 State advisory committee—Reimbursement of travel expenses. The advisory committee shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1981 c 272 § 11; 1975-'76 2nd ex.s. c 34 § 65; 1959 c 282 § 59.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

ADDITIONAL PROVISIONS

21.20.700 Investigations and examinations—Additional authority—Scope. (1) In addition to the authority conferred in RCW 21.20.370 the director at any time during a public offering whether registered or not, or one year thereafter or at any time that any debt or equity securities which have been sold to the public pursuant to registration under this chapter are still an outstanding obligation of the issuer: (a) May investigate the issuer for the purpose of ascertaining whether there have been violations of this chapter, rules adopted under this chapter, or any conditions imposed by the director expressed in any permit for a public offering or otherwise; (b) may visit and examine the issuer for the purpose of assuring compliance with this chapter, rules adopted under this chapter, or any conditions imposed by the director whether expressed in the permit for the public offering or otherwise; (c) may require or permit any person to file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated; and (d) may publish information concerning any violation of this chapter, or any rule, order, or condition adopted or imposed under this chapter.

(2) The examination or investigation, whether conducted within or without this state, shall include the right to reasonably examine the issuer's books, accounts, records, files, papers, feasibility reports, other pertinent information and obtain written permission from the issuer to consult with the independent accountant who audited the financial statements of the issuer. The reasonable costs of the examination shall be paid by the issuer to the director. The issuer shall not be liable for the costs of second or subsequent examinations during a calendar year. [1988 c 244 § 1; 1973 1st ex.s. c 171 § 5.]

Severability—1988 c 244: "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 244 § 18.]

Effective date—1988 c 244: "Sections 1 through 16 of this act shall take effect July 1, 1988." [1988 c 244 § 20.]

Implementation—Application—1988 c 244: "The director of licensing may take whatever action is necessary to implement this act on its effective date. This act applies to any person, individual, corporation, partnership, or association whether or not in existence on or prior to July 1, 1988. The director of licensing may adopt transition rules in order to allow debenture companies in existence prior to July 1, 1988, a reasonable amount of time to comply with the requirements of this act. Transition rules shall

require compliance with this act not later than January 1, 1990." [1988 c 244 § 21.]

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

Investigations: RCW 21.20.370.

21.20.705 Debenture companies—Definitions. When used in this chapter, unless the context otherwise requires:

(1) "Debenture company" means an issuer of any note, debenture, or other debt obligation for money used or to be used as capital or operating funds of the issuer, which is offered or sold in this state, and which issuer is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in: (a) Notes, or other debt obligations, whether or not secured by real or personal property; (b) vendors' interests in real estate contracts; (c) real or personal property to be leased to third parties; or (d) real or personal property. The term "debenture company" does not include an issuer by reason of any of its securities which are exempt from registration under RCW 21.20.310 or offered or sold in transactions exempt from registration under RCW 21.20.320 (1) or (8); and

(2) "Acquiring party" means any person becoming or attempting to become a controlling person under RCW 21.20.717. [1988 c 244 § 2; 1987 c 421 § 1; 1979 c 140 § 1; 1973 1st ex.s. c 171 § 6.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

Effective date—Application—1987 c 421: "Sections 1 through 8 of this act shall take effect January 1, 1988. The director of licensing may take whatever action is necessary to implement this act on its effective date. This act applies to any person, individual, corporation, partnership, or association whether or not in existence on or prior to January 1, 1988." [1987 c 421 § 12.] For codification of 1987 c 421, see Codification Tables, Volume 0.

Severability—1987 c 421: "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 421 § 10.]

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.710 Debenture companies—Capital requirements. (1) Except as provided in subsection (2) of this section, a debenture company shall not offer for sale any security other than capital stock if such sale would result in the violation of the following capital requirements:

(a) For outstanding securities other than capital stock totaling from \$1 to \$1,000,000, a debenture company shall have a net worth of at least \$200,000.

(b) In addition to the requirement set forth in (a) of this subsection:

(i) A debenture company with outstanding securities other than capital stock totaling in excess of \$1,000,000 but not over \$100,000,000 shall have additional net worth equal to at least ten percent of the outstanding securities in excess of \$1,000,000 but not over \$100,000,000; and

(ii) A debenture company with outstanding securities other than capital stock totaling in excess of \$100,000,000 shall have additional net worth equal to at least five percent of the outstanding securities in excess of \$100,000,000.

(c) Every debenture company shall hold at least one-half the amount of its required net worth in cash or comparable

liquid assets as defined by rule, or shall demonstrate comparable liquidity to the satisfaction of the director.

(2) The director may for good cause in the interest of the existing investors, waive the requirements of subsection (1) of this section. If the director waives the minimum requirements set forth in subsection (1) of this section, the debenture company shall increase its new [net] worth or liquidity in accordance with conditions imposed by the director until such time as the debenture company can meet the requirements of this section without waiver from the director. [1988 c 244 § 3; 1973 1st ex.s. c 171 § 7.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.715 Debenture companies—Maturity date requirements. Any debenture company offering debt securities to the public shall provide that at least fifty percent of the amount of those securities sold have maturity dates of two years or more. [1987 c 421 § 2; 1973 1st ex.s. c 171 § 8.]

Effective date—Application—Severability—1987 c 421: See notes following RCW 21.20.705.

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.717 Debenture companies—Controlling person—Exceptions. (1) For purposes of the provisions of this chapter relating to debenture companies a person shall be deemed a controlling person if:

(a) Such person directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote twenty-five percent or more of any class of voting securities of a debenture company;

(b) Such person controls in any manner the election of a majority of the directors or trustees of a debenture company; or

(c) The director determines, after notice and opportunity for hearing, that such person, directly or indirectly, exercises a controlling influence over the management or policies of a debenture company.

(2) The director may except, by order, for good cause shown, any person from subsection (1) of this section if the director finds the exception to be in the public interest and that the exception does not threaten the protection of investors. [1987 c 421 § 3.]

Effective date—Application—Severability—1987 c 421: See notes following RCW 21.20.705.

21.20.720 Debenture companies—Prohibited activities by directors, officers, or controlling persons. (1) A director, officer, or controlling person of a debenture company shall not:

(a) Have any interest, direct or indirect, in the gains or profits of the debenture company, except to receive dividends upon the amounts contributed by him or her, the same as any other investor or shareholder and under the same regulations and conditions: PROVIDED, That nothing in this subsection shall be construed to prohibit salaries as may be approved by the debenture company's board of directors;

(b) Become a member of the board of directors or a controlling shareholder of another debenture company or a bank, trust company, or national banking association, of which board enough other directors or officers of the debenture company are members so as to constitute with him or her a majority of the board of directors.

(2) A director, an officer, or controlling person shall not:

(a) For himself or herself or as agent or partner of another, directly or indirectly use any of the funds held by the debenture company, except to make such current and necessary payments as are authorized by the board of directors;

(b) Receive directly or indirectly and retain for his or her own use any commission on or benefit from any loan made by the debenture company, or any pay or emolument for services rendered to any borrower from the debenture company in connection with such loan;

(c) Become an indorser, surety, or guarantor, or in any manner an obligor, for any loan made from the debenture company and except when approval has been given by the director of licensing or the director's administrator of securities upon recommendation by the company's board of directors.

(d) For himself or herself or as agent or partner of another, directly or indirectly borrow any of the funds held by the debenture company, or become the owner of real or personal property upon which the debenture company holds a mortgage, deed of trust, or property contract. A loan to or a purchase by a corporation in which he or she is a stockholder to the amount of fifteen percent of the total outstanding stock, or in which he or she and other directors, officers, or controlling persons of the debenture company hold stock to the amount of twenty-five percent of the total outstanding stock, shall be deemed a loan to or a purchase by such director or officer within the meaning of this section, except when the loan to or purchase by such corporation occurred without his or her knowledge or against his or her protest. [1987 c 421 § 4; 1979 ex.s. c 68 § 41; 1979 c 158 § 87; 1973 1st ex.s. c 171 § 9.]

Effective date—Application—Severability—1987 c 421: See notes following RCW 21.20.705.

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.725 Debenture companies—Debentures payable on demand—Interest—Certificates of debenture.

(1) A debenture company shall not issue any debenture payable on demand nor pay or accrue interest beyond the maturity date of any debenture.

(2) Debenture companies shall not issue certificates of debentures in passbook form, or in any other form which suggests to the holder that such moneys may be withdrawn on demand.

(3) Each certificate of debenture or an application for a certificate shall specify on the face of the certificate or application therefor, in twelve point bold face type or larger, that such debenture is not insured by the United States government, the state of Washington, or any agency thereof. [1988 c 244 § 4; 1973 1st ex.s. c 171 § 10.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.727 Debenture companies—Acquisition of control—Requirements—Violation—Penalty. (1) It is unlawful for any person to acquire control of a debenture company until thirty days after filing with the director a copy of the notice of change of control on the form specified by the director. The notice or application shall be under oath and contain substantially all of the following information plus any additional information that the director may prescribe as necessary or appropriate in the particular instance for the protection of investors, borrowers, or shareholders and the public interest:

(a) The identity and business experience of each person by whom or on whose behalf acquisition is to be made;

(b) The financial and managerial resources and future prospects of each person involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(d) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(e) Any plan or proposal which any person making the acquisition may have to liquidate the debenture company, to sell its assets, to merge it with any other company, or to make any other major change in its business or corporate structure or management;

(f) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation; and

(g) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition.

(2) When a person, other than an individual or corporation, is required to file an application under this section, the director may require that the information required by subsection (1)(a), (b), and (f) of this section be given with respect to each person who has an interest in or controls a person filing an application under this subsection.

(3) When a corporation is required to file an application under this section, the director may require that the information required by subsection (1)(a), (b), and (f) of this section be given for the company, each officer and director of the company, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the company.

(4) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the Securities Act of 1933 (48 Stat. 74; 15 U.S.C. Sec. 77(a)), as amended, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 (48 Stat. 881; 15 U.S.C. Sec. 78(a)), as amended, the

registration statement or application may be filed with the director in lieu of the requirements of this section.

(5) Any acquiring party shall also deliver a copy of any notice or application required by this section to the debenture company proposed to be acquired within two days after the notice or application is filed with the director.

(6) Any acquisition of control in violation of this section shall be ineffective and void.

(7) Any person who wilfully or intentionally violates this section or any rule adopted pursuant thereto is guilty of a gross misdemeanor and shall be punished pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation. [1987 c 421 § 5.]

Effective date—Application—Severability—1987 c 421: See notes following RCW 21.20.705.

21.20.730 Debenture companies—Acquisition of control—Grounds for disapproval. The director may disapprove the acquisition of a debenture company within thirty days after the filing of a complete application under RCW 21.20.727 or an extended period not exceeding an additional fifteen days if:

(1) The poor financial condition of any acquiring party might jeopardize the financial stability of the debenture company or might prejudice the interests of the investors, borrowers, or shareholders;

(2) The plan or proposal of the acquiring party to liquidate the debenture company, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to the debenture company's investors, borrowers, or stockholders or is not in the public interest;

(3) The business experience and integrity of any acquiring party who would control the operation of the debenture company indicates that approval would not be in the interest of the debenture company's investors, borrowers, or shareholders;

(4) The information provided by the application is insufficient for the director to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(5) The acquisition would not be in the public interest. [1987 c 421 § 6.]

Effective date—Application—Severability—1987 c 421: See notes following RCW 21.20.705.

21.20.732 Debenture companies—Notice of charges—Hearing—Cease and desist orders. (1) The director may issue and serve upon a debenture company a notice of charges if in the opinion of the director any debenture company:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the debenture company;

(b) Is violating or has violated RCW 21.20.815, 21.20.820, or 21.20.830, or any rule, order, or condition adopted or imposed thereunder; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or act or acts or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the debenture company. The hearing shall be set in accordance with chapter 34.05 RCW.

Unless the debenture company appears at the hearing by a duly authorized representative, it shall be considered to have consented to the issuance of the cease and desist order. If the debenture company is deemed to have consented or if upon the record made at the hearing the director finds that any violation, act, or practice specified in the notice of charges has been established, the director may issue and serve upon the debenture company an order to cease and desist from the violation, act, or practice. The order may require the debenture company and its directors, officers, controlling persons, employees, and agents to cease and desist from the violation, act, or practice and may require the debenture company to take affirmative action to correct the conditions resulting from the violation, act, or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the debenture company concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the director or a reviewing court. [1988 c 244 § 5; 1987 c 421 § 7.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

Effective date—Application—Severability—1987 c 421: See notes following RCW 21.20.705.

21.20.734 Debenture companies—Temporary cease and desist orders. Whenever the director determines that any violation, act, or practice specified in RCW 21.20.732 or its continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the debenture company or to otherwise seriously prejudice the interests of its security holders, the director may also issue a temporary order requiring the debenture company and its directors, officers, controlling persons, employees, and agents to cease and desist from the violation, act, or practice. The order shall become effective upon service on the debenture company and shall remain effective pending the completion of the administrative proceedings under the notice and until such time as the director dismisses the charges specified in the notice or until the effective date of a cease and desist order issued against the debenture company under RCW 21.20.732. [1988 c 244 § 6; 1987 c 421 § 8.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

Effective date—Application—Severability—1987 c 421: See notes following RCW 21.20.705.

21.20.740 Reports—Requirements. (1) Every issuer which has registered securities under Washington state securities law shall file with the director reports described in subsection (2) of this section. Such reports shall be filed with the director not more than one hundred twenty days

(unless extension of time is granted by the director) after the end of the issuer's fiscal year.

(2) The reports required by subsection (1) of this section shall contain such information, statements and documents regarding the financial and business conditions of the issuer and the number and description of securities of the issuer held by its officers, directors and controlling shareholders and shall be in such form and filed at such annual times as the director may require by rule or order. For the purposes of RCW 21.20.720, 21.20.740 and 21.20.745, a "controlling shareholder" shall mean a person who is directly or indirectly the beneficial holder of more than ten percent of the outstanding voting securities of an issuer.

(3) (a) The reports described in subsection (2) of this section shall include financial statements corresponding to those required under the provisions of RCW 21.20.210 and to the issuer's fiscal year setting forth in comparative form the corresponding information for the preceding year and such financial statements shall be furnished to all shareholders within one hundred twenty days (unless extension of time is granted by the director) after the end of such year, but at least twenty days prior to the date of the annual meeting of shareholders.

(b) Such financial statements shall be prepared as to form and content in accordance with rules and regulations prescribed by the director and shall be audited (except that financial statements filed prior to July 1, 1976 need be audited only as to the most recent fiscal year) by an independent certified public accountant who is not an employee, officer or member of the board of directors of the issuer or a holder of securities of the issuer. The report of such independent certified public accountant shall be based upon an audit made in accordance with generally accepted auditing standards with no limitations on its scope.

(4) The director may by rule or order exempt any issuer or class of issuers from this section for a period of up to one year if the director finds that the filing of any such report by a specific issuer or class of issuers is not necessary for the protection of investors and the public interest.

(5) For the purposes of RCW 21.20.740 and 21.20.745, "issuer" does not include issuers of:

(a) Securities registered by the issuer pursuant to section 12 of the securities and exchange act of 1934 as now or hereafter amended or exempted from registration under that act on a basis other than the number of shareholders and total assets.

(b) Securities which are held of record by less than two hundred persons or whose total assets are less than \$500,000 at the close of the issuer's fiscal year.

(6) Any issuer who has been required to file under RCW 21.20.740 and who subsequently becomes excluded from the definition of "issuer" by virtue of RCW 21.20.740(5) must file a certification setting forth the basis on which they claim to no longer be an issuer within the meaning of *this act.

(7) The reports filed under this section shall be filed and maintained by the director for public inspection. Any person is entitled to receive copies thereof from the director upon payment of the reasonable costs of duplication.

(8) Filing of reports pursuant to this section shall not constitute an approval thereof by the director or a finding by the director that the report is true, complete and not mislead-

ing. It shall be unlawful to make, or cause to be made, to any prospective purchaser, seller, customer or client, any representation inconsistent with this subsection. [1979 ex.s. c 68 § 42; 1973 1st ex.s. c 171 § 11.]

*Reviser's note: "This act" apparently refers to 1973 1st ex.s. c 171 which consists of amendments to RCW 21.20.210, 21.20.370, 21.20.550, 21.20.560, and the enactment of RCW 21.20.700 through 21.20.805.

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.745 Reports—Violations of reporting requirements—Penalties—Contribution. (1) It is unlawful for any person, including the officers and directors of any issuer, to fail to file a report required by RCW 21.20.740 or to file any such report which contains an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading unless such person did not know, and in the exercise of reasonable care could not have known, of the failure, untruth or omission. In addition to any other penalties or remedies provided by chapter 21.20 RCW, each officer and director of an issuer which violates this subsection shall be personally liable for damages as provided in subsection (2) of this section if such officer or director:

(a) Had actual notice of the issuer's duty to file reports;
 (b) Knew, or in the exercise of reasonable care could have known of the violation; and
 (c) Could have prevented the violation.

(2) Any issuer and other person who violate subsection (1) of this section shall be liable jointly and severally for the damages occasioned by such violation, together with reasonable attorney fees and costs to any person who, during the continuation of the violation and without actual notice of the violation, purchases or sells any securities of the issuer within six months following the date the violation commenced.

(3) No suit or action may be commenced under subsection (2) of this section more than one year after the purchase or sale.

(4) Any person held liable under this section shall be entitled to contribution from those jointly and severally liable with that person. [1979 ex.s. c 68 § 43; 1973 1st ex.s. c 171 § 12.]

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.750 Reports—Suspension of sale of securities until reporting requirements complied with. In case of a violation of RCW 21.20.740 and 21.20.745, the director may suspend sale or trading by or through a broker-dealer of the securities of the issuer until the failure to file a report or statement or the inaccuracy or omissions in any report or statement are remedied as determined by the director. [1973 1st ex.s. c 171 § 13.]

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.800 Severability—1973 1st ex.s. c 171. If any provision of this 1973 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. [1973 1st ex.s. c 171 § 15.]

21.20.805 Effective date—Construction—1973 1st ex.s. c 171. *This 1973 amendatory act shall take effect on January 1, 1975: PROVIDED HOWEVER, That debenture companies registered pursuant to chapter 21.20 RCW as of January 1, 1974, and for which there are no stop orders outstanding shall have until January 1, 1975, to comply with the requirements of section 7 of this 1973 amendatory act. [1973 1st ex.s. c 171 § 14.]

*Reviser's note: "This 1973 amendatory act," see note following RCW 21.20.740.

21.20.810 Application of chapter not limited. Nothing in RCW 21.20.700 through 21.20.750 and 21.20.815 through 21.20.855 limits the application of other provisions of this chapter. [1988 c 244 § 7.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.815 Debenture companies—Equity investments. (1) A debenture company shall not, without prior written consent of the director:

(a) Make equity investments in a single project or subsidiary of more than ten percent of its assets or of more than its net worth, whichever is greater; or

(b) Make equity investments, including investments in subsidiaries, other than investments in income-producing real property, which in the aggregate exceed twenty percent of its assets.

(2) For the purposes of this section, an equity investment does not include any acquisition of real property in satisfaction, or on account, of debts previously contracted in the regular course of the debenture company's business, or in satisfaction of judgments, vendors' interests in real property contracts, or liens if the real property has not been held by the debenture company for more than three years from the date it was acquired and any additional time permitted by the director. [1988 c 244 § 8.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.820 Debenture companies—Loans to any one borrower—Limitations. (1) Except as provided in subsection (3) of this section, a debenture company shall not loan or invest in a loan or loans to any one borrower more than two and one-half percent of the debenture company's assets without prior written consent of the director.

(2) For the purpose of this section, loans made to affiliates of the borrower are deemed to have been made to the borrower.

(3)(a) If good cause is shown, the director may waive in whole or in part the limitation in subsection (1) of this section.

(b) A loan or obligation shall not be subject to the limitation in subsection (1) of this section to the extent that the loan is secured or covered by guarantee, or by commitment or agreement to take over or to purchase the loan, made by any federal reserve bank or by the United States or any department, bureau, board, commission, or establishment

of the United States, including any corporation wholly owned directly or indirectly by the United States. [1988 c 244 § 9.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.825 Debenture companies—Bad debts. (1) Any debt due a debenture company on which interest is one year or more past due and unpaid shall be considered a bad debt and shall be charged off the books of the debenture company unless:

(a) Such debt is well-secured and in the course of collection by legal process or probate proceedings; or

(b) Such debt is represented or secured by bonds having a determinable market value currently quoted on a national securities exchange, provided that in such case, such bonds shall be carried on the books of the debenture company at such value as the director may from time to time direct, but in no event may such carrying value exceed the market value thereof.

(2) A final judgment held by a debenture company shall not be considered an asset of the debenture company after two years from the date of its entry excluding any time for appeal unless extended by the director in writing for a specified period. [1988 c 244 § 10.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.830 Debenture companies—Investments in unsecured loans. (1) A debenture company shall not invest more than twenty percent of its assets in unsecured loans.

(2)(a) Except as provided in (b) of this subsection, a loan shall be deemed unsecured if the ascertained market value of the collateral securing the loan does not exceed one hundred twenty-five percent of the loan and all senior indebtedness.

(b) A loan shall not be deemed unsecured to the extent that the loan is guaranteed or insured by the federal housing administration, the administrator of veterans' affairs, the farmers home administration, or an insurer authorized to do business in this state, or any other guarantor or insurer approved by the director. [1988 c 244 § 11.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.835 Debenture companies—Debenture holders—Notice of maturity date of debenture. Every debenture company shall notify each of its debenture holders of the maturity date of the holder's debenture by sending a notice to the holder not more than forty-five days nor less than fifteen days prior to the maturity date of the debenture at the holder's last known address. [1988 c 244 § 12.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.840 Debenture companies—Annual financial statement. A debenture company shall send annually and in a timely manner either a copy of its annual financial statements or a summary of its financial statements for the most recent fiscal year to each debenture holder at the debenture holder's last known address. If a summary is

sent, the debenture company shall make available to any debenture holder upon request a copy of its complete annual financial statements for its most recent fiscal year. [1988 c 244 § 13.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.845 Debenture companies—Rules. The director may adopt rules to govern examinations and reports of debenture companies and to otherwise govern the administration of debenture companies under this chapter. [1988 c 244 § 14.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.850 Debenture companies—Record maintenance and preservation—Examination. Every debenture company shall make and keep such accounts and other records as shall be prescribed by the director. All records so required shall be preserved for three years unless the director prescribes otherwise for particular types of records. All the records of a debenture company are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for protection of investors. [1988 c 244 § 15.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.855 Debenture companies—Examination reports and information—Exempt from public disclosure—Use in civil actions. (1) Examination reports and information obtained by the director or the director's representatives in conducting examinations pursuant to RCW 21.20.700 shall not be subject to public disclosure under chapter 42.17 RCW.

(2) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director. [1988 c 244 § 16.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

STATUTORY POLICY

21.20.900 Construction to secure uniformity. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this chapter with the related federal regulation. [1959 c 282 § 61.]

SEVERABILITY OF PROVISIONS

21.20.905 Severability—1959 c 282. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect 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 severable. [1959 c 282 § 62.]

REPEAL AND SAVING PROVISIONS

21.20.910 Saving—Civil, criminal proceedings. Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this chapter, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within two years after the *effective date of this chapter. [1959 c 282 § 63.]

***Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

21.20.915 Saving—Prior effective registrations. All effective registrations under prior law and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if they had become effective under this chapter. They are considered to have been filed, entered, or imposed under this chapter. All dealers who are duly registered as brokers and all salespersons and issuers' agents who are duly registered as agents under said securities act, mining act or oil and mining leases act, on the *effective date of this chapter shall be deemed to be duly registered under and subject to the provisions of this chapter, such registration to expire on the 30th day of June of the year in which this chapter becomes effective and to be subject to renewal as provided in this chapter. [1979 ex.s. c 68 § 44; 1959 c 282 § 64.]

***Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

21.20.920 Application of prior law. Prior law applies in respect to any offer or sale made within one year after the *effective date of this chapter pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law. [1959 c 282 § 65.]

***Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

21.20.925 Judicial review of prior administrative orders. Judicial review of all administrative orders as to which review proceedings have not been instituted by the *effective date of this chapter are governed by RCW 21.20.440 except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within sixty days after the *effective date of this chapter. [1959 c 282 § 66.]

***Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

21.20.930 Solicitation permits under insurance laws not limited. Nothing in this chapter shall in any way limit the provisions of RCW 48.06.030. [1959 c 282 § 67.]

21.20.935 Repealer. The following acts and parts of acts are hereby repealed:

(1) Chapter 69, Laws of 1923; chapter 97, Laws of 1935; chapter 182, Laws of 1937; chapter 124, Laws of 1939; chapter 169, Laws of 1943; chapter 231, Laws of 1943; chapter 189, Laws of 1947; chapter 150, Laws of 1949; chapter 230, Laws of 1951; and RCW 21.04.010 through 21.04.220; and

(2) Chapter 178, Laws of 1937; chapter 64, Laws of 1951; and RCW 21.08.010 through 21.08.120; and

(3) Chapter 110, Laws of 1939 and RCW 21.12.010 through 21.12.080. [1959 c 282 § 68.]

SHORT TITLE

21.20.940 Short title. This chapter shall be known as "The Securities Act of Washington." [1959 c 282 § 69.]

Chapter 21.30

COMMODITY TRANSACTIONS

Sections

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Agricultural commodities: Chapter 22.09 RCW.

21.30.005 Intent. The legislature intends that this chapter, and any rules, regulations, or orders promulgated pursuant hereto, apply to transactions in commodities which constitute commodity contracts or commodity options as defined in this chapter, unless the context clearly requires otherwise. [1987 c 243 § 1.]

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

(1) "Administrator" means the person designated by the director in accordance with the provisions of RCW 21.20.460.

(2) "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving any commodity for sale on consignment, whether such person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.

(3) "Director" means the director of the department of licensing.

(4) "Commodity broker-dealer" means, for the purposes of registration in accordance with this chapter, any person engaged in the business of making offers, sales, or purchases of commodities under commodity contracts or under commodity options.

(5) "Commodity sales representative" means, for the purposes of registration in accordance with this chapter, any person authorized to act and acting for a commodity broker-dealer in effecting or attempting to effect a transaction in a commodity contract or commodity option.

(6) "Commodity exchange act" means the act of congress known as the commodity exchange act, as amended, codified at 7 U.S.C. Sec. 1 et seq.

(7) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the commodity exchange act.

(8) "CFTC rule" means any rule, regulation, or order of the commodity futures trading commission in effect on October 1, 1986, and all subsequent amendments, additions, or other revisions thereto, unless the administrator, within ten

days following the effective date of any such amendment, addition, or revision, disallows the application thereof by rule or order.

(9) "Commodity" means, except as otherwise specified by the director by rule or order, any agricultural, grain, or livestock product or by-product, any metal or mineral (including a precious metal set forth in subsection (17) of this section), any gem or gemstone (whether characterized as precious, semiprecious, or otherwise), any fuel (whether liquid, gaseous, or otherwise), any foreign currency, and all other goods, articles, products, or items of any kind. However, the term commodity does not include (a) a numismatic coin whose fair market value is at least fifteen percent higher than the value of the metal it contains, (b) real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property, or (c) any work of art offered or sold by art dealers, at public auction, or offered or sold through a private sale by the owner thereof.

(10) "Commodity contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. A commodity contract shall not include any contract or agreement which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(11) "Commodity option" means any account, agreement, or contract giving a party thereto the right to purchase or sell one or more commodities and/or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but does not include a commodity option traded on a national securities exchange registered with the United States securities and exchange commission.

(12) "Commodity merchant" means any of the following, as defined or described in the commodity exchange act or by CFTC rule:

- (a) Futures commission merchant;
- (b) Commodity pool operator;
- (c) Commodity trading advisor;
- (d) Introducing broker;
- (e) Leverage transaction merchant;
- (f) An associated person of any of the foregoing;
- (g) Floor broker; and
- (h) Any other person (other than a futures association) required to register with the commodity futures trading commission.

(13) "Financial institution" means a bank, savings institution, or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

(14) "Offer" or "offer to sell" includes every offer, every attempt to offer to dispose of, or solicitation of an offer to buy, to purchase, or to acquire, for value.

(15) "Sale" or "sell" includes every sale, contract of sale, contract to sell, or disposition, for value.

(16) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government, but does not include a contract market designated by the commodity futures trading commission or any clearinghouse thereof or a national securities exchange registered with the United States securities and exchange commission (or any employee, officer, or director of such contract market, clearinghouse, or exchange acting solely in that capacity).

(17) "Precious metal" means:

- (a) Silver, in either coin, bullion, or other form;
- (b) Gold, in either coin, bullion, or other form;
- (c) Platinum, in either coin, bullion, or other form; and
- (d) Such other items as the director may specify by rule or order. [1987 c 243 § 2; 1986 c 14 § 1.]

21.30.020 Transactions involving commodity contract or option—Prohibition—Exceptions. Except as otherwise provided in RCW 21.30.030 and 21.30.040, no person may sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option. [1986 c 14 § 2.]

21.30.030 Transactions conducted by certain persons exempt from prohibition under RCW 21.30.020. The prohibition in RCW 21.30.020 does not apply to any transaction offered by and in which any of the following persons (or any employee, officer, or director thereof acting solely in that capacity) is the purchaser or seller:

(1) A person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant but only as to those activities that require such registration;

(2) A person affiliated with, and whose obligations and liabilities are guaranteed by, a person referred to in subsection (1) or (5) of this section;

(3) A person who is a member of a contract market designated by the commodity futures trading commission (or any clearinghouse thereof);

(4) A financial institution;

(5) A person registered under chapter 21.20 RCW as a securities broker-dealer holding a general securities license whose activities require such registration;

(6) A person registered as a commodity broker-dealer or commodity sales representative in accordance with this chapter; or

(7) Any person who meets all of the following conditions:

(a) Prior to engaging in any transaction which would otherwise be prohibited under RCW 21.30.020, the person:

- (i) Files a claim of exemption on a form prescribed by the director; and

(ii) Files a consent to service of process pursuant to RCW 21.30.190;

(b) The person files a renewal of a claim for exemption not less than every two years on a form prescribed by the director;

(c) The person engages only in those commodity transactions in which the purchaser pays, and the seller receives, one hundred percent of the purchase price in cash or cash equivalent within ten days of the contract of sale;

(d) The person receives no more than twenty-five percent of the total dollar amount of its gross sales of commodities in any fiscal year from commodity contracts or commodity options;

(e) The person's gross profit on all transactions in commodity contracts or commodity options does not exceed five hundred thousand dollars in the fiscal year immediately preceding any year for which the person claims the exemption contained in this subsection, or one million dollars in the two fiscal years immediately preceding any year for which the person claims the exemption;

(f) The person maintains standard property and casualty insurance in an amount sufficient to cover the value of commodities stored for customers.

"Registered," for the purposes of this section, means holding a registration that has not expired, been suspended, or been revoked. The exemptions under this section shall not apply to any transaction or activity which is prohibited by the commodity exchange act or CFTC rule. [1987 c 243 § 3; 1986 c 14 § 3.]

21.30.040 Transactions and contracts exempt from prohibition under RCW 21.30.020—Rules. (1) The prohibition in RCW 21.30.020 does not apply to the following:

(a) An account, agreement, or transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the commodity exchange act;

(b) A commodity contract for the purchase of one or more precious metals in which, within seven calendar days from the payment in good funds of any portion of the purchase price, the quantity of precious metals purchased by the payment is delivered (whether in specifically segregated or fungible bulk form) into the possession of a depository (other than the seller) which is either (i) a financial institution, (ii) a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission, (iii) a storage facility licensed or regulated by the United States or any agency thereof, or (iv) a depository designated by the director, and the depository (or other person which itself qualifies as a depository as aforesaid) issues and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;

(c) A commodity contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject thereto, or any by-products thereof; or

(d) A commodity contract under which the offeree or the purchaser is a person referred to in RCW 21.30.030, a person registered with the federal securities and exchange commission as a broker-dealer, an insurance company, an investment company as defined in the federal investment company act of 1940, or an employee pension and profit sharing or benefit plan (other than a self-employed individual retirement plan, or individual retirement account).

(2) The director may issue rules or orders prescribing the terms and conditions of all transactions and contracts covered by this chapter which are not within the exclusive jurisdiction of the commodity futures trading commission as granted by the commodity exchange act, exempting any person or transaction from any provision of this chapter conditionally or unconditionally and otherwise implementing this chapter for the protection of purchasers and sellers of commodities. [1987 c 243 § 4; 1986 c 14 § 4.]

21.30.050 Commodity merchants—Place for trading commodity contract or option—Requirements. (1) No person may engage in a trade or business or otherwise act as a commodity merchant unless the person (a) is registered or temporarily licensed with the commodity futures trading commission for each activity constituting the person as a commodity merchant and the registration or temporary license has not expired, been suspended, or been revoked; or (b) is exempt from such registration by virtue of the commodity exchange act or a CFTC rule.

(2) No board of trade may trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the commodity futures trading commission unless the board of trade has been so designated for the commodity contract or commodity option and the designation has not been vacated, suspended, or revoked. [1986 c 14 § 5.]

21.30.060 Prohibited practices. No person may directly or indirectly, in or in connection with the purchase or sale of, the offer to sell, the offer to enter into, or the entry into of, any commodity contract or commodity option subject to RCW 21.30.020, 21.30.030, 21.30.040(1)(b), or 21.30.040(1)(d):

(1) Cheat or defraud, or attempt to cheat or defraud, any other person or employ any device, scheme, or artifice to defraud any other person;

(2) Make any false report, enter any false record, or make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

(3) Engage in any transaction, act, practice, or course of business, including, without limitation, any form of advertising or solicitation, that operates or would operate as a fraud or deceit upon any person; or

(4) Misappropriate or convert the funds, security, or property of any other person. [1986 c 14 § 6.]

21.30.070 Responsibility for acts or omissions—Liability—Burden of proof. (1) The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of the person's employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(2) Every person who directly or indirectly controls another person liable under any provision of this chapter, every partner, officer, or director of such other person, every person occupying a similar status or performing similar functions, every employee of such other person who materially aids in the violation is also liable jointly and severally with and to the same extent as such other person, unless the person who is also liable by virtue of this provision sustains the burden of proof that he or she did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. [1986 c 14 § 7.]

21.30.080 Offers to sell or buy in this state—Application of RCW 21.30.020, 21.30.050, and 21.30.060.

(1) RCW 21.30.020, 21.30.050, and 21.30.060 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) RCW 21.30.020, 21.30.050, and 21.30.060 apply to persons who buy or offer to buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received at the place to which it is directed, or at any post office in this state in the case of a mailed offer.

(4) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state, or whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance. [1986 c 14 § 8.]

21.30.090 When publications or electronic communications not deemed offers to sell or buy in this state.

(1) For the purpose of RCW 21.30.080, an offer to sell or to buy is not made in this state when the publisher circulates or there is circulated on his behalf in this state in any bona fide newspaper or other publication of general, regular, and paid circulation, which is not published in this state, an offer to sell or to buy that is reasonably calculated to solicit only persons outside this state and not to solicit persons in this state.

(2) For the purpose of RCW 21.30.080, an offer to sell or to buy is not made in this state when a radio or television program or other electronic communication originating

outside this state is received in this state and the offer to sell or to buy is reasonably calculated to solicit only persons outside this state and not to solicit persons in this state. [1986 c 14 § 9.]

21.30.100 Investigations—Statements—Publication of information. The director in the director's discretion:

(1) May make such public or private investigations, within or without the state, as the director finds necessary or appropriate to determine whether any person has violated, or is about to violate, any provision of this chapter or any rule or order of the director or to aid in enforcement of this chapter;

(2) May require or permit any person to file a statement in writing, under oath or otherwise as the director may determine; and

(3) May publish information concerning any violation of this chapter or any rule or order under this chapter. [1986 c 14 § 10.]

21.30.110 Investigations—Evidence—Subpoenas—Court orders of compliance.

(1) For purposes of any investigation or proceeding under this chapter, the director or any officer or employee designated by the director, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director finds to be relevant or material to the inquiry.

(2) If a person does not give testimony or produce the documents required by the director or a designated employee pursuant to a lawfully issued administrative subpoena, the director or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony. The request for an order of compliance may be addressed to either: (a) The superior court of Thurston county or the superior court where service may be obtained on the person refusing to testify or produce, if the person is within this state; or (b) the appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside the state. [1986 c 14 § 11.]

21.30.120 Violations—Director's authority—Court actions—Penalties.

(1) If the director believes, whether or not based upon an investigation conducted under RCW 21.30.100 or 21.30.110, that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or any rule or order hereunder, the director may:

(a) Issue a cease and desist order;

(b) Initiate any of the actions specified in subsection (2) of this section;

(c) Issue an order imposing a civil penalty in an amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings; or

(d) Take disciplinary action against a licensed person as specified in RCW 21.30.350.

(2) The director may institute any of the following actions in the appropriate courts of the state, or in the

appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

- (a) A declaratory judgment;
- (b) An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or any rule or order of the director;
- (c) An action for disgorgement; or
- (d) An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

(3) In any action under subsection (2) of this section if the director prevails, the director shall be entitled to costs and to reasonable attorneys' fees to be fixed by the court. [1986 c 14 § 12.]

21.30.130 Violations—Court-ordered remedies—Penalties—Bond by director not required. (1)(a) Upon a proper showing by the director that a person has violated, or is about to violate, this chapter or any rule or order of the department, the superior court may grant appropriate legal or equitable remedies.

(b) Upon showing of violation of this chapter or a rule or order of the director or administrator, the court, in addition to legal and equitable remedies otherwise available, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

(i) Imposition of a civil penalty in an amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings;

- (ii) Disgorgement;
- (iii) Declaratory judgment;
- (iv) Restitution to investors wishing restitution; and
- (v) Appointment of a receiver or conservator for the defendant or the defendant's assets.

(c) Appropriate remedies when the defendant is shown only about to violate this chapter or a rule or order of the department shall be limited to:

- (i) A temporary restraining order;
 - (ii) A temporary or permanent injunction; or
 - (iii) A writ of prohibition or mandamus.
- (2) The court shall not require the director to post a bond in any official action under this chapter. [1986 c 14 § 13.]

21.30.140 Wilful violations—Penalty—Limitation on actions. A person who wilfully violates this chapter, or who wilfully violates a rule or order under this chapter, shall upon conviction be fined not more than twenty thousand dollars or imprisoned not more than ten years, or both. However, no person may be imprisoned for the violation of a rule or order if the person proves that he or she had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation. [1986 c 14 § 14.]

21.30.150 No liability under chapter for act in good faith. No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order, or form adopted by the director,

notwithstanding that the rule, order, or form may later be amended, or rescinded, or be determined by judicial or other authority to be invalid for any reason. [1986 c 14 § 15.]

21.30.160 Unlawful use or disclosure of information. Neither the director nor any employee of the director shall use any information which is filed with or obtained by the department which is not public information for personal gain or benefit, nor shall the director nor any employee of the director conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate the information. [1986 c 14 § 17.]

21.30.170 Information—Availability to public—Exceptions. (1) All information collected, assembled, or maintained by the director under this chapter is public information and is available for the examination of the public as provided by chapter 42.17 RCW except the following:

(a) Information obtained in private investigations pursuant to RCW 21.30.100 or 21.30.110;

(b) Information exempt from public disclosure under chapter 42.17 RCW; and

(c) Information obtained from federal or state agencies which may not be disclosed under federal or state law.

(2) The director in the director's discretion may disclose any information made confidential under subsection (1)(a) of this section to persons identified in RCW 21.30.180.

(3) No provision of this chapter either creates or derogates from any privilege which exists at common law, by statute, or otherwise when any documentary or other evidence is sought under subpoena directed to the director or any employee of the director. [1986 c 14 § 18.]

21.30.180 Cooperation with other agencies or organizations. (1) To encourage uniform application and interpretation of this chapter and securities and commodities regulation and enforcement in general, the director and the employees of the director may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrators of another jurisdiction, Canadian provinces, or territories or such other agencies administering this chapter or similar statutes, the commodity futures trading commission, the federal securities and exchange commission, any self-regulatory organization established under the commodity exchange act or the securities exchange act of 1934, any national or international organization of commodities or securities officials or agencies, and any governmental law enforcement agency.

(2) The cooperation authorized by subsection (1) of this section shall include, but need not be limited to, the following:

- (a) Making joint examinations or investigations;
- (b) Holding joint administrative hearings;
- (c) Filing and prosecuting joint litigation;
- (d) Sharing and exchanging information and documents;
- (e) Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes and releases; and

(f) Issuing and enforcing subpoenas at the request of the agency administering similar statutes in another jurisdiction, the securities agency of another jurisdiction, the commodity futures trading commission or the federal securities and exchange commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state. [1986 c 14 § 19.]

21.30.190 Consent for service of process—Service, how made. (1) Every applicant for registration under this chapter or person filing a claim of exemption under RCW 21.30.030(7) shall file with the administrator in such form as the administrator by rule prescribes, an irrevocable consent appointing the administrator or successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or successor executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless (a) the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by the administrator, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address on file with the administrator, and (b) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(2) If a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order of the director, the engaging in the conduct shall constitute the appointment of the administrator as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor, or personal representative, which arises out of that conduct and which is brought under this chapter or any rule or order of the director with the same force and validity as if served personally. [1987 c 243 § 5; 1986 c 14 § 20.]

21.30.200 Administrative proceedings—Summary order—Notice—Hearing—Final order. (1) The director shall commence an administrative proceeding under this chapter by entering either a statement of charges or a summary order. The statement of charges or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but must be in writing.

(2) Upon entry of the statement of charges or summary order, the director shall promptly inform all interested parties that they have twenty business days from receipt of notice of the statement of charges or the summary order to file a written request for a hearing on the matter with the director and that the hearing will be scheduled to commence within thirty business days after receipt of the written request.

(3) If no hearing is requested within the twenty-day period and none is ordered by the director, the statement of charges or summary order will automatically become a final order.

(4) If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(5) No final order or order after hearing may be returned without:

- (a) Appropriate notice to all interested persons;
- (b) Opportunity for hearing by all interested persons; and
- (c) Entry of written findings of fact and conclusions of law.

(6) Every hearing in an administrative proceeding under this chapter shall be public unless the director grants a request joined in by all the respondents that the hearing be conducted privately. [1986 c 14 § 21.]

21.30.210 Application of chapter 34.05 RCW, the administrative procedure act. Chapter 34.05 RCW applies to an administrative proceeding carried out by the director under this chapter unless otherwise provided in this chapter. [1986 c 14 § 22.]

21.30.220 Pleading exemptions or exceptions—Burden of proof. It shall not be necessary to negate any of the exemptions, or exceptions from a definition, of this chapter in any complaint, information, or indictment, or any writ or proceeding brought under this chapter; and the burden of proof of any such exemption or exception from a definition shall be on the party claiming the same. [1986 c 14 § 23.]

21.30.230 Application for licensing. An applicant for licensing as a commodity broker-dealer or commodity sales representative shall file with the administrator or the designee of the administrator an application for licensing together with a consent to service of process pursuant to RCW 21.30.190. The application for licensing must contain the information that the administrator determines, by rule, is necessary or appropriate to facilitate the administration of this chapter. [1986 c 14 § 24.]

21.30.240 Fees. (1) An applicant for licensing shall pay a registration fee as follows:

- (a) For a commodity broker-dealer, two hundred dollars; and for each branch office, one hundred dollars; and
 - (b) For a commodity sales representative, fifty dollars.
- (2) Except in any year in which a licensing fee is paid, an applicant shall pay an annual fee as follows:
- (a) For a commodity broker-dealer, one hundred dollars; and for each branch office in this state, fifty dollars; and
 - (b) For a commodity sales representative, thirty-five dollars.

(3) For purposes of this section, a branch office means each office of a commodity broker-dealer in this state, other than the principal office in this state of the commodity broker-dealer, from which three or more commodity sales representatives transact business.

(4) If an application is denied or withdrawn or the license is terminated by revocation, cancellation, or withdrawal, the administrator shall retain the fee paid. [1986 c 14 § 25.]

21.30.250 Examinations—Waiver. (1) The administrator may, by rule or order, impose an examination requirement upon:

(a) An applicant applying for licensing under this chapter; and

(b) Any class of applicants.

(2) Any examination required may be administered by the administrator or a designee of the administrator. Examinations may be oral, written, or both and may differ for each class of applicants.

(3) The administrator may, by order, waive any examination requirement imposed pursuant to subsection (1) of this section as to any applicant if the administrator determines that the examination is not necessary in the public interest and for the protection of investors. [1986 c 14 § 26.]

21.30.260 Expiration of licenses—Authority under commodity sales representative license—Notification of changes. (1) The license of a commodity broker-dealer or commodity sales representative expires on December 31 of the year for which issued or at such other time as the administrator may by rule prescribe.

(2) The license of a commodity sales representative is only effective with respect to transactions effected as an employee or representative on behalf of the commodity broker-dealer or issuer for whom the commodity sales representative is licensed.

(3) When a commodity sales representative begins or terminates association with a commodity broker-dealer or issuer, or begins or terminates activities which make that person a commodity sales representative, the commodity sales representative and the former commodity broker-dealer or issuer on whose behalf the commodity sales representative was acting shall notify promptly the administrator or the administrator's designee. [1986 c 14 § 27.]

21.30.270 Multiple licenses, when permitted. No person may at any one time act as a commodity sales representative for more than one commodity broker-dealer or one issuer, except (1) where the commodity broker-dealers for whom the commodity sales representative will act are affiliated by direct or indirect common control, a commodity sales representative may represent each of those organizations or (2) where the administrator, by rule or order, authorizes multiple licenses as consistent with the public interest and protection of investors. [1986 c 14 § 28.]

21.30.280 Classification of licenses—Limitations and conditions of licenses. If the administrator determines, by rule, that one or more classifications of licenses as a commodity broker-dealer or commodity sales representative which are subject to limitations and conditions on the nature of the activities which may be conducted by those persons are consistent with the public interest and the protection of investors, the administrator may authorize the licensing of persons subject to specific limitations and conditions. [1986 c 14 § 29.]

21.30.290 Annual report and fee. For so long as a commodity broker-dealer or commodity sales representative is licensed under this chapter, it shall file an annual report,

together with the annual fee specified in RCW 21.30.240(2), with the administrator or the administrator's designee at a time and including that information that the administrator determines, by rule or order, is necessary or appropriate. [1986 c 14 § 30.]

21.30.300 Minimum net capital and fidelity bond requirements. (1) (a) The administrator may, by rule, require a licensed commodity broker-dealer to maintain: (i) Minimum net capital; and (ii) a prescribed ratio between net capital and aggregate indebtedness. The minimum net capital and net capital-to-aggregate indebtedness ratio may vary with type or class of commodity broker-dealer.

(b) If a licensed commodity broker-dealer believes, or has reasonable cause to believe, that any requirement imposed on it under this subsection is not being met, it shall promptly notify the administrator of its current financial condition.

(2) The administrator may, by rule, require the furnishing of fidelity bonds from commodity broker-dealers. [1986 c 14 § 31.]

21.30.310 Financial and other reports. A licensed commodity broker-dealer shall file financial and other reports that the administrator determines, by rule, are necessary or appropriate. [1986 c 14 § 32.]

21.30.320 Records. (1) A licensed commodity broker-dealer or commodity sales representative shall make and maintain records that the administrator determines, by rule, are necessary or appropriate.

(2) Required records may be maintained in computer or microform format or any other form of data storage provided that the records are readily accessible to the administrator.

(3) Required records must be preserved for five years unless the administrator, by rule, specifies either a longer or shorter period for a particular type or class of records. [1986 c 14 § 33.]

21.30.330 Correcting amendments of information in application or financial and other reports—Exception. If the information contained in any document filed with the administrator or the administrator's designee pursuant to RCW 21.30.230 or 21.30.310, except for those documents which the administrator, by rule or order, may exclude from this requirement, is or becomes inaccurate or incomplete in any material respect, the licensed person shall promptly file a correcting amendment, unless notification of the correction has been given under RCW 21.30.260(3). [1986 c 14 § 34.]

21.30.340 Examination of records—Copies—Fees.

(1) The administrator, without prior notice, may examine the records and require copies of the records which a licensed commodity broker-dealer or commodity sales representative is required to make and maintain under RCW 21.30.320, within or without this state, in a manner reasonable under the circumstances. Commodity broker-dealers and commodity sales representatives must make their records available to the administrator in a readable form.

(2) The administrator may copy records or require a licensed person to copy records and provide the copies to the

administrator in a manner reasonable under the circumstances.

(3) The administrator may impose reasonable fees for conducting an examination pursuant to this section. [1986 c 14 § 35.]

21.30.350 Denial, suspension, revocation, or limitation of license—Grounds. (1) The administrator may, by order, deny, suspend, or revoke any license or an exemption granted under RCW 21.30.030(7), limit the activities which an applicant or licensed person may perform in this state, conserve any applicant or licensed person, or bar any applicant or licensed person from association with a licensed commodity broker-dealer, if the administrator finds that (a) the order is in the public interest and (b) that the applicant or licensed person or, in the case of a commodity broker-dealer any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the commodity broker-dealer:

(i) Has filed an application for licensing with the administrator or the designee of the administrator which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) (A) Has violated or failed to comply with a provision of this chapter, a predecessor act, or a rule or order under this chapter or a predecessor act, (B) is the subject of an adjudication or determination within the last five years by a securities agency or administrator or court of competent jurisdiction that the person has wilfully violated the federal securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or the commodity exchange act, or the securities law of any other state (but only if the acts constituting the violation of that state's law would constitute a violation of this chapter had the acts taken place in this state);

(iii) Has, within the last ten years, pled guilty or nolo contendere to, or been convicted of any crime indicating a lack of fitness to engage in the investment commodities business;

(iv) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in, or continuing, any conduct or practice indicating a lack of fitness to engage in the investment commodities business;

(v) Is the subject of an order of the administrator denying, suspending, or revoking the person's license as a commodity or securities broker-dealer, securities salesperson or commodity sales representative, or investment adviser or investment adviser salesperson;

(vi) Is the subject of any of the following orders which are currently effective and which were issued within the last five years:

(A) An order by a securities agency or administrator of another state, Canadian province or territory, or the federal securities and exchange commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's license as a commodities or securities broker-dealer,

sales representative, or investment adviser, or the substantial equivalent of those terms;

(B) A suspension or expulsion from membership in or association with a self-regulatory organization registered under the securities exchange act of 1934 or the commodity exchange act;

(C) A United States postal service fraud order;

(D) A cease and desist order entered after notice and opportunity for hearing by the administrator or the securities agency or administrator of any other state, Canadian province or territory, the securities and exchange commission, or the commodity futures trading commission;

(E) An order entered by the commodity futures trading commission denying, suspending, or revoking registration under the commodity exchange act;

(vii) Has engaged in any unethical or dishonest conduct or practice in the investment commodities or securities business;

(viii) Is insolvent, either in the sense that liabilities exceed assets, or in the sense that obligations cannot be met as they mature;

(ix) Is not qualified on the basis of such factors as training, experience, and knowledge of the investment commodities business;

(x) Has failed reasonably to supervise sales representatives or employees; or

(xi) Has failed to pay the proper filing fee within thirty days after being notified by the administrator of the deficiency. However, the administrator shall vacate any order under (xi) of this subsection when the deficiency has been corrected.

An order entered under this subsection shall be governed by subsection (2) of this section and RCW 21.30.200 and 21.30.210.

The administrator shall not institute a suspension or revocation proceeding on the basis of a fact or transaction disclosed in the license application unless the proceeding is instituted within the next ninety days following issuance of the license.

(2) If the public interest or the protection of investors so requires, the administrator may, by order, summarily suspend a license or postpone the effective date of a license. Upon the entry of the order, the administrator shall promptly notify the applicant or licensed person, as well as the commodity broker-dealer with whom the person is or will be associated if the applicant or licensed person is a commodity sales representative, that an order has been entered and of the reasons therefore and that within twenty days after the receipt of a written request the matter will be set down for hearing. The provisions of RCW 21.30.200 and 21.30.210 apply with respect to all subsequent proceedings.

(3) If the administrator finds that any applicant or licensed person is no longer in existence or has ceased to do business as a commodity broker-dealer or commodity sales representative or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the administrator may, by order, cancel the application or license. [1987 c 243 § 6; 1986 c 14 § 36.]

21.30.360 Violations—Prosecuting attorney may bring criminal proceedings. The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order under this chapter to the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, institute the appropriate criminal proceedings under this chapter. [1986 c 14 § 37.]

21.30.370 Penalties in chapter nonexclusive. Nothing in this chapter limits the power of the state to punish a person for conduct which constitutes a crime by statute or at common law. [1986 c 14 § 38.]

21.30.380 Administration of chapter under director of licensing. The administration of this chapter shall be under the director of the department of licensing. [1986 c 14 § 39.]

21.30.390 Administrator—Appointment—Delegation of duties—Term. The director shall appoint a competent person to administer this chapter, who shall be designated the administrator. The director shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out this chapter. The administrator shall hold office at the pleasure of the director. [1986 c 14 § 16.]

21.30.400 Director's powers and duties—Rules, forms, and orders—Fees. In addition to specific authority granted elsewhere in this chapter, the director may make, amend, and rescind rules, forms, and orders as are necessary to carry out this chapter. Such rules or forms shall include but need not be limited to rules defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with this chapter. The director may classify commodities, commodity contracts, and commodity options, persons, and matters within the director's jurisdiction. No rule or form may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of the investors and consistent with the purposes intended by the policy and provisions of this chapter. The director may, by rule, establish a schedule of reasonable fees to carry out the purposes of this chapter, such fees to cover the estimated costs of enforcing this chapter. [1986 c 14 § 40.]

21.30.800 Securities laws not affected. Nothing in this chapter shall impair, derogate from, or otherwise affect the authority or powers of the administrator under the securities act of Washington, chapter 21.20 RCW, or the application of any provision thereof to any person or transaction subject thereto. [1986 c 14 § 41.]

21.30.810 Construction and purpose. This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodities and to maximize coordination with federal and other states' law and

the administration and enforcement thereof. [1986 c 14 § 42.]

21.30.900 Severability—1986 c 14. 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 14 § 43.]

21.30.901 Effective date—1986 c 14. This act shall take effect on October 1, 1986. [1986 c 14 § 46.]



Title 22

WAREHOUSING AND DEPOSITS

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Chapter 22.09

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Commodity transactions: Chapter 21.30 RCW.

22.09.011 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(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, firm, partnership, corporation, company, society, association, cooperative, two or more persons having a joint or common interest, or any unit or agency of local, state, or federal government.

(4) "Agricultural commodities," or "commodities," means: (a) Grains for which inspection standards have been established under the United States grain standards act; (b) pulses and similar commodities for which inspection standards have been established under the agricultural marketing act of 1946; and (c) other similar agricultural products for which inspection standards have been established or which have been otherwise designated by the department by rule for inspection services or the warehousing requirements of this chapter.

(5) "Warehouse," also referred to as a public warehouse, means any elevator, mill, subterminal grain warehouse, terminal warehouse, country warehouse, or other structure or enclosure located in this state that is used or useable for the storage of agricultural products, and in which commodities are received from the public for storage, handling, conditioning, or shipment for compensation. The term does not include any warehouse storing or handling fresh fruits and/or vegetables, any warehouse used exclusively for cold storage, or any warehouse that conditions yearly less than three hundred tons of an agricultural commodity for compensation.

(6) "Terminal warehouse" means any warehouse designated as a terminal by the department, and located at an

inspection point where inspection facilities are maintained by the department and where commodities are ordinarily received and shipped by common carrier.

(7) "Subterminal warehouse" means any warehouse that performs an intermediate function in which agricultural commodities are customarily received from dealers rather than producers and where the commodities are accumulated before shipment to a terminal warehouse.

(8) "Station" means two or more warehouses between which commodities are commonly transferred in the ordinary course of business and that are (a) immediately adjacent to each other, or (b) located within the corporate limits of any city or town and subject to the same transportation tariff zone, or (c) at any railroad siding or switching area and subject to the same transportation tariff zone, or (d) at one location in the open country off rail, or (e) in any area that can be reasonably audited by the department as a station under this chapter and that has been established as such by the director by rule adopted under chapter 34.05 RCW, or (f) within twenty miles of each other but separated by the border between Washington and Idaho or Oregon when the books and records for the station are maintained at the warehouse located in Washington.

(9) "Inspection point" means a city, town, or other place wherein the department maintains inspection and weighing facilities.

(10) "Warehouseman" means any person owning, operating, or controlling a warehouse in the state of Washington.

(11) "Depositor" means (a) any person who deposits a commodity with a Washington state licensed warehouseman for storage, handling, conditioning, or shipment, or (b) any person who is the owner or legal holder of a warehouse receipt, outstanding scale weight ticket, or other evidence of the deposit of a commodity with a Washington state licensed warehouseman or (c) any producer whose agricultural commodity has been sold to a grain dealer through the dealer's place of business located in the state of Washington, or any Washington producer whose agricultural commodity has been sold to or is under the control of a grain dealer, whose place of business is located outside the state of Washington.

(12) "Historical depositor" means any person who in the normal course of business operations has consistently made deposits in the same warehouse of commodities produced on the same land. In addition the purchaser, lessee, and/or inheritor of such land from the original historical depositor with reference to the land shall be considered a historical depositor with regard to the commodities produced on the land.

(13) "Grain dealer" means any person who, through his place of business located in the state of Washington, solicits, contracts for, or obtains from a producer, title, possession, or control of any agricultural commodity for purposes of resale, or any person who solicits, contracts for, or obtains from a Washington producer, title, possession, or control of any agricultural commodity for purposes of resale.

(14) "Producer" means any person who is the owner, tenant, or operator of land who has an interest in and is entitled to receive all or any part of the proceeds from the sale of a commodity produced on that land.

(15) "Warehouse receipt" means a negotiable or nonnegotiable warehouse receipt as provided for in Article 7 of Title 62A RCW.

(16) "Scale weight ticket" means a load slip or other evidence of deposit, serially numbered, not including warehouse receipts as defined in subsection (15) of this section, given a depositor on request upon initial delivery of the commodity to the warehouse and showing the warehouse's name and state number, type of commodity, weight thereof, name of depositor, and the date delivered.

(17) "Put through" means agricultural commodities that are deposited in a warehouse for receiving, handling, conditioning, or shipping, and on which the depositor has concluded satisfactory arrangements with the warehouseman for the immediate or impending shipment of the commodity.

(18) "Conditioning" means, but is not limited to, the drying or cleaning of agricultural commodities.

(19) "Deferred price contract" means a contract for the sale of commodities that conveys the title and all rights of ownership to the commodities represented by the contract to the buyer, but allows the seller to set the price of the commodities at a later date based on an agreed upon relationship to a future month's price or some other mutually agreeable method of price determination. Deferred price contracts include but are not limited to those contracts commonly referred to as delayed price, price later contracts, or open price contracts.

(20) "Shortage" means that a warehouseman does not have in his possession sufficient commodities at each of his stations to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him for the station.

(21) "Failure" means:

(a) An inability to financially satisfy claimants in accordance with this chapter and the time limits provided for in it;

(b) A public declaration of insolvency;

(c) A revocation of license and the leaving of an outstanding indebtedness to a depositor;

(d) A failure to redeliver any commodity to a depositor or to pay depositors for commodities purchased by a licensee in the ordinary course of business and where a bona fide dispute does not exist between the licensee and the depositor;

(e) A failure to make application for license renewal within sixty days after the annual license renewal date; or

(f) A denial of the application for a license renewal.

(22) "Original inspection" means an initial, official inspection of a grain or commodity.

(23) "Reinspection" means an official review of the results of an original inspection service by an inspection office that performed that original inspection service. A reinspection may be performed either on the basis of the official file sample or a new sample obtained by the same means as the original if the lot remains intact.

(24) "Appeal inspection" means, for commodities covered by federal standards, a review of original inspection or reinspection results by an authorized United States department of agriculture inspector. For commodities covered under state standards, an appeal inspection means a review of original or reinspection results by a supervising inspector. An appeal inspection may be performed either on

the basis of the official file sample or a new sample obtained by the same means as the original if the lot remains intact. [1989 c 354 § 44; 1988 c 254 § 11; 1987 c 393 § 19; 1983 c 305 § 16.]

Severability—1989 c 354: See note following RCW 15.32.010.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.020 Department authority—Rules. The department shall administer and carry out the provisions of this chapter and rules adopted hereunder, and it has the power and authority to:

(1) Supervise the receiving, handling, conditioning, weighing, storage, and shipping of all commodities;

(2) Supervise the inspection and grading of commodities;

(3) Approve or disapprove the facilities, including scales, of all warehouses;

(4) Approve or disapprove all rates and charges for the handling, storage, and shipment of all commodities;

(5) Investigate all complaints of fraud in the operation of any warehouse;

(6) Examine, inspect, and audit, during ordinary business hours, any warehouse licensed under this chapter, including all commodities therein and examine, inspect, audit, or record all books, documents, and records;

(7) Examine, inspect, and audit during ordinary business hours, all books, documents, and records, and examine, inspect, audit, or record records of any grain dealer licensed hereunder at the grain dealer's principal office or headquarters;

(8) Inspect at reasonable times any warehouse or storage facility where commodities are received, handled, conditioned, stored, or shipped, including all commodities stored therein and all books, documents, and records in order to determine whether or not such facility should be licensed pursuant to this chapter;

(9) Inspect at reasonable times any grain dealer's books, documents, and records in order to determine whether or not the grain dealer should be licensed under this chapter;

(10) Administer oaths and issue subpoenas to compel the attendance of witnesses, and/or the production of books, documents, and records anywhere in the state pursuant to a hearing relative to the purpose and provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided in chapter 2.40 RCW;

(11) Adopt rules establishing inspection standards and procedures for grains and commodities;

(12) Adopt rules regarding the identification of commodities by the use of confetti or other similar means so that such commodities may be readily identified if stolen or removed in violation of the provisions of this chapter from a warehouse or if otherwise unlawfully transported;

(13) Adopt all the necessary rules for carrying out the purpose and provisions of this chapter. The adoption of rules under the provisions of this chapter shall be subject to the provisions of chapter 34.05 RCW, the Administrative Procedure Act. When adopting rules in respect to the provisions of this chapter, the director shall hold a public hearing and shall to the best of his ability consult with persons and organizations or interests who will be affected thereby, and any final rule adopted as a result of the hearing

shall be designed to promote the provisions of this chapter and shall be reasonable and necessary and based upon needs and conditions of the industry, and shall be for the purpose of promoting the well-being of the industry to be regulated and the general welfare of the people of the state. [1989 c 354 § 45; 1983 c 305 § 17; 1963 c 124 § 2.]

Severability—1989 c 354: See note following RCW 15.32.010.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.030 Warehouse license or licenses required.

It shall be unlawful for any person to operate a warehouse in the state of Washington without first having obtained an annual license from the department, but this chapter shall not apply to warehouses that are federally licensed under the provisions of 7 USC 241 et seq. for the handling and storage of agricultural commodities. A separate license shall be required for each warehouse that a person intends to operate, but any person operating two or more warehouses that constitute a station may license the warehouses under one state license. All the assets of a given station that is licensed under one state license are subject to all the liabilities of that station and for the purposes of this chapter shall be treated as a single warehouse, requiring all the stocks and obligations of the warehouses at a given station to be treated as a unit for all purposes including, but not limited to, issuance of warehouse receipts and receipt and delivery of commodities for handling, conditioning, storage, or shipment. [1983 c 305 § 18; 1975 1st ex.s. c 7 § 20; 1963 c 124 § 3.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.035 Grain dealer license required, exception.

It is unlawful for any person to operate as a grain dealer in the state of Washington without first having obtained an annual license from the department. This chapter does not apply to a grain dealer that is licensed for dealing in agricultural commodities under federal law. [1983 c 305 § 19.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.040 Application for warehouse license.

Application for a license to operate a warehouse under the provisions of this chapter shall be on a form prescribed by the department and shall include:

(1) The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation, or other entity;

(2) The full name of each member of the firm or partnership, or the names of the officers of the company, society, cooperative association, or corporation;

(3) The principal business address of the applicant in the state and elsewhere;

(4) The name or names of the person or persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant;

(5) Whether the applicant has also applied for or has been issued a grain dealer license under the provisions of this chapter;

(6) The location of each warehouse the applicant intends to operate and the location of the headquarters or main office of the applicant;

(7) The bushel storage capacity of each such warehouse to be licensed;

(8) The schedule of fees to be charged at each warehouse for the handling, conditioning, storage, and shipment of all commodities during the licensing period;

(9) A financial statement to determine the net worth of the applicant to determine whether or not the applicant meets the minimum net worth requirements established by the director pursuant to chapter 34.05 RCW. All financial statement information required by this subsection shall be confidential information not subject to public disclosure;

(10) Whether the application is for a terminal, subterminal, or country warehouse license;

(11) Whether the applicant has previously been denied a grain dealer or warehouseman license or whether the applicant has had either license suspended or revoked by the department;

(12) Any other reasonable information the department finds necessary to carry out the purpose and provisions of this chapter. [1987 c 393 § 17; 1983 c 305 § 20; 1979 ex.s. c 238 § 13; 1975 1st ex.s. c 7 § 21; 1963 c 124 § 4.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.045 Application for grain dealer license.

Application for a license to operate as a grain dealer under the provisions of this chapter shall be on a form prescribed by the department and shall include:

(1) The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation, or other entity;

(2) The full name of each member of the firm or partnership, or the names of the officers of the company, society, cooperative association, or corporation;

(3) The principal business address of the applicant in the state and elsewhere;

(4) The name or names of the person or persons in this state authorized to receive and accept service of summons and legal notices of all kinds for the applicant;

(5) Whether the applicant has also applied for or has been issued a warehouse license under this chapter;

(6) The location of each business location from which the applicant intends to operate as a grain dealer in the state of Washington whether or not the business location is physically within the state of Washington, and the location of the headquarters or main office of the application;

(7) A financial statement to determine the net worth of the applicant to determine whether or not the applicant meets the minimum net worth requirements established by the director under chapter 34.05 RCW. However, if the applicant is a subsidiary of a larger company, corporation, society, or cooperative association, both the parent company and the subsidiary company must submit a financial statement to determine whether or not the applicant meets the minimum net worth requirements established by the director under chapter 34.05 RCW. All financial statement information required by this subsection shall be confidential information not subject to public disclosure;

(8) Whether the applicant has previously been denied a grain dealer or warehouseman license or whether the applicant has had either license suspended or revoked by the department;

(9) Any other reasonable information the department finds necessary to carry out the purpose and provisions of this chapter. [1987 c 393 § 18; 1983 c 305 § 21.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.050 Warehouse license fees, penalties. Any application for a license to operate a warehouse shall be accompanied by a license fee of four hundred dollars for a terminal warehouse, three hundred dollars for a subterminal warehouse, and one hundred dollars for a country warehouse. If a licensee operates more than one warehouse under one state license as provided for in RCW 22.09.030, the license fee shall be computed by multiplying the number of physically separated warehouses within the station by the applicable terminal, subterminal, or country warehouse license fee. If an application for renewal of a warehouse license or licenses is not received by the department prior to the renewal date or dates established by the director by rule, a penalty of fifty dollars for the first week and one hundred dollars for each week thereafter shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license may be issued. This penalty does not apply if the applicant furnishes an affidavit certifying that he has not acted as a warehouseman subsequent to the expiration of his prior license. [1991 c 109 § 25; 1986 c 203 § 13; 1983 c 305 § 22; 1979 ex.s. c 238 § 14; 1963 c 124 § 5.]

Severability—1986 c 203: See note following RCW 15.04.100.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.055 Grain dealer license fees, penalties. An application for a license to operate as a grain dealer shall be accompanied by a license fee of three hundred dollars unless the applicant is also a licensed warehouseman, in which case the fee for a grain dealer license shall be one hundred fifty dollars. The license fee for grain dealers exempted from bonding under RCW 22.09.060 shall be seventy-five dollars.

If an application for renewal of a grain dealer license is not received by the department before the renewal date or dates established by the director by rule, a penalty of fifty dollars for the first week and one hundred dollars for each week thereafter shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license may be issued. This penalty does not apply if the applicant furnishes an affidavit certifying that he has not acted as a grain dealer after the expiration of his prior license. [1991 c 109 § 26; 1988 c 95 § 1; 1986 c 203 § 14; 1983 c 305 § 23.]

Severability—1986 c 203: See note following RCW 15.04.100.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.060 Bond or certificate of deposit and insurance prerequisite to license—Exemption. Except as provided in RCW 22.09.405(2), no warehouse or grain dealer license may be issued to an applicant before a bond, certificate of deposit, or other security is given to the department as provided in RCW 22.09.090, or in RCW 22.09.095. No warehouse license may be issued to an applicant before a certificate of insurance as provided in RCW 22.09.110 has been filed with the department. Grain dealers may be exempted by rule from the bonding require-

ment if the grain dealer does not do more than one hundred thousand dollars in business annually and makes payments solely in coin or currency of the United States at the time of obtaining possession or control of grain. However, a cashier's check, certified check, or bankdraft may be considered as cash for purposes of this section. [1988 c 95 § 2; 1987 c 509 § 1; 1983 c 305 § 24; 1975 1st ex.s. c 7 § 22; 1963 c 124 § 6.]

Severability—1987 c 509: "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 509 § 22.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.070 Warehouse licenses—Issuance—Posting—Duration. The department shall issue a warehouse license to an applicant upon its determination that the applicant has facilities adequate for handling and storage of commodities and, if applicable, conditioning, and that the application is in the proper form and upon approval of the matters contained on the application and upon a showing that the applicant has complied with the provisions of this chapter and rules adopted hereunder. The licensee shall immediately upon receipt of the license post it in a conspicuous place in the office of the licensed warehouse or if a station license, in the main office at the station. The license automatically expires on the date set by rule by the director unless it has been revoked, canceled, or suspended by the department before that date. Fees shall be prorated where necessary to accommodate the staggering of renewal dates of a license or licenses. [1991 c 109 § 27; 1983 c 305 § 25; 1963 c 124 § 7.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.075 Grain dealer licenses—Issuance—Posting—Duration. The department shall issue a grain dealer license to an applicant upon its determination that the application is in its proper form and upon approval of the matters contained on the application and upon a showing that the applicant has complied with the provisions of this chapter and rules adopted hereunder. The licensee shall immediately upon receipt of the license post it in a conspicuous place in its principal place of business. The license expires automatically on a date set by rule by the director unless it has been revoked, canceled, or suspended by the department before that date. Fees shall be prorated where necessary in order to accommodate staggered renewal of a license or licenses. [1991 c 109 § 28; 1983 c 305 § 26.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.080 Licenses—Denial—Suspension—Revocation. The department is authorized to deny, suspend, or revoke a license after a hearing in any case in which it is determined that there has been a violation or refusal to comply with the requirements of this chapter, rules adopted hereunder, or the provisions of Article 7 of Title 62A RCW as enacted or hereafter amended. All hearings for the denial, suspension, or revocation of a license shall be subject to chapter 34.05 RCW (Administrative Procedure Act) as enacted or hereafter amended. [1979 ex.s. c 238 § 15; 1963 c 124 § 8.]

22.09.090 Bond requisites—Certificate of deposit or other security—Additional security—Suspension of license for failure to maintain. (1) An applicant for a warehouse or grain dealer license pursuant to the provisions of this chapter shall give a bond to the state of Washington executed by the applicant as the principal and by a corporate surety licensed to do business in this state as surety.

(2) The bond required under this section for the issuance of a warehouse license shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount that will be required for the warehouse bond which shall be computed at a rate of not less than fifteen cents nor more than thirty cents per bushel multiplied by the number of bushels of licensed commodity storage capacity of the warehouses of the applicant furnishing the bond. The applicant for a warehouse license may give a single bond meeting the requirements of this chapter, and all warehouses operated by the warehouseman are deemed to be one warehouse for the purpose of the amount of the bond required under this subsection. Any change in the capacity of a warehouse or addition of any new warehouse involving a change in bond liability under this chapter shall be immediately reported to the department.

(3) The bond required under this section for the issuance of a grain dealer license shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount that will be required for the dealer bond which shall be computed at a rate not less than six percent nor more than twelve percent of the sales of agricultural commodities purchased by the dealer from producers during the dealer's last completed fiscal year or in the case of a grain dealer who has been engaged in business as a grain dealer less than one year, the estimated aggregate dollar amount to be paid by the dealer to producers for agricultural commodities to be purchased by the dealer during the dealer's first fiscal year.

(4) An applicant making application for both a warehouse license and a grain dealer license may satisfy the bonding requirements set forth in subsections (2) and (3) of this section by giving to the state of Washington a single bond for the issuance of both licenses, which bond shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount of the bond which shall be computed at a rate of not less than fifteen cents nor more than thirty cents per bushel multiplied by the number of bushels of licensed commodity storage capacity of the warehouses of the applicant furnishing the bond, or at the rate of not less than six percent nor more than twelve percent of the gross sales of agricultural commodities of the applicant whichever is greater.

(5) The bonds required under this chapter shall be approved by the department and shall be conditioned upon the faithful performance by the licensee of the duties imposed upon him by this chapter. If a person has applied for warehouse licenses to operate two or more warehouses in this state, the assets applicable to all warehouses, but not the deposits except in case of a station, are subject to the liabilities of each. The total and aggregate liability of the

surety for all claims upon the bond is limited to the face amount of the bond.

(6) Any person required to submit a bond to the department under this chapter has the option to give the department a certificate of deposit or other security acceptable to the department payable to the director as trustee, in lieu of a bond or a portion thereof. The principal amount of the certificate or other security shall be the same as that required for a surety bond under this chapter or may be in an amount which, when added to the bond, will satisfy the licensee's requirements for a surety bond under this chapter, and the interest thereon shall be made payable to the purchaser of the certificate or other security. The certificate of deposit or other security shall remain on deposit until it is released, canceled, or discharged as provided for by rule of the department. The provisions of this chapter that apply to a bond required under this chapter apply to each certificate of deposit or other security given in lieu of such a bond.

(7) The department may, when it has reason to believe that a grain dealer does not have the ability to pay producers for grain purchased, or when it determines that the grain dealer does not have a sufficient net worth to outstanding financial obligations ratio, or when it believes there may be claims made against the bond in excess of the face amount of the bond, require a grain dealer to post an additional bond in a dollar amount deemed appropriate by the department or may require an additional certificate of deposit or other security. The additional bonding or other security may exceed the maximum amount of the bond otherwise required under this chapter. Failure to post the additional bond, certificate of deposit, or other security constitutes grounds for suspension or revocation of a license issued under this chapter.

(8) Notwithstanding any other provisions of this chapter, the license of a warehouseman or grain dealer shall automatically be suspended in accordance with RCW 22.09.100 for failure at any time to have or to maintain a bond, certificate of deposit, or other security or combination thereof in the amount and type required by this chapter. The department shall remove the suspension or issue a license as the case may be, when the required bond, certificate of deposit, or other security has been obtained. [1987 c 509 § 2; 1983 c 305 § 27; 1975 1st ex.s. c 7 § 23; 1969 ex.s. c 132 § 2; 1963 c 124 § 9.]

Severability—1987 c 509: See note following RCW 22.09.060.

Severability—1983 c 305: See note following RCW 20.01.010.

Grain indemnity fund program: See RCW 22.09.405 through 22.09.471.

22.09.095 Single bond by multiple applicants. (1) Two or more applicants for a warehouse or grain dealer license may provide a single bond to the state of Washington, executed by a corporate surety licensed to do business in this state and designating each of the applicants as a principal on said bond.

(2) The department shall promulgate rules establishing the amount of the bond required under this section. In no event shall that amount be less than ten percent of the aggregate amount of each of the bonds that would be required of the applicants under RCW 22.09.090 or less than the amount that would be required under RCW 22.09.090 for

the applicant having the highest bond requirement under that section. [1987 c 509 § 3.]

Severability—1987 c 509: See note following RCW 22.09.060.

Grain indemnity fund program: See RCW 22.09.405 through 22.09.471.

22.09.100 Bonds—Duration—Release of surety—Cancellation by surety. (1) Every bond filed with and approved by the department shall without the necessity of periodic renewal remain in force and effect until such time as the warehouseman or grain dealer license of each principal on the bond is revoked or otherwise canceled.

(2) The surety on a bond, as provided in this chapter, shall be released and discharged from all liability to the state, as to a principal whose license is revoked or canceled, which liability accrues after the expiration of thirty days from the effective date of the revocation or cancellation of the license. The surety on a bond under this chapter shall be released and discharged from all liability to the state accruing on the bond after the expiration of ninety days from the date upon which the surety lodges with the department a written request to be released and discharged. Nothing in this section shall operate to relieve, release, or discharge the surety from any liability which accrues before the expiration of the respective thirty or ninety-day period. In the event of a cancellation by the surety, the surety shall simultaneously send the notification of cancellation in writing to any other governmental agency requesting it. Upon receiving any such request, the department shall promptly notify the principal or principals who furnished the bond, and unless the principal or principals file a new bond on or before the expiration of the respective thirty or ninety-day period, the department shall forthwith cancel the license of the principal or principals whose bond has been canceled. [1987 c 509 § 4; 1983 c 305 § 28; 1963 c 124 § 10.]

Severability—1987 c 509: See note following RCW 22.09.060.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.110 Casualty insurance required—Certificate to be filed. All commodities in storage in a warehouse shall be kept fully insured for the current market value of the commodity for the license period against loss by fire, lightning, internal explosion, windstorm, cyclone, and tornado. Evidence of the insurance coverage in the form of a certificate of insurance approved by the department shall be filed by the warehouseman with the department at the time of making application for an annual license to operate a warehouse as required by this chapter. The department shall not issue a license until the certificate of insurance is received. [1983 c 305 § 29; 1963 c 124 § 11.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.120 Insurance—Cancellation procedure—Suspension of license. (1) Upon the existence of an effective policy of insurance as required in RCW 22.09.110, the insurance company involved shall be required to give thirty days' advance notice to the department by registered mail or certified mail return receipt requested of any cancellation of the policy. In the event of any cancellation, the department, without hearing, shall immediately suspend the license of such person, and the suspension shall not be removed until satisfactory evidence of the existence of an

effective policy of insurance, conditioned as above set out, has been submitted to the department. [1963 c 124 § 12.]

22.09.130 Rights and duties of warehousemen—Duty to serve—Receipts—Special binning—Unsuitable commodities—Put through commodities. (1) Every warehouseman shall receive for handling, conditioning, storage, or shipment, so far as the capacity and facilities of his warehouse will permit, all commodities included in the provisions of this chapter, in suitable condition for storage, tendered him in the usual course of business from historical depositors and shall issue therefor a warehouse receipt or receipts in a form prescribed by the department as provided in this chapter or a scale weight ticket. Warehousemen may accept agricultural commodities from new depositors who qualify to the extent of the capacity of that warehouse. The deposit for handling, conditioning, storage, or shipment of the commodity must be credited to the depositor in the books of the warehouseman as soon as possible, but in no event later than seven days from the date of the deposit. If the commodity has been graded a warehouse receipt shall be issued within ten days after demand by the owner.

(2) If requested by the depositor, each lot of his commodity shall be kept in a special pile or special bin, if available, but in the case of a bulk commodity, if the lot or any portion of it does not equal the capacity of any available bin, the depositor may exercise his option to require the commodity to be specially binned only on agreement to pay charges based on the capacity of the available bin most nearly approximating the required capacity.

(3) A warehouseman may refuse to accept for storage, commodities that are wet, damaged, insect-infested, or in other ways unsuitable for storage.

(4) Terminal and subterminal warehousemen shall receive put through agricultural commodities to the extent satisfactory transportation arrangements can be made, but may not be required to receive agricultural commodities for storage. [1983 c 305 § 30; 1981 c 296 § 38; 1979 ex.s. c 238 § 16; 1963 c 124 § 13.]

Severability—1983 c 305: See note following RCW 20.01.010.

Severability—1981 c 296: See note following RCW 15.04.020.

22.09.140 Rights and duties of licensees—Partial withdrawal—Adjustment or substitution of receipt—Liability to third parties. (1) When partial withdrawal of his commodity is made by a depositor, the warehouseman shall make appropriate notation thereof on the depositor's nonnegotiable receipt or on other records, or, if the warehouseman has issued a negotiable receipt to the depositor, he shall claim, cancel, and replace it with a negotiable receipt showing the amount of such depositor's commodity remaining in the warehouse, and for his failure to claim and cancel, upon delivery to the owner of a commodity stored in his warehouse, a negotiable receipt issued by him, the negotiation of which would transfer the right to possession of such commodity, a warehouseman shall be liable to anyone who purchases such receipt for value and in good faith, for failure to deliver to him all the commodity specified in the receipt, whether such purchaser acquired title to the negotiable receipt before or after delivery of any part of the commodity by the warehouseman. [1963 c 124 § 14.]

22.09.150 Rights and duties of warehousemen—Delivery of stored commodities—Damages. (1) The duty of the warehouseman to deliver the commodities in storage is governed by the provisions of this chapter and the requirements of Article 7 of Title 62A RCW. Upon the return of the receipt to the proper warehouseman, properly endorsed, and upon payment or tender of all advances and legal charges, the warehouseman shall deliver commodities of the grade and quantity named upon the receipt to the holder of the receipt, except as provided by Article 7 of Title 62A RCW.

(2) A warehouseman's duty to deliver any commodity is fulfilled if delivery is made pursuant to the contract with the depositor or if no contract exists, then to the several owners in the order of demand as rapidly as it can be done by ordinary diligence. Where delivery is made within forty-eight hours excluding Saturdays, Sundays, and legal holidays after facilities for receiving the commodity are provided, the delivery is deemed to comply with this subsection.

(3) No warehouseman may fail to deliver a commodity as provided in this section, and delivery shall be made at the warehouse or station where the commodity was received unless the warehouseman and depositor otherwise agree in writing.

(4) In addition to being subject to penalties provided in this chapter for a violation of this section, if a warehouseman unreasonably fails to deliver commodities within the time as provided in this section, the person entitled to delivery of the commodity may maintain an action against the warehouseman for any damages resulting from the warehouseman's unreasonable failure to so deliver. In any such action the person entitled to delivery of the commodity has the option to seek recovery of his actual damages or liquidated damages of one-half of one percent of the value for each day's delay after the forty-eight hour period. [1983 c 305 § 31; 1979 ex.s. c 238 § 17; 1963 c 124 § 15.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.160 Rights and duties of licensees—Disposition of hazardous commodities. (1) If a warehouseman discovers that as a result of a quality or condition of a certain commodity placed in his warehouse, including identity preserved commodities as provided for in RCW 22.09.130(2), of which he had no notice at the time of deposit, such commodity is a hazard to other commodities or to persons or to the warehouse he may notify the depositor that it will be removed. If the depositor does not accept delivery of such commodity upon removal the warehouseman may sell the commodity at public or private sale without advertisement but with reasonable notification of the sale to all persons known to claim an interest in the commodity. If the warehouseman after a reasonable effort is unable to sell the commodity, he may dispose of it in any other lawful manner and shall incur no liability by reason of such disposition.

(2) At any time prior to sale or disposition as authorized in this section, the warehouseman shall deliver the commodity to any person entitled to it, upon proper demand and payment of charges.

(3) From the proceeds of sale or other disposition of the commodity the warehouseman may satisfy his charges for

which otherwise he would have a lien, and shall hold the balance thereof for delivery on the demand of any person to whom he would have been required to deliver the commodity. [1963 c 124 § 16.]

22.09.170 Rights and duties of warehousemen—Special disposition of commodities under written order. If the owner of the commodity or his authorized agent gives or furnishes to a licensed warehouseman a written instruction or order, and if the order is properly made a part of the warehouseman's records and is available for departmental inspection, then the warehouseman:

(1) May receive the commodity for the purpose of processing or conditioning;

(2) May receive the commodity for the purpose of shipping by the warehouseman for the account of the depositor;

(3) May accept an agricultural commodity delivered as seed and handle it pursuant to the terms of a contract with the depositor and the contract shall be considered written instructions pursuant to this section. [1983 c 305 § 32; 1963 c 124 § 17.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.175 Presumptions regarding commodities—Approval of contracts. (1) A commodity deposited with a warehouseman without a written agreement for sale of the commodity to the warehouseman shall be handled and considered to be a commodity in storage.

(2) A presumption is hereby created that in all written agreements for the sale of commodities, the intent of the parties is that title and ownership to the commodities shall pass on the date of payment therefor. This presumption may only be rebutted by a clear statement to the contrary in the agreement.

(3) Any warehouseman or grain dealer entering into a deferred price contract with a depositor shall first have the form of the contract approved by the director. The director shall adopt rules setting forth the standards for approval of the contracts. [1983 c 305 § 33.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.180 Rights and duties of licensees—Records, contents—Itemized charges. (1) The licensee shall maintain complete records at all times with respect to all agricultural commodities handled, stored, shipped, or merchandised by him, including commodities owned by him. The department shall adopt rules specifying the minimum record-keeping requirements necessary to comply with this section.

(2) The licensee shall maintain an itemized statement of any charges paid by the depositor. [1983 c 305 § 34; 1975 1st ex.s. c 7 § 24; 1963 c 124 § 18.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.190 Rights and duties of warehousemen—Rebates, preferences, etc., prohibited. No warehouseman subject to the provisions of this chapter may:

(1) Directly or indirectly, by any special charge, rebate, drawback, or other device, demand, collect, or receive from any person a greater or lesser compensation for any service

rendered or to be rendered in the handling, conditioning, storage, or shipment of any commodity than he demands, collects, or receives from any other person for doing for him a like and contemporaneous service in the handling, conditioning, storage, or shipment of any commodity under substantially similar circumstances or conditions;

(2) Make or give any undue or unreasonable preference or advantage to any person in any respect whatsoever;

(3) Subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [1983 c 305 § 35; 1963 c 124 § 19.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.195 Rights and duties of warehousemen—RCW 22.09.190 inapplicable to contracts with governmental agencies. RCW 22.09.190 does not apply to contracts entered into with a governmental agency, state or federal, for the handling, conditioning, storage, or shipping of agricultural commodities. [1983 c 305 § 36; 1979 ex.s. c 238 § 24.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.200 Rights and duties of licensees—Reports to department. Each licensee shall report information to the department at such times and as may be reasonably required by the department for the necessary enforcement and supervision of a sound, reasonable, and efficient commodity inspection program for the protection of depositors of commodities and for persons or agencies who deal in commodities. [1983 c 305 § 37; 1963 c 124 § 20.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.220 Rights and duties of licensees—Premises, construction and maintenance. A warehouse or station shall be constructed and maintained in a manner adequate to carry out the provisions of this chapter. [1963 c 124 § 22.]

22.09.230 Rights and duties of warehouse licensees—Signs—Use of "Washington Bonded Warehouse." Every warehouse licensee shall post at or near the main entrance to each of his warehouses a sign as prescribed by the department which shall include the words "Washington Bonded Warehouse." It is unlawful to display such sign or any sign of similar appearance or bearing the same words, or words of similar import, when the warehouse is not licensed and bonded under this chapter. [1983 c 305 § 39; 1963 c 124 § 23.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.240 Rights and duties of warehousemen—Schedule of rates—Posting—Revision. Every warehouseman shall annually, during the first week in July, publish by posting in a conspicuous place in each of his warehouses the schedule of handling, conditioning, and storage rates filed with the department for the ensuing license year. The schedule shall be kept posted, and the rates shall not be changed during such year except after thirty days' written notice to the director and proper posting of the changes on the licensee's premises. [1991 c 109 § 29; 1983 c 305 § 40; 1963 c 124 § 24.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.250 Rights and duties of warehousemen—Unlawful practices. It is unlawful for a warehouseman to:

(1) Issue a warehouse receipt for any commodity that he does not have in his warehouse at the time the receipt is issued;

(2) Issue warehouse receipts in excess of the amount of the commodities held in the licensee's warehouse to cover the receipt;

(3) Remove, deliver, direct, assist, or permit any person to remove, or deliver any commodity from any warehouse for which warehouse receipts have been issued and are outstanding without receiving and canceling the warehouse receipt issued therefor;

(4) Sell, encumber, ship, transfer, or in any manner remove or permit to be shipped, transferred, or removed from a warehouse any commodity received by him for deposit, handling, conditioning, or shipment, for which scale weight tickets have been issued without the written approval of the holder of the scale weight ticket and such transfer shall be shown on the individual depositor's account and the inventory records of the warehouseman;

(5) Remove, deliver, direct, assist, or permit any person to deliver, or remove any commodities from any warehouse, whereby the amount of any fairly representative grade or class of any commodity in the warehouses of the licensee is reduced below the amount for which warehouse receipts or scale weight tickets for the particular commodity are outstanding;

(6) Issue a warehouse receipt showing a grade or description different from the grade or description of the commodity delivered;

(7) Issue a warehouse receipt or scale weight ticket that exceeds the amount of the actual quantity of commodities delivered for storage;

(8) Fail to deliver commodities pursuant to RCW 22.09.150 upon demand of the depositor;

(9) Knowingly accept for storage any commodity destined for human consumption that has been contaminated with an agricultural pesticide or filth rendering it unfit for human consumption, if the commodities are commingled with any uncontaminated commodity;

(10) Terminate storage of a commodity in his warehouse without giving thirty days' written notice to the depositor. [1983 c 305 § 41; 1963 c 124 § 25.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.260 Deposit of commodities unfit for human consumption—Notice. No depositor may knowingly deliver for handling, conditioning, storage, or shipment any commodity treated with an agricultural pesticide or contaminated with filth rendering it unfit for human consumption without first notifying the warehouseman. [1983 c 305 § 42; 1963 c 124 § 26.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.290 Warehouse receipts—Required terms. (1) Every warehouse receipt issued for commodities covered by this chapter shall embody within its written or printed terms:

(a) The grade of the commodities as described by the official standards of this state, unless the identity of the commodity is in fact preserved in a special pile or special bin, and an identifying mark of such pile or bin shall appear on the face of the receipt and on the pile or bin. A commodity in a special pile or bin shall not be removed or relocated without canceling the outstanding receipt and issuing a new receipt showing the change;

(b) Such other terms and conditions as required by Article 7 of Title 62A RCW: PROVIDED, That nothing contained therein requires a receipt issued for wheat to specifically state the variety of wheat by name;

(c) A clause reserving for the warehouseman the optional right to terminate storage upon thirty days' written notice to the depositor and collect outstanding charges against any lot of commodities after June 30th following the date of the receipt.

(2) Warehouse receipts issued under the United States Warehouse Act (7 USCA § 241 et seq.) are deemed to fulfill the requirements of this chapter so far as it pertains to the issuance of warehouse receipts. [1989 c 354 § 46; 1983 c 305 § 43; 1979 ex.s. c 238 § 19; 1963 c 124 § 29.]

Severability—1989 c 354: See note following RCW 15.32.010.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.300 Warehouse receipts—Forms, numbering, printing, bond—Compliance with Article 7 of Title 62A RCW—Confiscation. (1) All warehouse receipts issued under this chapter shall be upon forms prescribed by the department and supplied only to licensed warehousemen at cost of printing, packing, and shipping, as determined by the department. They shall contain the state number of such license and shall be numbered serially for each state number and the original negotiable receipts shall bear the state seal. Requests for such receipts shall be on forms furnished by the department and shall be accompanied by payment to cover cost: PROVIDED, That the department by order may allow a warehouseman to have his individual warehouse receipts printed, after the form of the receipt is approved as in compliance with this chapter, and the warehouseman's printer shall supply an affidavit stating the amount of receipts printed, numbers thereof: PROVIDED FURTHER, That the warehouseman must supply a bond in an amount fixed by the department and not to exceed five thousand dollars to cover any loss resulting from the unlawful use of any such receipts.

(2) All warehouse receipts shall comply with the provisions of Article 7 of Title 62A RCW as enacted or hereafter amended, except as to the variety of wheat as set forth in RCW 22.09.290(1)(b) herein, and with the provisions of this chapter where not inconsistent or in conflict with Article 7 of Title 62A RCW. All receipts remaining unused shall be confiscated by the department if the license required herein is not promptly renewed or is suspended, revoked, or canceled. [1979 ex.s. c 238 § 20; 1963 c 124 § 30.]

22.09.310 Warehouse receipts—Dealing in unauthorized receipts prohibited—Penalty. Any person, or any agent or servant of that person, or any officer of a corporation who prints, binds, or delivers warehouse receipt forms,

except on an order or requisition signed by the director, or who uses such forms knowing that they were not so printed, bound, or delivered is guilty of a class C felony and is punishable as provided in chapter 9A.20 RCW. [1983 c 305 § 44; 1963 c 124 § 31.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.320 Warehouse receipts—Lost or destroyed receipts. In case any warehouse receipt issued by a licensee shall be lost or destroyed, the owner thereof shall be entitled to a duplicate receipt from the licensee upon executing and delivering to the warehouseman issuing such receipt, a bond in double the value of the commodity covered by such lost receipt, with good and sufficient surety to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and such duplicate receipt shall state that it is issued in lieu of the former receipt, giving the number and date thereof. [1963 c 124 § 32.]

22.09.330 Scale weight tickets not precluded. Nothing in this chapter may be construed to prevent the issuance of scale weight tickets showing when and what quantities of commodities were received and the condition thereof upon delivery. [1983 c 305 § 45; 1963 c 124 § 33.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.340 Examination of receipts and commodities—Request—Fee—Access to bins—Records and accounts—Out-of-state offices. (1) Upon the request of any person or persons having an interest in a commodity stored in any public warehouse and upon payment of fifty dollars in advance by the person or persons, the department may cause the warehouse to be inspected and shall check the outstanding negotiable and nonnegotiable warehouse receipts, and scale weight tickets that have not been superseded by negotiable or nonnegotiable warehouse receipts, with the commodities on hand and shall report the amount of receipts and scale weight tickets outstanding and the amount of storage, if any. If the cost of the examination is more than fifty dollars, the person or persons having an interest in the commodity stored in the warehouse and requesting the examination, shall pay the additional cost to the department, unless a shortage is found to exist.

(2) A warehouse shall be maintained in a manner that will provide a reasonable means of ingress and egress to the various storage bins and compartments by those persons authorized to make inspections, and an adequate facility to complete the inspections shall be provided.

(3) The property, books, records, accounts, papers, and proceedings of every such warehouseman shall at all reasonable times be subject to inspection by the department. The warehouseman shall maintain adequate records and systems for the filing and accounting of warehouse receipts, canceled warehouse receipts, scale weight tickets, other documents, and transactions necessary or common to the warehouse industry. Canceled warehouse receipts, copies of scale weight tickets, and other copies of documents evidencing ownership or ownership liability shall be retained by the warehouseman for a period of at least three years from the date of deposit.

(4) Any warehouseman whose principal office or headquarters is located outside the state of Washington shall make available, if requested, during ordinary business hours, at any of their warehouses licensed in the state of Washington, all books, documents, and records for inspection.

(5) Any grain dealer whose principal office or headquarters is located outside the state of Washington shall make available, if requested, all books, documents, and records for inspection during ordinary business hours at any facility located in the state of Washington, or if no facility in the state of Washington, then at a Washington state department of agriculture office or other mutually acceptable place. [1983 c 305 § 46; 1963 c 124 § 34.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.345 Inspections—Notice, when issued—Failure to comply, penalty—Court order—Costs, expenses, attorneys' fees. (1) The department may give written notice to the warehouseman or grain dealer to submit to inspection, and/or furnish required reports, documents, or other requested information, under such conditions and at such time as the department may deem necessary whenever a warehouseman or grain dealer fails to:

(a) Submit his books, papers, or property to lawful inspection or audit;

(b) Submit required reports or documents to the department by their due date; or

(c) Furnish the department with requested information, including but not limited to correction notices.

(2) If the warehouseman or grain dealer fails to comply with the terms of the notice within twenty-four hours from the date of its issuance, or within such further time as the department may allow, the department shall levy a fine of fifty dollars per day from the final date for compliance allowed by this section or the department. In those cases where the failure to comply continues for more than thirty days or where the director determines the failure to comply creates a threat of loss to depositors, the department may, in lieu of levying further fines petition the superior court of the county where the licensee's principal place of business in Washington is located, as shown by the license application, for an order:

(a) Authorizing the department to seize and take possession of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouseman's or grain dealer's business, and the books, papers, records, and property that pertain specifically, exclusively, and directly to that business; and

(b) Enjoining the warehouseman or grain dealer from interfering with the department in the discharge of its duties as required by this chapter.

(3) All necessary costs and expenses, including attorneys' fees, incurred by the department in carrying out the provisions of this section may be recovered at the same time and as part of the action filed under this section. [1987 c 393 § 20; 1983 c 305 § 47.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.350 Remedies of department on discovery of shortage. (1) Whenever it appears that there is evidence after any investigation that a warehouseman has a shortage,

the department may levy a fine of one hundred dollars per day until the warehouseman covers the shortage.

(2) In any case where the director determines the shortage creates a substantial or continuing threat of loss to the depositors of the warehouseman, the department may, in lieu of levying a fine or further fines, give notice to the warehouseman to comply with all or any of the following requirements:

(a) Cover the shortage;

(b) Give additional bond as requested by the department;

(c) Submit to such inspection as the department may deem necessary;

(d) Cease accepting further commodities from depositors or selling, encumbering, transporting, or otherwise changing possession, custody, or control of commodities owned by the warehouseman until there is no longer a shortage.

(3) If the warehouseman fails to comply with the terms of the notice provided for in subsection (2) of this section within twenty-four hours from the date of its issuance, or within such further time as the department may allow, the department may petition the superior court of the county where the licensee's principal place of business in Washington is located as shown by the license application, for an order:

(a) Authorizing the department to seize and take possession of all or a portion of special piles and special bins of commodities and all or a portion of commingled commodities in the warehouse or warehouses owned, operated, or controlled by the warehouseman, and of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouseman's warehouse business, and the books, papers, records, and property that pertain specifically, exclusively, and directly to that business; and

(b) Enjoining the warehouseman from interfering with the department in the discharge of its duties as required by this section. [1983 c 305 § 48; 1963 c 124 § 35.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.361 Seizure of commodities or warehouseman's records—Department duties—Warehouseman's remedies—Expenses and attorneys' fees. (1) Whenever the department, pursuant to court order, seizes and takes possession of all or a portion of special piles and special bins of commodities, all or a portion of commingled commodities in a warehouse owned, operated, or controlled by a warehouseman, or books, papers, and property of any kind used in connection with the conduct of a warehouseman's warehouse business, the department shall:

(a) Give written notice of its action to the surety on the bond of the warehouseman and may notify the holders of record, as shown by the warehouseman's records, of all warehouse receipts or scale weight tickets issued for commodities, to present their warehouse receipt or other evidence of deposits for inspection, or to account for the same. The department may thereupon cause an audit to be made of the affairs of the warehouse, especially with respect to the commodities in which there is an apparent shortage, to determine the amount of the shortage and compute the shortage as to each depositor as shown by the

warehouseman's records, if practicable. The department shall notify the warehouseman and the surety on his bond of the approximate amount of the shortage and notify each depositor thereby affected by sending notice to the depositor's last known address as shown by the records of the warehouseman.

(b) Retain possession of the commodities in the warehouse or warehouses, and of the books, papers, and property of the warehouseman, until the warehouseman or the surety on the bond has satisfied the claims of all holders of warehouse receipts or other evidence of deposits, or, in case the shortage exceeds the amount of the bond, the surety on the bond has satisfied the claims pro rata.

(2) At any time within ten days after the department takes possession of any commodities or the books, papers, and property of any warehouse, the warehouseman may serve notice upon the department to appear in the superior court of the county in which the warehouse is located, at a time to be fixed by the court, which shall not be less than five nor more than fifteen days from the date of the service of the notice, and show cause why such commodities, books, papers, and property should not be restored to his possession.

(3) All necessary expenses and attorneys' fees incurred by the department in carrying out the provisions of this section may be recovered in the same action or in a separate civil action brought by the department in the superior court.

(4) As a part of the expenses so incurred, the department is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this section. [1983 c 305 § 49.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.371 Depositor's lien. (1) When a depositor stores a commodity with a warehouseman or sells a commodity to a grain dealer, the depositor has a first priority statutory lien on the commodity or the proceeds therefrom or on commodities owned by the warehouseman or grain dealer if the depositor has written evidence of ownership disclosing a storage obligation or written evidence of sale. The lien arises at the time the title is transferred from the depositor to the warehouseman or grain dealer, or if the commodity is under a storage obligation, the lien arises at the commencement of the storage obligation. The lien terminates when the liability of the warehouseman or grain dealer to the depositor terminates or if the depositor sells his commodity to the warehouseman or grain dealer, then thirty days after the date title passes. If, however, the depositor is tendered payment by check or draft, then the lien shall not terminate until forty days after the date title passes.

(2) The lien created under this section shall be preferred to any lien or security interest in favor of any creditor of the warehouseman or grain dealer, regardless of whether the creditor's lien or security interest attached to the commodity or proceeds before or after the date on which the depositor's lien attached under subsection (1) of this section.

(3) A depositor who claims a lien under subsection (1) of this section need not file any notice of the lien in order to perfect the lien.

(4) The lien created by subsection (1) of this section is discharged, except as to the proceeds therefrom and except

as to commodities owned by the warehouseman or grain dealer, upon sale of the commodity by the warehouseman or grain dealer to a buyer in the ordinary course of business. [1987 c 393 § 21; 1983 c 305 § 50.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.381 Depositors' claims, processing by department. In the event of a failure of a grain dealer or warehouseman, the department may process the claims of depositors possessing written evidence of ownership disclosing a storage obligation or written evidence of a sale of commodities in the following manner:

(1) The department shall give notice and provide a reasonable time to depositors possessing written evidence of ownership disclosing a storage obligation or written evidence of sale of commodities to file their claims with the department.

(2) The department may investigate each claim and determine whether the claimant's commodities are under a storage obligation or whether a sale of the commodities has occurred. The department may, in writing, notify each claimant and the failed grain dealer or warehouseman of the department's determination as to the status and amount of each claimant's claim. A claimant, failed warehouseman, or grain dealer may request a hearing on the department's determination within twenty days of receipt of written notification, and a hearing shall be held in accordance with chapter 34.05 RCW.

(3) The department may inspect and audit the failed warehouseman to determine whether the warehouseman has in his possession sufficient quantities of commodities to cover his storage obligations. In the event of a shortage, the department shall determine each depositor's pro rata share of available commodities and the deficiency shall be considered as a claim of the depositor. Each type of commodity shall be treated separately for [the] purpose of determining shortages.

(4) The department shall determine the amount, if any, due each claimant by the surety and make demand upon the bond in the manner set forth in this chapter. [1983 c 305 § 51.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.391 Depositor's lien—Liquidation procedure. Upon the failure of a grain dealer or warehouseman, the statutory lien created in RCW 22.09.371 shall be liquidated by the department to satisfy the claims of depositors in the following manner:

(1) The department shall take possession of all commodities in the warehouse, including those owned by the warehouseman or grain dealer, and those that are under warehouse receipts or any written evidence of ownership that discloses a storage obligation by a failed warehouseman, including but not limited to scale weight tickets, settlement sheets, and ledger cards. These commodities shall be distributed or sold and the proceeds distributed to satisfy the outstanding warehouse receipts or other written evidences of ownership. If a shortage exists, the department shall distribute the commodities or the proceeds from the sale of the commodities on a prorated basis to the depositors. To the extent the commodities or the proceeds from their sale

are inadequate to satisfy the claims of depositors with evidence of storage obligations, the depositors have a first priority lien against any proceeds received from commodities sold while under a storage obligation or against any commodities owned by the failed warehouseman or grain dealer.

(2) Depositors possessing written evidence of the sale of a commodity to the failed warehouseman or grain dealer, including but not limited to scale weight tickets, settlement sheets, deferred price contracts, or similar commodity delivery contracts, who have completed delivery and passed title during a thirty-day period immediately before the failure of the failed warehouseman or grain dealer have a second priority lien against the commodity, the proceeds of the sale, or warehouse-owned or grain dealer-owned commodities. If the commodity, commodity proceeds, or warehouse-owned or grain dealer-owned commodities are insufficient to wholly satisfy the claim of depositors possessing written evidence of the sale of the commodity to the failed warehouseman or grain dealer, each depositor shall receive a pro rata share thereof.

(3) Upon the satisfaction of the claims of depositors qualifying for first or second priority treatment, all other depositors possessing written evidence of the sale of the commodity to the failed warehouseman or grain dealer have a third priority lien against the commodity, the proceeds of the sale, or warehouse-owned or grain dealer-owned commodities. If the commodities, commodity proceeds, or warehouse-owned or grain dealer-owned commodities are insufficient to wholly satisfy these claims, each depositor shall receive a pro rata share thereof.

(4) The director of agriculture may represent depositors whom, under RCW 22.09.381, the director has determined have claims against the failed warehouseman or failed grain dealer in any action brought to enjoin or otherwise contest the distributions made by the director under this section. [1987 c 393 § 22; 1983 c 305 § 52.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.405 Grain indemnity fund program—Activation—In lieu of other security. (1) The provisions of this section and RCW 22.09.416 through 22.09.471 constitute the grain indemnity fund program. RCW 22.09.416 through 22.09.471 shall take effect on a date specified by the director but within ninety days after receipt by the director of a petition seeking implementation of the grain indemnity fund program provided for in this chapter and a determination by the director, following a public hearing on said petition, that a grain indemnity fund program is in the interest of the agricultural industry of this state. The petition shall be signed by licensees of at least thirty-three percent of the grain warehouses and thirty-three percent of the grain dealers. At least sixty days in advance, the director shall notify each licensed warehouse and grain dealer of the effective date of the grain indemnity fund program provisions.

(2) The grain indemnity fund program, if activated by the director, shall be in lieu of the bonding and security provisions of RCW 22.09.090 and 22.09.095. [1987 c 509 § 7.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.411 Grain indemnity fund program—Fund established—Contents, deposits, disbursements, use. (1) There is hereby established a fund to be known as the grain indemnity fund. The grain indemnity fund shall consist of assessments remitted by licensees pursuant to the provisions of RCW 22.09.416 through 22.09.426.

(2) All assessments shall be paid to the department and shall be deposited in the grain indemnity fund. The state treasurer shall be the custodian of the grain indemnity fund. Disbursements shall be on authorization of the director. No appropriation is required for disbursements from this fund.

(3) The grain indemnity fund shall be used exclusively for purposes of paying claimants pursuant to this chapter, and paying necessary expenses of administering the grain indemnity fund, provided however, that moneys equivalent to one-half of the interest earned by the fund for deposit to the general fund may be paid to the department to defray costs of administering the warehouse audit program. The state of Washington shall not be liable for any claims presented against the fund. [1991 sp.s. c 13 § 67; 1987 c 509 § 8.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.416 Grain indemnity fund program—Assessments. (1) Every licensed warehouse and grain dealer and every applicant for any such license shall pay assessments to the department for deposit in the grain indemnity fund according to the provisions of RCW 22.09.405 through 22.09.471 and rules promulgated by the department to implement this chapter.

(2) The rate of the assessments shall be established by rule, provided however, that no single assessment against a licensed warehouse or grain dealer or applicant for any such license shall exceed five percent of the bond amount that would otherwise have been required of such grain dealer, warehouseman, or license applicant under RCW 22.09.090. [1987 c 509 § 9.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.421 Grain indemnity fund program—Initial assessment—Effect on preceding security—New applicants for warehouse or grain dealer licenses. (1) The department shall establish the initial assessment within sixty days of the activation of the grain indemnity fund program pursuant to RCW 22.09.405. Immediately upon promulgation of the rule, the department shall issue notice to each licensed warehouse and grain dealer of the assessment owed. The initial assessment and assessments issued thereafter shall be paid within thirty days of the date posted on the assessment notice.

(2) The surety bond or other security posted by a licensed warehouse or grain dealer in effect immediately preceding the effective date of the grain indemnity fund program, shall remain in full force and effect and shall not be released until thirty days after the initial assessment is paid. A certificate of deposit or other security in effect immediately preceding the effective date of the grain indemnity fund program shall remain on deposit until the initial assessment is paid and until such certificate of deposit

or other security is released by the department following a prompt determination that no outstanding claims are pending against the security.

(3) Each new applicant for a warehouse or grain dealer license shall pay the assessment imposed pursuant to RCW 22.09.416 at the time of application. No license to operate as a grain dealer or grain warehouse or both shall be issued until such assessment is paid.

Notwithstanding the provisions of RCW 22.09.416(2), new applicants shall pay annual assessments into the grain indemnity fund for an equivalent number of years as those participating at the inception of the grain indemnity fund program and who continue to participate in the grain indemnity fund program. [1987 c 509 § 10.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.426 Grain indemnity fund program—Annual assessments—Limitations. The assessments imposed pursuant to RCW 22.09.416 shall be imposed annually, under rules promulgated by the department, until such time as the grain indemnity fund balance, less any outstanding claims, reaches three million dollars. For any year in which the grain indemnity fund balance, less any outstanding claims, exceeds three million dollars on the annual assessment date, no assessment shall be imposed by the department, except as provided in RCW 22.09.421(3) or 22.09.431. [1987 c 509 § 11.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.431 Grain indemnity fund program—Additional security. The department may, when it has reason to believe that a licensee does not have the ability to pay producers for grain purchased, or when it determines that the licensee does not have a sufficient net worth to outstanding financial obligations ratio, require from the licensee the payment of an additional assessment or, at the department's option, the posting of a bond or other additional security in an amount to be prescribed by rule. The additional assessment or other security may exceed the maximum amount set forth in RCW 22.09.416. Failure of the licensee to timely pay the additional assessment or post the additional bond or other security constitutes grounds for suspension or revocation of a license issued under this chapter. [1987 c 509 § 12.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.436 Grain indemnity fund program—Advisory committee. (1) There is hereby created a grain indemnity fund advisory committee consisting of six members to be appointed by the director. The director shall make appointments to the committee no later than seven days following the date this section becomes effective pursuant to RCW 22.09.405. Of the initial appointments, three shall be for two-year terms and three shall be for three-year terms. Thereafter, appointments shall be for three-year terms, each term ending on the same day of the same month as did the term preceding it. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the predecessor's term.

(2) The committee shall be composed of two producers primarily engaged in the production of agricultural commodities, two licensed grain dealers, and two licensed grain warehousemen.

(3) The committee shall meet at such places and times as it shall determine and as often as necessary to discharge the duties imposed upon it. Each committee member shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel and subsistence expense under RCW 43.03.050 and 43.03.060. The expenses of the committee and its operation shall be paid from the grain indemnity fund.

(4) The committee shall have the power and duty to advise the director concerning assessments, administration of the grain indemnity fund, and payment of claims from the fund. [1987 c 509 § 13.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.441 Grain indemnity fund program—Processing of claims. In the event a grain dealer or warehouse fails, as defined in RCW 22.09.011(21), or otherwise fails to comply with the provisions of this chapter or rules promulgated hereunder, the department shall process the claims of depositors producing written evidence of ownership disclosing a storage obligation or written evidence of a sale of commodities for damages caused by the failure, in the following manner:

(1) The department shall give notice and provide a reasonable time, not to exceed thirty days, to depositors possessing written evidence of ownership disclosing a storage obligation or written evidence of sale of commodities to file their written verified claims with the department.

(2) The department may investigate each claim and determine whether the claimant's commodities are under a storage obligation or whether a sale of commodities has occurred. The department shall notify each claimant, the grain warehouseman or grain dealer, and the committee of the department's determination as to the validity and amount of each claimant's claim. A claimant, warehouseman, or grain dealer may request a hearing on the department's determination within twenty days of receipt of written notification and a hearing shall be held by the department pursuant to chapter 34.05 RCW. Upon determining the amount and validity of the claim, the director shall pay the claim from the grain indemnity fund.

(3) The department may inspect and audit a failed warehouseman, as defined by RCW 22.09.011(21) to determine whether the warehouseman has in his possession, sufficient quantities of commodities to cover his storage obligations. In the event of a shortage, the department shall determine each depositor's pro rata share of available commodities and the deficiency shall be considered as a claim of the depositor. Each type of commodity shall be treated separately for the purpose of determining shortages. [1987 c 509 § 14.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.446 Grain indemnity fund program—Failure to file claim in time. If a depositor or creditor, after notification, refuses or neglects to file in the office of the director his verified claim against a warehouseman or grain

dealer as requested by the director within thirty days from the date of the request, the director shall thereupon be relieved of responsibility for taking action with respect to such claim later asserted and no such claim shall be paid from the grain indemnity fund. [1987 c 509 § 15.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.451 Grain indemnity fund program—Payment limitations. Subject to the provisions of RCW 22.09.456 and 22.09.461 and to a maximum payment of seven hundred fifty thousand dollars on all claims against a single licensee, approved claims against a licensed warehouseman or licensed grain dealer shall be paid from the grain indemnity fund in the following amounts:

(1) Approved claims against a licensed warehouseman shall be paid in full;

(2) Approved claims against a licensed grain dealer for payments due within thirty days of transfer of title shall be paid in full for the first twenty-five thousand dollars of the claim. The amount of such a claim in excess of twenty-five thousand dollars shall be paid to the extent of eighty percent;

(3) Approved claims against a licensed grain dealer for payments due between thirty and ninety days of transfer of title shall be paid to the extent of eighty percent;

(4) Approved claims against a licensed grain dealer for payments due after ninety days from transfer of title shall be paid to the extent of seventy-five percent;

(5) In the event that approved claims against a single licensee exceed seven hundred fifty thousand dollars, recovery on those claims shall be prorated. [1987 c 509 § 16.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.456 Grain indemnity fund program—Additional payment limitations. In addition to the payment limitations imposed by RCW 22.09.451, payment of any claim approved before the grain indemnity fund first reaches a balance of one million two hundred fifty thousand dollars, shall be limited to the following amounts:

(1) For claims against a licensed grain warehouse, payment shall not exceed the lesser of seven hundred fifty thousand dollars or an amount equal to the licensee's total bushels of licensed storage space multiplied by the rate of eighteen cents.

(2) For claims against a licensed grain dealer, payment shall not exceed the lesser of seven hundred fifty thousand dollars or an amount equal to six percent of the gross purchases of the licensee during the licensee's immediately preceding fiscal year.

(3) The unpaid balance of any claim subject to this section shall be paid when the grain indemnity fund first reaches a balance of one million two hundred fifty thousand dollars, provided that the total paid on the claim shall not exceed the limits specified in RCW 22.09.451. [1987 c 509 § 17.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.461 Grain indemnity fund program—Payment of claims—Restrictions, priority. The requirement that the state of Washington pay claims under this chapter only exists so long as the grain indemnity fund

contains sufficient money to pay the claims. Under no circumstances whatsoever may any funds (other than assessment amounts and other money obtained under this chapter) be used to pay claims. In the event that the amount in the grain indemnity fund is insufficient to pay all approved claims in the amount provided for under RCW 22.09.451 or 22.09.456, the claims shall be paid in the order in which they were filed with the department, until such time as sufficient moneys are available in the grain indemnity fund to pay all of the claims. [1987 c 509 § 18.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.466 Grain indemnity fund program—Debt and obligation of grain dealer or warehouseman—Recovery by director. Amounts paid from the grain indemnity fund in satisfaction of any approved claim shall constitute a debt and obligation of the grain dealer or warehouseman against whom the claim was made. On behalf of the grain indemnity fund, the director may bring suit, file a claim, or intervene in any legal proceeding to recover from the grain dealer or warehouseman the amount of the payment made from the grain indemnity fund, together with costs and attorneys' fees incurred. In instances where the superior court is the appropriate forum for a recovery action, the director may elect to institute the action in the superior court of Thurston county. [1987 c 509 § 19.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.471 Grain indemnity fund program—Proceedings against licensee. The department may deny, suspend, or revoke the license of any grain dealer or warehouseman who fails to timely pay assessments to the grain indemnity fund or against whom a claim has been made, approved, and paid from the grain indemnity fund. Proceedings for the denial, suspension, or revocation shall be subject to the provisions of chapter 34.05 RCW. [1987 c 509 § 20.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.520 Deposits as bailments. Whenever any commodity shall be delivered to a warehouse under this chapter, and the scale ticket or warehouse receipt issued therefor provides for the return of a like amount of like kind, grade, and class to the holder thereof, such delivery shall be a bailment and not a sale of the commodity so delivered. In no case shall such commodities be liable to seizure upon process of any court in an action against such bailee, except action by the legal holder of the warehouse receipt to enforce the terms thereof. Such commodities, in the event of failure or insolvency of such bailee, shall be applied exclusively to the redemption of such outstanding warehouse receipts and scale weight tickets covering commodities so stored with such bailee. The commodities on hand in any warehouse or warehouses with a particular license, as provided in RCW 22.09.030, shall be applied to the redemption and satisfaction of warehouse receipts and scale weight tickets which were issued pursuant to the particular license. Commodities in special piles or special bins shall be applied exclusively against the warehouse receipts or scale weight tickets issued therefor. [1987 c 393 § 23; 1963 c 124 § 52.]

22.09.570 Action on bond by director—Authorized—Grounds. The director may bring action upon the bond of a warehouseman or grain dealer against both principal against whom a claim has been made and the surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter or the rules adopted hereunder. Recovery for damages against a warehouseman or grain dealer on a bond furnished under RCW 22.09.095 shall be limited to the bond amount that would be required for that warehouseman or grain dealer under RCW 22.09.090. [1987 c 509 § 5; 1983 c 305 § 56; 1975 1st ex.s. c 7 § 29.]

Severability—1987 c 509: See note following RCW 22.09.060.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.580 Action on bond by director—Failure of depositor creditor to file claim upon request—Effect. If a depositor creditor after notification fails, refuses, or neglects to file in the office of the director his verified claim against a warehouseman or grain dealer bond as requested by the director within thirty days from the date of the request, the director shall thereupon be relieved of further duty or action under this chapter on behalf of the depositor creditor. [1983 c 305 § 57; 1975 1st ex.s. c 7 § 30.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.590 Action on bond by director—Records as to depositor creditors missing or information incomplete—Effect. 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 the depositor creditors, the director after exerting due diligence and making reasonable inquiry to secure that information from all reasonable and available sources, may make demand on a warehouseman's or grain dealer's 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 that may subsequently appear or be discovered. [1983 c 305 § 58; 1975 1st ex.s. c 7 § 31.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.600 Action on bond by director—Powers of director. Upon ascertaining all claims and statements in the manner set forth in this chapter, the director may then make demand upon the warehouseman's or grain dealer's bond on behalf of those claimants whose claims and statements have been filed, and has the power to settle or compromise the 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. [1983 c 305 § 59; 1975 1st ex.s. c 7 § 32.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.610 Action on bond by director—When authorized—New bond, when required—Penalty for failure to file. Upon the refusal of the surety company to pay the demand, the director may thereupon bring an action on the warehouseman's or grain dealer's bond in behalf of the depositor creditors. Upon any action being commenced on the bond, the director may require the filing of a new

bond, and immediately upon the recovery in any action on the bond, a new bond shall be filed. The failure to file the new bond or otherwise satisfy the security requirements of this chapter within ten days in either case constitutes grounds for the suspension or revocation of the license of any principal on the bond. [1987 c 509 § 6; 1983 c 305 § 60; 1975 1st ex.s. c 7 § 33.]

Severability—1987 c 509: See note following RCW 22.09.060.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.615 Action by depositor upon licensee's bond. (1) If no action is commenced under RCW 22.09.570 within thirty days after written demand to the department, any depositor injured by the failure of a licensee to comply with the condition of his bond has a right of action upon the licensee's bond for the recovery of his damages. The depositor shall give the department immediate written notice of the commencement of any such action.

(2) Recovery under the bond shall be prorated when the claims exceed the liability under the bond.

(3) Whenever the claimed shortage exceeds the amount of the bond, it is not necessary for any depositor suing on the bond to join other depositors in the suit, and the burden of establishing proration is on the surety as a matter of defense. [1983 c 305 § 53; 1963 c 124 § 37. Formerly RCW 22.09.370.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.620 Payment for agricultural commodities purchased—Time requirements. Every warehouseman or grain dealer must pay for agricultural commodities purchased by him at the time and in the manner specified in the contract with the depositor, but if no time is set by the contract, then within thirty days after taking possession for purpose of sale or taking title of the agricultural product. [1983 c 305 § 62; 1975 1st ex.s. c 7 § 34.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.630 Payment violations—Recovery by department—Charges to depositors. When a violation has occurred which results in improper payment or nonpayment and a claim is made to the department and the payment is secured through the actions of the department the following charges will be made to the depositor for the action of the department in the matter:

(1) When reported within thirty days from time of default, no charge.

(2) When reported thirty days to one hundred eighty days from time of default, five percent.

(3) When reported after one hundred eighty days from time of default, ten percent. [1975 1st ex.s. c 7 § 35.]

22.09.640 Publication and distribution of list of licensed warehouses. Notwithstanding the provisions of chapter 42.17 RCW, the department shall publish annually and distribute to interested parties, a list of licensed warehouses showing the location, county, capacity, and bond coverage for each company. [1979 ex.s. c 238 § 25.]

22.09.650 Remedies of department as to stations.

When a station is licensed pursuant to this chapter, the department may assert any and all the remedies provided for in this chapter, including but not limited to those remedies provided for in RCW 22.09.350. Furthermore, if inspection of that portion of the station located in the contiguous state is refused by the licensee, the department may give notice to the licensee to submit to such inspection as the department may deem necessary.

If the station refuses to comply with the terms of the notice within twenty-four hours, the director may summarily suspend the station's license pending a hearing in compliance with chapter 34.05 RCW. [1983 c 305 § 63; 1979 ex.s. c 238 § 26.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.660 Emergency storage situation—

Forwarding to other warehouses. Upon determining that an emergency storage situation appears to exist, the director may authorize the warehouseman to forward grain that is covered by negotiable receipts to other licensed warehouses for storage without canceling and reissuing the negotiable receipts for not more than thirty days pursuant to conditions established by rule. [1983 c 305 § 64.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.710 Designation of inspection points and

terminal warehouses. The department may designate a warehouse located at an inspection point as a terminal warehouse. The department shall, by rule, designate inspection points which shall be provided with state/federal inspection and weighing services commencing July 1, 1979. The revenue from inspection and weighing shall equal the cost of providing such services. Where the department after hearing determines that such cities are no longer necessary as inspection points it may by rule change such designated inspection points by removing one or more locations. [1979 ex.s. c 238 § 21; 1963 c 124 § 38. Formerly RCW 22.09.380.]

22.09.720 Grades and standards of commodities—

Regulations. The grades and standards established by the United States department of agriculture as of September 30, 1988, for all commodities included within the provisions of this chapter are hereby adopted as the grades and standards for such commodities in this state: PROVIDED, That the department is hereby authorized to adopt by regulation any new or future amendments to such federal grades and standards. The department is also authorized to issue regulations whether or not in accordance with the federal government and to prescribe therein grades and standards which it may deem suitable for inspection of commodities in the state of Washington. In adopting any new or amendatory regulations the department shall give appropriate consideration, among other relevant factors, to the following:

- (1) The usefulness of uniform federal and state grades;
- (2) The common classifications given such commodities within the industry;
- (3) The utility of various grades;
- (4) The kind and type of grades requested by those dealing with the particular type of commodity; and

(5) The condition of the commodity with regard to its wholesomeness and purity. [1989 c 354 § 47; 1963 c 124 § 39. Formerly RCW 22.09.390.]

Severability—1989 c 354: See note following RCW 15.32.010.

22.09.730 Inspection or grading of commodities—

Methods. Inspection or grading of a lot, partial lot, or sample of a commodity tendered for inspection or grading under this chapter shall consist of taking and examining a representative sample thereof and making such tests as are necessary to determine its grade, condition, or other qualitative measurement. Commodities tendered for inspection must be offered and made accessible for sampling at inspection points during customary business hours.

(1) No inspector shall issue a certificate of grade, grading factors, condition, or other qualitative measurement for any commodity unless the inspection or grading thereof be based upon a correct and representative sample of the commodity and the inspection is made under conditions which permit the determination of its true grade or quality, except as provided in subsections (2) and (3) of this section. No sample shall be deemed to be representative unless it is of the size and procured in accordance with the uniform methods prescribed by the department.

(2) An inspection may be made of a submitted sample of a commodity, provided that the certificate issued in such case clearly shows that the inspection or grading covers only the submitted sample of such commodity and not the lot from which it is purportedly drawn.

(3) When commodities are tendered for inspection in such a manner as to make the drawing of a representative sample impossible, a qualified inspection may be made. In such case, the certificate shall clearly show the condition preventing proper sampling such as heavily loaded car, truck, barge, or other container, or other condition. [1989 c 354 § 48; 1963 c 124 § 40. Formerly RCW 22.09.400.]

Severability—1989 c 354: See note following RCW 15.32.010.

22.09.740 Inspection or grading of commodities—

File samples, retention. From all commodities inspected, samples may be drawn, which samples, unless returned by agreement to the applicant, shall become the property of the state and subject to disposition by the department. Upon request the department may transmit a portion of such samples to interested parties upon payment of a reasonable fee set by regulation. Official state file samples shall be retained for periods prescribed by state or federal regulation. [1989 c 354 § 49; 1963 c 124 § 41. Formerly RCW 22.09.410.]

Severability—1989 c 354: See note following RCW 15.32.010.

22.09.750 Inspection or grading of commodities—

Powers and duties of inspectors at terminal warehouses—Recordkeeping. The department's inspectors shall, at terminal warehouses, have exclusive control of the weighing, inspecting, and grading of the commodities that are included within the provisions of this chapter: PROVIDED, That official supervision of weighing under the United States grain standards act shall be deemed in compliance with this section. The action and the certificates of the inspectors in the discharge of their duties, as to all commodities inspected

or weighed by them, shall be accepted as prima facie evidence of the correctness of the above activity. Suitable books and records shall be maintained in which shall be entered a record of each inspection activity and the fees assessed and collected. These books and records shall be available for inspection by any party of interest during customary business hours. The records shall be maintained for periods set by regulation. [1989 c 354 § 50; 1983 c 305 § 54; 1963 c 124 § 42. Formerly RCW 22.09.420.]

Severability—1989 c 354: See note following RCW 15.32.010.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.760 Inspection or grading of commodities—No inspection if commodity is to be loaded into defective container. No inspection shall be made of any commodity which is to be loaded into a vessel, vehicle, or other container, if it appears that the hold, compartment, or other enclosure into which the commodity is to be loaded is in such condition as to contaminate the commodity or lower the grade. [1963 c 124 § 43. Formerly RCW 22.09.430.]

22.09.770 Inspection or grading of commodities—Unlawful practices—Penalty. Any department employee who shall, directly or indirectly, accept any money or other consideration for any neglect of duty or any improper performance of duty as such department employee; or any person who shall knowingly cause or attempt to cause the issuance of a false or incorrect grade or weight certificate under this chapter by deceptive loading, handling, or sampling of commodities or by submitting commodities for inspection knowing that it has been so loaded, handled, or sampled, or by any other means; shall be deemed guilty of a misdemeanor. [1963 c 124 § 44. Formerly RCW 22.09.440.]

22.09.780 Inspection or grading of commodities. (1) In case any owner, consignee, or shipper of any commodity included under the provisions of this chapter, or his agent or broker, or any warehouseman shall be aggrieved at the grading of such commodity, the person may request a reinspection or appeal inspection within three business days from the date of certificate. The reinspection or appeal may be based in the official file sample or upon a new sample drawn from the lot of the grain or commodity if the lot remains intact and available for sampling. The reinspection or appeal inspection shall be of the same factors and scope as the original inspection.

(2) For commodities inspected under federal standards, the reinspection and appeal inspection procedure provided in the applicable federal regulations shall apply. For commodities inspected under state standards, the department shall provide a minimum of a reinspection and appeal inspection service. The reinspection shall consist of a full review of all relevant information and a reexamination of the commodity to determine the correctness of the grade assigned or other determination. The reinspection shall be performed by an authorized inspector of the department other than the inspector who performed the original inspection unless no other inspector is available. An appeal inspection shall be performed by a supervisory inspector.

(3) If the grading of any commodity for which federal standards have been fixed and the same adopted as official state standards has not been the subject of a hearing, in accordance with subsection (2) of this section, any interested party who is aggrieved with the grading of such commodity, may, with the approval of the secretary of the United States department of agriculture, appeal to the federal grain supervisor of the supervision district in which the state of Washington may be located. Such federal grain supervisor shall confer with the department inspectors and any other interested party and shall make such tests as he may deem necessary to determine the correct grade of the commodity in question. Such federal grade certificate shall be prima facie evidence of the correct grade of the commodity in any court in the state of Washington. [1989 c 354 § 51; 1963 c 124 § 45. Formerly RCW 22.09.450.]

Severability—1989 c 354: See note following RCW 15.32.010.

22.09.790 Inspection or grading of commodities—Fees and charges. (1) The department shall fix the fees for inspection, grading, and weighing of the commodities included under the provisions of this chapter, which fees shall be sufficient to cover the cost of such service. The fees for inspection, weighing, and grading of such commodities shall be a lien upon the commodity so weighed, graded, or inspected which the department may require to be paid by the carrier or agent transporting the same and treated by it as an advanced charge, except when the bill of lading contains the notation "not for terminal weight and grade," and the commodity is not unloaded at a terminal warehouse.

(2) The department is authorized to make any tests relating to grade or quality of commodities covered by this chapter. The department may inspect and approve facilities and vessels to be used in transporting such commodities and provide any other necessary services. It may fix and charge a reasonable fee to be collected from the person or his agent requesting such service.

(3) The department shall so adjust the fees to be collected under this chapter as to meet the expenses necessary to carry out the provisions hereof, and may prescribe a different scale of fees for different localities. The department may also prescribe a reasonable charge for service performed at places other than terminal warehouses in addition to the regular fees when necessary to avoid rendering the services at a loss to the state. [1963 c 124 § 46. Formerly RCW 22.09.460.]

22.09.800 Inspection or grading of commodities—Scales and weighing. If any terminal warehouse at inspection points is provided with proper scales and weighing facilities, the department may weigh the commodity upon the scales so provided. The department at least once each year shall cause to be examined, tested, and corrected, all scales used in weighing commodities in any of the cities designated as inspection points in this chapter or such places as may be hereinafter designated, and after such scale is tested, if found to be correct and in good condition, to seal the weights with a seal provided for that purpose and issue to the owner or proprietor a certificate authorizing the use of such scales for weighing commodities for the ensuing year, unless sooner revoked by the department. If such scales be found to be

inaccurate or unfit for use, the department shall notify the party operating or using them, and the party thus notified shall, at his own expense, thoroughly repair the same before attempting to use them and until thus repaired or modified to the satisfaction of the department the certificate of such party shall be suspended or revoked at the discretion of the department. The party receiving such certificate shall pay to the department a reasonable fee for such inspection and certificate to be fixed by the department. It shall be the duty of the department to see that the provisions of this section are strictly enforced. [1963 c 124 § 47. Formerly RCW 22.09.470.]

22.09.810 Inspection or grading of commodities—Inspection of commodities shipped to or from places other than inspection points. In case any commodity under the provisions of this chapter is sold for delivery on Washington grade to be shipped to or from places not provided with state inspection under this chapter, the buyer, seller, or persons making delivery may have it inspected by notifying the department or its inspectors, whose duty it shall be to have such commodity inspected, and after it is inspected, to issue to the buyer, seller, or person delivering it, without undue delay, a certificate showing the grade of such commodity. The person or persons, or his agent, calling for such inspection shall pay for such inspection a reasonable fee to be fixed by the department. [1963 c 124 § 48. Formerly RCW 22.09.480.]

22.09.820 Inspection or grading of commodities—Unloading commodity without inspection or weighing. When commodities are shipped to points where inspection is provided and the bill of lading does not contain the notation "not for terminal weight and grade" and the commodity is unloaded by or on account of the consignee or his assignee without being inspected or weighed by a duly authorized inspector under the provisions of this chapter, the shipper's weight and grade shall be conclusive and final and shall be the weight and grade upon which settlement shall be made with the seller, and the consignee or his assignee, by whom such commodities are so unlawfully unloaded shall be liable to the seller thereof for liquidated damages in an amount equal to ten percent of the sale price of such commodities computed on the basis of the shipper's weight and grade. [1963 c 124 § 49. Formerly RCW 22.09.490.]

22.09.830 Disposition of revenue. (1) All moneys collected as warehouse license fees, fees for weighing, grading, and inspecting commodities and all other fees collected under the provisions of this chapter, except as provided in subsection (2) of this section, shall be deposited in the grain inspection revolving fund, which is hereby established. The state treasurer is the custodian of the revolving fund. Disbursements from the revolving fund shall be on authorization of the director of the department of agriculture. The revolving fund is subject to the allotment procedure provided in chapter 43.88 RCW, but no appropriation is required for disbursements from the fund. The fund shall be used for all expenses directly incurred by the commodity inspection division in carrying out the provisions of this chapter. The department may use so much of such

fund not exceeding five percent thereof as the director of agriculture may determine necessary for research and promotional work, including rate studies, relating to wheat and wheat products.

(2) All fees collected for the inspection, grading, and testing of hops shall be deposited into the hop inspection fund, which is hereby established, and shall be retained by the department for the purpose of inspecting, grading, and testing hops. Any moneys in any fund retained by the department on July 1, 1963, and derived from hop inspection and grading shall be deposited to this hop inspection fund. For the purposes of research which would contribute to the development of superior hop varieties and to improve hop production and harvest practices, the department may expend up to twenty percent of the moneys deposited in the hop inspection fund during the fiscal year ending June 30th immediately preceding the year in which such expenditures are to be made. No expenditures shall be made under the provisions of this subsection when the hop inspection fund is, or the director may reasonably anticipate that it will be, reduced below twenty thousand dollars as the result of such expenditure or other necessary expenditures made to carry out the inspection, grading, and testing of hops. [1989 c 354 § 52; 1981 c 297 § 25; 1963 c 124 § 50. Formerly RCW 22.09.500.]

Severability—1989 c 354: See note following RCW 15.32.010.

Severability—1981 c 297: See note following RCW 15.36.110.

22.09.840 Fumigated conveyances to be labeled. It shall be unlawful to ship commodities in closed conveyances which have been fumigated without labeling such railroad car, vehicle, or other conveyance to show that it has been fumigated. The label shall show the type of fumigant used and the date of application. [1963 c 124 § 53. Formerly RCW 22.09.530.]

22.09.850 Railroads to provide side tracks and track scales—Weighing of cars. Any railroad delivering commodities covered by this chapter in cars at designated inspection points shall provide convenient and suitable side tracks at such places as the department may approve. All cars billed for inspection shall be placed on such side tracks and the department shall be notified by the railroad in accordance with department regulations. Such railroad company shall provide suitable track scales for weighing cars of commodities upon the request of interested persons. Upon request, the department may weigh, or supervise the weighing of all cars of commodities received over the line of such railroad. Such weighing shall be conditioned upon the weighing of such cars after unloading to determine the actual weight of commodities delivered. [1963 c 124 § 28. Formerly RCW 22.09.280.]

22.09.860 Police protection of terminal yards and tracks. All railroad companies and warehousemen operating in the cities provided for inspection by this chapter shall furnish ample and sufficient police protection to all their several terminal yards and terminal tracks to securely protect all cars containing commodities while the same are in their possession. They shall prohibit and restrain all unauthorized persons, whether under the guise of sweepers, or under any

other pretext whatever, from entering or loitering in or about their railroad yards or tracks and from entering any car of commodities under their control, or removing commodities therefrom, and shall employ and detail such number of watchmen as may be necessary for the purpose of carrying out the provisions of this section. [1963 c 124 § 27. Formerly RCW 22.09.270.]

22.09.870 Injunctions. The director may bring an action in the name of the state to temporarily and/or permanently 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 any other remedy at law. [1963 c 124 § 54. Formerly RCW 22.09.540.]

22.09.880 Cooperation with governmental agencies and private associations. 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 and the United States Warehouse Act (7 USCA § 241 et seq.) and the United States Grain Standards Act, as amended (7 USCA § 71, et seq.). Notwithstanding any other provision of this chapter such agreements may also relate to a joint program for licensing, bonding, and inspecting stations. Such a program should be designed to avoid duplication of effort on the part of the licensing authority and requirements for operation, and promote more efficient enforcement of the provisions of this chapter and comparable provisions of the law of the states of Idaho or Oregon. [1983 c 305 § 55; 1979 ex.s. c 238 § 22; 1963 c 124 § 55. Formerly RCW 22.09.550.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.890 General penalty. A violation of any provision or section of this chapter, where no other penalty is provided for, and the violation of any rule or regulation adopted hereunder shall constitute a misdemeanor. [1963 c 124 § 58. Formerly RCW 22.09.560.]

22.09.895 Civil penalty. 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 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 393 § 24.]

22.09.900 Continuation of rules adopted pursuant to repealed chapter. The repeal of chapter 22.08 RCW and the enactment of this chapter shall not be deemed to have repealed any rules adopted under the provisions of chapter 22.08 RCW 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. [1963 c 124 § 56.]

22.09.910 Savings—1963 c 124. 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, 1963. [1963 c 124 § 57.]

22.09.920 Construction as to Article 7 of Title 62A RCW. Nothing in this chapter, with the exception of RCW 22.09.290(1)(b), shall be deemed to repeal, amend, or modify Article 7 of Title 62A RCW. [1979 ex.s. c 238 § 23; 1963 c 124 § 59.]

22.09.930 Effective date—1963 c 124. The effective date of this chapter shall be July 1, 1963. [1963 c 124 § 60.]

22.09.940 Severability—1963 c 124. If any section, sentence, clause, or part of this chapter is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this chapter. The legislature hereby declares that it would have passed this chapter and each section, sentence, clause, and part thereof despite the fact that one or more sections, clauses, sentences, or parts thereof be declared unconstitutional. [1963 c 124 § 61.]

22.09.941 Severability—1979 ex.s. c 238. See note following RCW 15.44.010.

Chapter 22.16

WAREHOUSES AND ELEVATORS—EMINENT DOMAIN

Sections

- 22.16.010 Right of eminent domain extended.
- 22.16.020 Right of entry.
- 22.16.030 Extent of appropriation.
- 22.16.040 Limitations on right—Finding of public necessity.

Reviser's note: The term "director of the department of agriculture" has been substituted for "public service commission" in this chapter since the powers and duties of the commission devolved upon the director of agriculture by virtue of 1921 c 7 § 90, 1921 c 137 §§ 1, 2, 1921 c 145 § 8, and 1937 c 90 § 10.

22.16.010 Right of eminent domain extended. The right of eminent domain is hereby extended to corporations incorporated or that may hereafter be incorporated under the laws of this state, or of any other state or territory and qualified to transact business in this state for the purpose of acquiring, owning or operating public warehouses or elevators for storing and handling grain, produce and other agricultural commodities which may desire to secure warehouse or elevator sites or rights of way for roadways leading to and from the same or for wharves or boat landings on navigable waters and all other purposes incident to and connected with the business conducted by such warehouse or elevator. [1919 c 98 § 1; RRS § 11566.]

22.16.020 Right of entry. Every corporation incorporated or that may hereafter be incorporated under the laws of this state or of any other state or territory, and qualified to transact business in this state for the purpose of acquiring, owning or operating public warehouses or elevators for storing and handling grain, produce and other agricultural commodities which may desire to erect and operate any such public warehouse or elevator, or to erect and operate tramways or cable tramways for the purpose of carrying, conveying or transporting such grain, produce or commodities to or from such warehouse or elevator or to acquire rights of way for roadways to and from such warehouse or elevator or to acquire boat landing or wharving facilities in connection with such warehouse or elevator shall have the right to enter upon any lands proposed to be used for any such purpose for the purpose of examining, locating and surveying the lines and boundaries thereof, doing no unnecessary damage thereby. [1919 c 98 § 2; RRS § 11567.]

22.16.030 Extent of appropriation. Every such corporation shall have the right to appropriate real estate and other property for any or all of the said purposes and under the same procedure as now is or may be hereafter provided by law, in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain. [1919 c 98 § 3; RRS § 11568.]

22.16.040 Limitations on right—Finding of public necessity. The right hereby granted shall not be exercised within the limits of any regularly organized port district, nor against the right of way of any railroad company within the yard limits thereof, nor unless and until the director of the department of agriculture after a full hearing shall have determined that existing facilities are inadequate and that a public necessity exists for the construction of additional facilities and shall specify what additional facilities are necessary and shall have further determined that the facilities contemplated to be established will be a public benefit. Such hearing shall be initiated and conducted in accordance with the statutes, rules and regulations relating to public hearings before the director. [1919 c 98 § 4; RRS § 11569.]

Chapter 22.28

SAFE DEPOSIT COMPANIES

Sections

- 22.28.010 Definitions.
- 22.28.020 Safe deposit company a warehouseman.
- 22.28.030 Exercise of due care required.
- 22.28.040 Procedure when rent is unpaid.
- 22.28.060 Destruction of paper contents—Other remedies available.

Disposition of unclaimed property in safe deposit box: RCW 63.29.160.

Financial institutions as bailee: RCW 30.08.140, 32.08.140, 33.12.010.

Trust receipts: Articles 62A.1, 62A.9 RCW.

22.28.010 Definitions. The term safe deposit company as used in RCW 22.28.010 through 22.28.060 shall be construed to extend to and include all banks, trust companies and other corporations organized under the laws of the state of Washington or of the United States of America, and doing business in the state of Washington; which are empowered

by law to let vaults, safes or other receptacles upon the premises occupied by such bank, trust company or corporation. [1923 c 186 § 1; RRS § 3382.]

22.28.020 Safe deposit company a warehouseman. Whenever any safe deposit company shall take or receive as bailee for hire and for safekeeping or storage any jewelry, plate, money, specie, bullion, stocks, bonds, mortgages, securities, or valuable paper of any kind, or other valuable personal property, and shall have issued a receipt therefor, it shall be deemed to be a warehouseman as to such property and the provisions of Article 7 of the Uniform Commercial Code, Title 62A RCW, shall apply to such deposit, or to the proceeds thereof, to the same extent and with the same effect, and be enforceable in the same manner as is now provided with reference to warehousemen in said act. [1983 c 3 § 26; 1923 c 186 § 2; RRS § 3383.]

22.28.030 Exercise of due care required. Whenever any safe deposit company shall let or lease any vault, safe, box or other receptacle for the keeping or storage of personal property such safe deposit company shall be bound to exercise due care to prevent the opening of such vault, safe, box or receptacle by any person other than the lessee thereof, or his or her duly authorized agent, and said parties may provide in writing the terms, conditions and liabilities in said lease. [1923 c 186 § 3; RRS § 3384.]

22.28.040 Procedure when rent is unpaid. If the amount due for the rental of any safe or box in the vaults of any safe deposit company shall not have been paid for one year, it may, at the expiration thereof, send to the person in whose name such safe or box stands on its books a notice in writing in securely closed, postpaid and certified mail, return receipt requested, directed to such person at his post office address, as recorded upon the books of the safe deposit company, notifying such person that if the amount due for the rental of such safe or box is not paid within thirty days from date, the safe deposit company will then cause such safe or box to be opened, and the contents thereof to be inventoried, sealed, and placed in one of its general safes or boxes.

Upon the expiration of thirty days from the date of mailing such notice, and the failure of the person in whose name the safe or box stands on the books of the company to pay the amount due for the rental thereof to the date of notice, the corporation may, in the presence of two officers of the corporation, cause such safe or box to be opened, and the contents thereof, if any, to be removed, inventoried and sealed in a package, upon which the officers shall distinctly mark the name of the person in whose name the safe or box stood on the books of the company, and the date of removal of the property, and when such package has been so marked for identification by the officers, it shall be placed in one of the general safes or boxes of the company at a rental not to exceed the original rental of the safe or box which was opened, and shall remain in such general safe or box for a period of not less than one year, unless sooner removed by the owner thereof, and two officers of the corporation shall thereupon file with the company a certificate which shall fully set out the date of the opening of such safe or box, the

name of the person in whose name it stood and a reasonable description of the contents, if any.

A copy of such certificate shall within ten days thereafter be mailed to the person in whose name the safe or box so opened stood on the books of the company, at his last known post office address, in securely closed, postpaid and certified mail, return receipt requested, together with a notice that the contents will be kept, at the expense of such person, in a general safe or box in the vaults of the company, for a period of not less than one year. At any time after the mailing of such certificate and notice, and before the expiration of one year, such person may require the delivery of the contents of the safe as shown by said certificate, upon the payment of all rentals due at the time of opening of the safe or box, the cost of opening the box, and the payment of all further charges accrued during the period the contents remained in the general safe or box of the company.

The company may sell all the property or articles of value set out in said certificate, at public auction, provided a notice of the time and place of sale has been published once within ten days prior to the sale in a newspaper published in the county where the contents of the safe or box [is] located and where the holder chooses to conduct the sale. If the holder chooses not to sell the contents at public sale, the contents shall be delivered to the department of revenue as unclaimed property.

From the proceeds of the sale, the company shall deduct amounts which shall then be due for rental up to the time of opening the safe, the cost of opening thereof, and the further cost of safekeeping all of its contents for the period since the safe or box was opened, plus any additional charges accruing to the time of sale, including advertising and cost of sale. The balance, if any, of such proceeds, together with any unsold property, shall be deposited by the company within thirty days after the receipt of the same, with the department of revenue as unclaimed property. The company shall file with such deposit a certificate stating the name and last known place of residence of the owner of the property sold, the articles sold, the price obtained therefor, and showing that the notices herein required were duly mailed and that the sale was advertised as required herein. [1983 c 289 § 1; 1923 c 186 § 4; RRS § 3385. Formerly RCW 22.08.050, 22.28.040.]

22.28.060 Destruction of paper contents—Other remedies available. Whenever the contents of any such safe or box, so opened, shall consist either wholly or in part, of documents or letters or other papers of a private nature, such documents, letters, or papers shall not be sold, but shall be deposited with the department of revenue as unclaimed property unless sooner claimed by the owner. The department may hold or destroy documents or letters or other papers, and the holder shall not be held liable to any person or persons whatsoever for the destruction of papers or other contents which the department declines to accept.

The provision of this section shall not preclude any other remedy by action or otherwise now existing for the enforcement of the claims of a corporation against the person in whose name such safe or box stood, nor bar the right of a safe deposit company to recover so much of the debt due it as shall not be paid by the proceeds of the sale of the

property deposited with it. The sale or disposition of property in accordance with this chapter shall discharge the holder of all liability to the owner for such sale or disposition, irrespective of whether a better price could have been obtained by a sale at a different time or in a different method from that selected by the holder. [1983 c 289 § 2; 1923 c 186 § 5; RRS § 3386. Formerly RCW 22.28.060, 22.28.070.]

Chapter 22.32

GENERAL PENALTIES

Sections

22.32.010	Warehouseman or carrier refusing to issue receipt.
22.32.020	Fictitious bill of lading and receipt.
22.32.030	Fraudulent tampering with or mixing goods.
22.32.040	Issuance of second receipt not marked "duplicate."
22.32.050	Delivery of goods without taking up receipt.

Crimes relating to corporations: Chapter 9.24 RCW.

Warehouse receipts, bills of lading, and other documents of title—Uniform commercial code: Article 62A.7 RCW.

22.32.010 Warehouseman or carrier refusing to issue receipt. Every person or corporation, and every officer, agent and employee thereof, receiving any goods, wares or merchandise, for sale or on commission, for storage, carriage or forwarding, who, having an opportunity to inspect the same, shall fail or refuse to deliver to the owner thereof a receipt duly signed, bearing the date of issuance, describing the goods, wares or merchandise received and the quantity, quality and condition thereof, and specifying the terms and conditions upon which they are received, shall be guilty of a misdemeanor. [1909 c 249 § 391; RRS § 2643.]

22.32.020 Fictitious bill of lading and receipt. Every person or corporation engaged wholly or in part in the business of a common carrier or warehouseman, and every officer, agent or employee thereof, who shall issue any bill of lading, receipt or other voucher by which it shall appear that any goods, wares or merchandise have been received by such carrier or warehouseman, unless the same have been so received and shall be at the time actually under his control, or who shall issue any bill of lading, receipt or voucher containing any false statement concerning any material matter, shall be guilty of a gross misdemeanor. But no person shall be convicted under this section for the reason that the contents of any barrel, box, case, cask or other closed vessel or package mentioned in the bill of lading, receipt or voucher did not correspond with the description thereof in such instrument, if such description corresponds substantially with the mark on the outside of such barrel, box, case, cask, vessel or package, unless it appears that the defendant knew that such marks were untrue. [1909 c 249 § 392; RRS § 2644. Prior: 1891 c 69 § 7; Code 1881 § 836; 1873 p 193 § 62; 1854 p 85 § 56.]

22.32.030 Fraudulent tampering with or mixing goods. Every person mentioned in RCW 22.32.020, who shall fraudulently mix or tamper with any goods, wares or

merchandise under his control, shall be guilty of a gross misdemeanor. [1909 c 249 § 393; RRS § 2645.]

Reviser's note: Caption for 1909 c 249 § 393 reads as follows: "SEC. 393. WAREHOUSEMAN FRAUDULENTLY MIXING GOODS."

22.32.040 Issuance of second receipt not marked "duplicate." Every person mentioned in RCW 22.32.020, who shall issue any second or duplicate receipt or voucher of the kind specified in said section, while a former receipt or voucher for the goods, wares or merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "Duplicate," in a plain and legible manner, shall be guilty of a misdemeanor. [1909 c 249 § 394; RRS § 2646.]

Reviser's note: Caption for 1909 c 249 § 394 reads as follows: "SEC. 394. DUPLICATE RECEIPT."

22.32.050 Delivery of goods without taking up receipt. Each person mentioned in RCW 22.32.020 who shall deliver to another any goods, wares or merchandise for which a bill of lading, receipt or voucher has been issued, unless such bill of lading, receipt or voucher is surrendered and canceled or a lawful and sufficient bond or undertaking is given therefor at the time of such delivery, or unless, in case of a partial delivery, a memorandum thereof is endorsed upon such bill of lading, receipt or voucher, shall be guilty of a misdemeanor. [1909 c 249 § 395; RRS § 2647.]

Reviser's note: Caption for 1909 c 249 § 395 reads as follows: "SEC. 395. BILL OF LADING OR RECEIPT MUST BE CANCELED ON REDELIVERY OF PROPERTY."

Title 23

CORPORATIONS AND ASSOCIATIONS (PROFIT)

(Business Corporation Act: See Title 23B RCW)

Chapters

23.72 Miscellaneous—Preferences by insolvent corporations.

23.78 Employee cooperative corporations.

23.86 Cooperative associations.

23.90 Massachusetts trusts.

Reviser's note: See Title 23B RCW for the Washington Business Corporation Act.

Acknowledgment form, corporations: RCW 64.08.070.

Acquisition of corporate stock by another corporation to lessen competition declared unlawful—Exceptions—Judicial order to divest: RCW 19.86.060.

Actions by and against public corporations: RCW 4.08.110, 4.08.120.

Constitutional provisions, generally: State Constitution Art. 12.

Consumer loan act: Chapter 31.04 RCW.

Corporations for educational, social, religious, fraternal, etc., purposes: Title 24 RCW.

Crimes relating to corporations: Chapter 9.24 RCW.

Criminal procedure: RCW 10.01.070 through 10.01.100.

Dentistry, practice or solicitation prohibited: RCW 18.32.675.

Doing business without license, gross misdemeanor: RCW 9.24.040.

Eminent domain by corporations: Chapter 8.20 RCW.

Legal services, advertising of, penalty: RCW 30.04.260.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

Partnerships: Title 25 RCW.

"Person" defined: RCW 1.16.080.

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Secretary of state, duties: Chapter 43.07 RCW.

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Chapter 23.72

MISCELLANEOUS—PREFERENCES BY INSOLVENT CORPORATIONS

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23.72.010	Definitions.
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23.72.030	Preference voidable, when—Recovery.
23.72.040	Mutual debts and credits.
23.72.050	Attorney's fees—Reexamination.
23.72.060	Setoffs and counterclaims.

23.72.010 Definitions. Words and terms used in this chapter shall be defined as follows:

(1) "Receiver" means any receiver, trustee, common law assignee, or other liquidating officer of an insolvent corporation;

(2) "Date of application" means the date of filing with the clerk of the court of the petition or other application for the appointment of a receiver, pursuant to which application such appointment is made; or in case the appointment of a receiver is lawfully made without court proceedings, it means the date on which the receiver is designated, elected or otherwise authorized to act as such;

(3) "Preference" means a judgment procured or suffered against itself by an insolvent corporation or a transfer of any of the property of such corporation, the effect of the enforcement of which judgment or transfer at the time it was procured, suffered, or made, would be to enable any one of the creditors of such corporation to obtain a greater percentage of his debt than any other creditor of the same class;

(4) "Insolvent" means, for the purposes of this chapter, a condition whereby the aggregate of a corporation's property, exclusive of any property which it may have conveyed, transferred, concealed, removed or permitted to be concealed or removed, with intent to defraud, hinder, or delay its creditors, shall not at a fair valuation be sufficient in amount to pay its debts. [1959 c 219 § 1; 1941 c 103 § 1; Rem. Supp. 1941 § 5831-4. Formerly RCW 23.48.010.]

23.72.020 Action to recover—Limitation. If not otherwise limited by law, actions in the courts of this state by a receiver to recover preferences may be commenced at any time within but not after six months, from the date of application for the appointment of such receiver. [1941 c 103 § 2; Rem. Supp. 1941 § 5831-5. Formerly RCW 23.48.020.]

23.72.030 Preference voidable, when—Recovery. Any preference made or suffered within four months before the date of application for the appointment of a receiver may be avoided and the property or its value recovered by such receiver, if the person receiving the preference or to be benefited thereby or his agent acting therein shall then have reasonable cause to believe that the debtor corporation is insolvent. No preference made or suffered prior to such four months' period may be recovered, and all provisions of law or of the trust fund doctrine permitting recovery of any preference made beyond such four months' period are hereby specifically superseded. [1959 c 219 § 2; 1941 c 103 § 3; Rem. Supp. 1941 § 5831-6. Formerly RCW 23.48.030.]

23.72.040 Mutual debts and credits. In any action by a receiver against a creditor to avoid and recover a preference such creditor may set off against the amount of such preference an amount equal to any credit or credits given by such creditor to the corporation within four months prior to the date of application for the appointment of the receiver when such credit or credits were given in good faith without security of any kind for property which became a part of the assets of the corporation. [1941 c 103 § 4; Rem. Supp. 1941 § 5831-7. Formerly RCW 23.48.040.]

23.72.050 Attorney's fees—Reexamination. If a corporation shall directly or indirectly in contemplation of the appointment of a receiver of such corporation pay money or transfer property to an attorney or counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be reexamined by the court on petition of the receiver of such corporation or any creditor and shall be held valid only to the extent of a reasonable amount to be determined by the court and any excess may be recovered by the receiver for the benefit of the creditors of such corporation. [1941 c 103 § 5; Rem. Supp. 1941 § 5831-8. Formerly RCW 23.48.050.]

23.72.060 Setoffs and counterclaims. (1) In all cases of mutual debts or mutual credits between the corporation and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid: PROVIDED, That as against voidable preferences the only offsets shall be the credits specified in RCW 23.72.050.

(2) A setoff or counterclaim shall not be allowed in favor of any debtor of the corporation which (1) is not provable against the corporation, or (2) was purchased by or transferred to him after the appointment of a receiver for such corporation, or within four months before the date of application for the appointment of such receiver, with a view to such use and with knowledge or notice that such corporation was insolvent. [1941 c 103 § 6; Rem. Supp. 1941 § 5831-9. Formerly RCW 23.48.060 and 23.48.070.]

Chapter 23.78

EMPLOYEE COOPERATIVE CORPORATIONS

Sections

23.78.010	Definitions.
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23.78.900	Short title.
23.78.902	Severability—1987 c 457.

Employee ownership programs through the department of community development: RCW 43.63A.230.

23.78.010 Definitions. For the purposes of this chapter, the terms defined in this section have the meanings given:

(1) "Employee cooperative" means a corporation that has elected to be governed by the provisions of this chapter.

(2) "Member" means a natural person who has been accepted for membership in, and owns a membership share issued by an employee cooperative.

(3) "Patronage" means the amount of work performed as a member of an employee cooperative, measured in accordance with the articles of incorporation and bylaws.

(4) "Written notice of allocation" means a written instrument which discloses to a member the stated dollar amount of the member's patronage allocation, and the terms for payment of that amount by the employee cooperative. [1987 c 457 § 2.]

23.78.020 Election by corporation to be governed as an employee cooperative—Laws governing. Any corporation organized under the laws of this state may elect to be governed as an employee cooperative under the provisions of this chapter, by so stating in its articles of incorporation,

or articles of amendment filed in accordance with Title 23B RCW.

A corporation so electing shall be governed by all provisions of Title 23B RCW, except RCW 23B.07.050, 23B.13.020, and chapter 23B.11 RCW, and except as otherwise provided in this chapter. [1991 c 72 § 9; 1987 c 457 § 3.]

23.78.030 Revocation of election. An employee cooperative may revoke its election under this chapter by a vote of two-thirds of the members and through articles of amendment filed with the secretary of state in accordance with RCW 23B.01.200 and 23B.10.060. [1991 c 72 § 10; 1987 c 457 § 4.]

23.78.040 Corporate name. An employee cooperative may include the word "cooperative" or "co-op" in its corporate name. [1987 c 457 § 5.]

23.78.050 Members—Membership shares. (1) The articles of incorporation or the bylaws shall establish qualifications and the method of acceptance and termination of members. No person may be accepted as a member unless employed by the employee cooperative on a full-time or part-time basis.

(2) An employee cooperative shall issue a class of voting stock designated as "membership shares." Each member shall own only one membership share, and only members may own these shares.

(3) Membership shares shall be issued for a fee as determined from time to time by the directors. RCW 23B.06.040 and 23B.06.200 do not apply to such membership shares.

Members of an employee cooperative shall have all the rights and responsibilities of stockholders of a corporation organized under Title 23B RCW, except as otherwise provided in this chapter. [1991 c 72 § 11; 1987 c 457 § 6.]

23.78.060 Right to vote—Power to amend or repeal bylaws—Right to amend articles of incorporation. (1) No capital stock other than membership shares shall be given voting power in an employee cooperative, except as otherwise provided in this chapter, or in the articles of incorporation.

(2) The power to amend or repeal bylaws of an employee cooperative shall be in the members only.

(3) Except as otherwise permitted by RCW 23B.10.040, no capital stock other than membership shares shall be permitted to vote on any amendment to the articles of incorporation. [1991 c 72 § 12; 1987 c 457 § 7.]

23.78.070 Net earnings or losses—Apportionment, distribution, and payment. (1) The net earnings or losses of an employee cooperative shall be apportioned and distributed at the times and in the manner as the articles of incorporation or bylaws shall specify. Net earnings declared as patronage allocations with respect to a period of time, and paid or credited to members, shall be apportioned among the members in accordance with the ratio which each member's patronage during the period involved bears to total patronage by all members during that period.

(2) The apportionment, distribution, and payment of net earnings required by subsection (1) of this section may be in cash, credits, written notices of allocation, or capital stock issued by the employee cooperative. [1987 c 457 § 8.]

23.78.080 Internal capital accounts authorized—Redemptions—Assignment of portion of retained net earnings and net losses to collective reserve account authorized. (1) Any employee cooperative may establish through its articles of incorporation or bylaws a system of internal capital accounts to reflect the book value and to determine the redemption price of membership shares, capital stock, and written notices of allocation.

(2) The articles of incorporation or bylaws of an employee cooperative may permit the periodic redemption of written notices of allocation and capital stock, and must provide for recall and redemption of the membership share upon termination of membership in the cooperative. No redemption shall be made if redemption would result in a violation of RCW 23B.06.400.

(3) The articles of incorporation or bylaws may provide for the employee cooperative to pay or credit interest on the balance in each member's internal capital account.

(4) The articles of incorporation or bylaws may authorize assignment of a portion of retained net earnings and net losses to a collective reserve account. Earnings assigned to the collective reserve account may be used for any and all corporate purposes as determined by the board of directors. [1991 c 72 § 13; 1987 c 457 § 9.]

23.78.090 Internal capital account cooperatives. (1) An internal capital account cooperative is an employee cooperative whose entire net book value is reflected in internal capital accounts, one for each member, and a collective reserve account, and in which no persons other than members own capital stock. In an internal capital account cooperative, each member shall have one and only one vote in any matter requiring voting by stockholders.

(2) An internal capital account cooperative shall credit the paid-in membership fee and additional paid-in capital of a member to the member's internal capital account, and shall also record the apportionment of retained net earnings or net losses to the members in accordance with patronage by appropriately crediting or debiting the internal capital accounts of members. The collective reserve account in an internal capital account cooperative shall reflect any paid-in capital, net losses, and retained net earnings not allocated to individual members.

(3) In an internal capital account cooperative, the balances in all the individual internal capital accounts and collective reserve account, if any, shall be adjusted at the end of each accounting period so that the sum of the balances is equal to the net book value of the employee cooperative. [1987 c 457 § 10.]

23.78.100 Provision for conversion of shares and accounts—Limitations upon merger. (1) When any employee cooperative revokes its election in accordance with RCW 23.78.030, the articles of amendment shall provide for conversion of membership shares and internal capital

accounts or their conversion to securities or other property in a manner consistent with Title 23B RCW.

(2) An employee cooperative that has not revoked its election under this chapter may not merge with another corporation other than an employee cooperative. Two or more employee cooperatives may merge in accordance with RCW 23B.01.200, 23B.07.050, and chapter 23B.11 RCW. [1991 c 72 § 14; 1987 c 457 § 11.]

23.78.900 Short title. This chapter may be cited as the employee cooperative corporations act. [1987 c 457 § 1.]

23.78.902 Severability—1987 c 457. 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 457 § 16.]

Chapter 23.86

COOPERATIVE ASSOCIATIONS

Sections

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23.86.360	Application of Title 23B RCW.
23.86.370	Application of RCW 24.06.340 through 24.06.435.

23.86.900 Application—1989 c 307.

Crop credit associations, powers: RCW 31.16.090.

Exemptions to commission merchant's act: RCW 20.01.030.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

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

(1) "Association" means any corporation subject to this chapter.

(2) "Member" or "members" includes a member or members of an association subject to this chapter without capital stock and a shareholder or shareholders of voting common stock in an association subject to this chapter with capital stock.

(3) "Articles of incorporation" means the original or restated articles of incorporation, articles of consolidation, or articles of association and all amendments including articles of merger. Corporations incorporated under this chapter with articles of association shall not be required to amend the title or references to the term "articles of association."

(4) "Director," "directors," or "board of directors" includes "trustee," "trustees," or "board of trustees" respectively. Corporations incorporated under this chapter with references in their articles of association or bylaws to "trustee," "trustees," or "board of trustees" shall not be required to amend the references. [1989 c 307 § 3.]

Legislative finding—1989 c 307: "The legislature finds that since 1921 there have existed in the laws of this state two separate incorporation statutes expressly designed for corporations intending to operate as nonprofit cooperatives. The existence of two cooperative incorporation statutes has been the source of confusion, disparity of treatment, and legal and administrative ambiguities, and the rationale for having two cooperative incorporation statutes is no longer valid. These cooperative incorporation statutes have not been updated with the regularity of this state's business incorporation statutes and, as a result, are deficient in certain respects." [1989 c 307 § 1.]

23.86.010 Cooperative associations—Who may organize. Any number of persons may associate themselves together as a cooperative association, society, company or exchange, with or without capital stock, for the transaction of any lawful business on the cooperative plan. For the purposes of this chapter the words "association," "company," "exchange," "society" or "union" shall be construed the same. [1989 c 307 § 4; 1913 c 19 § 1; RRS § 3904. Formerly RCW 23.56.010.] [1954 SLC-RO-7]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Severability—1913 c 19: "If any section or part of a section of this act shall for any cause be held unconstitutional such fact shall not affect the remainder of this act." [1913 c 19 § 20.] This applies to RCW 23.86.010 through 23.86.190.

23.86.020 Business authorized. An association created under this chapter, being for mutual welfare, the words "lawful business" shall extend to every kind of lawful effort for business, agricultural, dairy, mercantile, mining, manufacturing or mechanical business, on the cooperative plan. [1913 c 19 § 7; RRS § 3910. Formerly RCW 23.56.020.]

23.86.030 Association name—Immunity from liability of association board members and officers. (1) The name of any association subject to this chapter may contain the word "corporation," "incorporated," or "limited" or an abbreviation of any such word.

(2) No corporation or association organized or doing business in this state shall be entitled to use the term "cooperative" as a part of its corporate or other business name or title, unless it: (a) Is subject to the provisions of this chapter, chapter 23.78, or 31.12 RCW; (b) is subject to the provisions of chapter 24.06 RCW and operating on a cooperative basis; (c) is, on July 23, 1989, an organization lawfully using the term "cooperative" as part of its corporate or other business name or title; or (d) is a nonprofit corporation or association the voting members of which are corporations or associations operating on a cooperative basis. Any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any member or any association subject to this chapter.

(3) A member of the board of directors or an officer of any association subject to this chapter shall have the same immunity from liability as is granted in RCW 4.24.264. [1989 c 307 § 5; 1987 c 212 § 706; 1913 c 19 § 17; RRS § 3920. Formerly RCW 23.56.030.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.035 Powers. Each association subject to this chapter shall have the following powers:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in the articles of incorporation.

(2) To sue and be sued, complain, and defend in its corporate name.

(3) To have and use a corporate seal.

(4) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and deal in and with real or personal property or any interest therein, wherever situated.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its property and assets.

(6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, use, and deal in and with shares or other interest in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or any other government, state, territory, governmental district or municipality, or any instrumentality thereof.

(7) To make contracts and incur liabilities, borrow money at rates of interest the association may determine, issue notes, bonds, certificates of indebtedness, and other obligations, receive funds from members and pay interest thereon, issue capital stock and certificates representing equity interests in assets, allocate earnings and losses at the times and in the manner the articles of incorporation or bylaws or other contract specify, create book credits, capital funds, and reserves, and secure obligations by mortgage or pledge of any of its property, franchises, and income.

(8) To lend money for corporate purposes, invest and reinvest funds, and take and hold real and personal property as security for the payment of funds loaned or invested.

(9) To conduct business, carry on operations, have offices, and exercise the powers granted by this chapter, within or without this state.

(10) To elect or appoint officers and agents of the corporation, define their duties, and fix their compensation.

(11) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the association.

(12) To make donations for the public welfare or for charitable, scientific, or educational purposes, and in time of war to make donations in aid of war activities.

(13) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, and other incentive plans for any or all of its directors, officers, and employees.

(14) To be a partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise.

(15) To cease corporate activities and surrender its corporate franchise.

(16) To have and exercise all powers necessary or convenient to effect its purposes. [1989 c 307 § 6.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.050 Articles—Contents. Every association formed under this chapter after July 23, 1989, shall prepare articles of incorporation in writing, which shall set forth:

(1) The name of the association.

(2) The purpose for which it was formed which may include the transaction of any lawful business for which associations may be incorporated under this chapter. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) Its principal place of business.

(4) The term for which it is to exist which may be perpetual or for a stated number of years.

(5) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rules by which the property rights and interests of all members shall be determined and fixed. The association may admit new members who shall be entitled to share in the property of the association with old members in accordance with the general rules.

(6) If the association is to have capital stock:

(a) The aggregate number of shares which the association shall have authority to issue; if shares are to consist of one class only, the par value of each share, or a statement that all shares are without par value; or, if shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class or that shares are to be without par value;

(b) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect to the shares of each class;

(c) If the association is to issue the shares of any preferred or special class in series, the designation of each

series and a statement of the variations in the relative rights and preferences between series fixed in the articles of incorporation, and a statement of any authority vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences between series; and

(d) Any provision limiting or denying to members the preemptive right to acquire additional shares of the association.

(7) Provisions for distribution of assets on dissolution or final liquidation.

(8) Whether a dissenting member shall be limited to a return of less than the fair value of the member's equity interest in the association. A dissenting member may not be limited to a return of less than the consideration paid to or retained by the association for the equity interest unless the fair value is less than the consideration paid to or retained by the association.

(9) The address of its initial registered office, including street and number, and the name of its initial registered agent at the address.

(10) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors.

(11) The name and address of each incorporator.

(12) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the association, including provisions regarding:

(a) Eliminating or limiting the personal liability of a director to the association or its members for monetary damages for conduct as a director: PROVIDED, That such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision may eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective; and

(b) Any provision which under this chapter is required or permitted to be set forth in the bylaws.

Associations organized under this chapter before July 23, 1989, or under *chapter 24.32 RCW shall not be required to amend their articles of association or articles of incorporation to conform to this section unless the association is otherwise amending the articles of association or articles of incorporation.

The information specified in subsections (9) through (11) of this section may be deleted when filing amendments. [1989 c 307 § 7; 1987 c 212 § 704; 1982 c 35 § 171; 1961 c 34 § 1; 1913 c 19 § 2; RRS § 3905. Formerly RCW 23.56.050.]

*Reviser's note: Chapter 24.32 RCW was repealed by 1989 c 307.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

23.86.055 Articles—Filing. (1) Duplicate originals of the articles of incorporation signed by the incorporators shall

be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, the secretary of state shall, when all required fees have been paid:

(a) Endorse each original with the word "filed" and the effective date of the filing.

(b) File one original in his or her office.

(c) Issue a certificate of incorporation with one original attached.

(2) The certificate of incorporation, with an original of the articles of incorporation affixed by the secretary of state, shall be returned to the incorporators or their representatives and shall be retained by the association.

(3) Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall, except as against the state in a proceeding to cancel or revoke the certificate of incorporation, be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter. [1989 c 307 § 8.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.070 Filing fees. For filing articles of incorporation of an association organized under this chapter or filing application for a certificate of authority by a foreign corporation, there shall be paid to the secretary of state the sum of twenty-five dollars and for filing of an amendment the sum of twenty dollars. Fees for filing other documents with the secretary of state and issuing certificates shall be as prescribed in RCW 23B.01.220. Associations subject to this chapter shall not be subject to any corporation license fees excepting the fees hereinabove enumerated. [1991 c 72 § 15; 1989 c 307 § 9; 1982 c 35 § 173; 1959 c 263 § 2; 1953 c 214 § 1; 1925 ex.s. c 99 § 1; 1913 c 19 § 4; RRS § 3907. Formerly RCW 23.56.070.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

23.86.075 Fees for services by secretary of state. See RCW 43.07.120.

23.86.080 Directors—Election and appointment. (1) Associations shall be managed by a board of not less than three directors (which may be referred to as "trustees"). The directors shall be elected by and from the members of the association at such time, in such manner, and for such term of office as the bylaws may prescribe, and shall hold office during the term for which they were elected and until their successors are elected and qualified.

(2) Except as provided in RCW 23.86.087, any vacancy occurring in the board of directors, and any directorship to be filled by reason of an increase in the number of directors, may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of the predecessor.

sor in office. [1989 c 307 § 10; 1913 c 19 § 5; RRS § 3908. Formerly RCW 23.56.080.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.085 Election of officers. The directors shall elect a president and one or more vice-presidents, who need not be directors. If the president and vice-presidents are not members of the board of directors, the directors shall elect from their number a chairman of the board of directors and one or more vice-chairmen. They shall also elect a secretary and treasurer, who need not be directors, and they may combine the two offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered an officer but a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, except that the funds shall be deposited only as authorized by the board of directors. [1989 c 307 § 11.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.087 Removal of officers or directors. Any member may bring charges against an officer or director by filing charges in writing with the secretary of the association, together with a petition signed by ten percent of the members requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members voting, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges prior to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses. The person or persons bringing the charges shall have the same opportunity. If the bylaws provide for election of directors by districts, the petition for removal of a director must be signed by the number of members residing in the district from which the officer or director was elected as the articles of incorporation or bylaws specify and, in the absence of such specification, the petition must be signed by ten percent of the members residing in the district. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of the district voting, the association may remove the officer or director and fill the vacancy. [1989 c 307 § 12.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.090 Amendments to articles. The articles of incorporation may be amended by a majority vote of the members voting thereon, at any regular meeting or at any special meeting called for that purpose, after notice of the proposed amendment has been given to all members entitled to vote thereon, in the manner provided by the bylaws: PROVIDED, That if the total vote upon the proposed amendment shall be less than twenty-five percent of the total membership of the association, the amendment shall not be approved. At the meeting, members may vote upon the

proposed amendment in person, or by written proxy, or by mailed ballot. The power to amend shall include the power to extend the period of its duration for a further definite time or perpetually, and also include the power to increase or diminish the amount of capital stock and the number of shares: PROVIDED, The amount of the capital stock shall not be diminished below the amount of the paid-up capital stock at the time such amendment is adopted. After the adoption of an amendment to its articles of incorporation, the association shall cause a copy of such amendment adopted to be recorded in the office of the secretary of state as provided in RCW 24.06.195. [1989 c 307 § 23; 1982 c 35 § 174; 1981 c 297 § 32; 1961 c 34 § 2; 1913 c 19 § 6; RRS § 3909. Formerly RCW 23.56.090.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 297: See note following RCW 15.36.110.

23.86.095 Registered office and agent. Effective January 1, 1990, every association subject to this chapter shall have and maintain a registered office and a registered agent in this state in accordance with the requirements set forth in RCW 24.06.050. [1989 c 307 § 13.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.100 Bylaws. Any association subject to this chapter may pass bylaws to govern itself in the carrying out of the provisions of this chapter which are not inconsistent with the provisions of this chapter. [1989 c 307 § 24; 1913 c 19 § 19; RRS § 3922. Formerly RCW 23.56.100.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.105 Member liability—Termination. (1) Except for debts lawfully contracted between a member and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his or her membership fee or subscription to capital stock.

(2) Membership may be terminated under provisions, rules, or regulations prescribed in the articles of incorporation or bylaws. In the absence thereof, the board of directors may prescribe such provisions, rules, and regulations. [1989 c 307 § 19.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.115 Voting. (1) The right of a member to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or bylaws. Unless so limited, enlarged, or denied, each member shall be entitled to one vote on each matter submitted to a vote of members. The bylaws may allow subscribers to vote as members if one-fifth of the subscription for the membership fee or capital stock has been paid.

(2) A member may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by mail or by proxy executed in writing by the member or

by a duly authorized attorney-in-fact. No proxy shall be valid for more than eleven months from the date of its execution unless otherwise specified in the proxy. Votes by mail or by proxy shall be made by mail ballot or proxy form prepared and distributed by the association in accordance with procedures set forth in the articles of incorporation or bylaws. Persons voting by mail shall be deemed present for all purposes of quorum, count of votes, and percentage voting of total voting power.

(3) If the articles of incorporation or bylaws provide for more or less than one vote per member on any matter, every reference in this chapter to a majority or other proportion of members shall refer to such a majority or other proportion of votes entitled to be cast by members. [1989 c 307 § 21.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.125 Voting—Quorum. Except as otherwise provided in this chapter, the articles of incorporation or the bylaws may provide the number or percentage of votes that members are entitled to cast in person, by mail, or by proxy that shall constitute a quorum at meetings of members. In the absence of any provision in the articles of incorporation or bylaws, twenty-five percent of the total membership of the association shall constitute a quorum. [1989 c 307 § 22.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.135 Members right to dissent. A member of an association shall have the right to dissent from any of the following association actions:

(1) Any plan of merger or consolidation to which the association is a party;

(2) Any plan of conversion of the association to an ordinary business corporation; or

(3) Any sale or exchange of all or substantially all of the property and assets of the association not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of the sale be distributed to the members in accordance with their respective interests within one year from the date of sale. [1989 c 307 § 30.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.145 Rights of dissenting members. (1) Except as provided otherwise under subsection (2) of this section, the rights and procedures set forth in chapter 23B.13 RCW shall apply to a member who elects to exercise the right of dissent.

(2) The articles of incorporation of an association subject to this chapter may provide that a dissenting member shall be limited to a return of less than the fair value of the member's equity interest in the association, but a dissenting member may not be limited to a return of less than the consideration paid to or retained by the association for the equity interest unless the fair value is less than the consideration paid to or retained by the association. [1991 c 72 § 16; 1989 c 307 § 31.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.155 Failure to appoint registered agent—Removal—Reinstatement. (1) The secretary of state shall notify all associations subject to this chapter thirty days prior to July 23, 1989, that in the event they fail to appoint a registered agent as provided in RCW 23.86.095, they shall thereupon cease to be recorded as an active corporation.

(2) If the notification provided under subsection (1) of this section from the secretary of state to any association was or has been returned unclaimed or undeliverable, the secretary of state shall proceed to remove the name of such association from the records of active corporations.

(3) Associations removed from the records of active corporations under subsection (2) of this section may be reinstated at any time within ten years of the action by the secretary of state. The association shall be reinstated to active status by filing a request for reinstatement, by appointment of a registered agent and designation of a registered office as required by this chapter, and by filing an annual report for the reinstatement year. No fees may be charged for reinstatements under this section. If, during the period of inactive status, another person or corporation has reserved or adopted a corporate name which is identical to or deceptively similar to the association's name, the association seeking reinstatement shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles of incorporation accordingly.

(4) If no action is taken to reinstate to active status as provided in subsection (3) of this section, the association shall be administratively dissolved. [1989 c 307 § 35.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.160 Apportionment of earnings. The directors may apportion the net earnings by paying dividends upon the paid-up capital stock at a rate not exceeding eight percent per annum. They may set aside reasonable reserves out of such net earnings for any association purpose. The directors may, however, distribute all or any portion of the net earnings to members in proportion to the business of each with the association and they may include nonmembers at a rate not exceeding that paid to members. The directors may distribute, on a patronage basis, such net earnings at different rates on different classes, kinds, or varieties of products handled. All dividends declared or other distributions made under this section may, in the discretion of the directors, be in the form of capital stock, capital or equity certificates, book credits, or capital funds of the association. All unclaimed dividends or distributions authorized under this chapter or funds payable on redeemed stock, equity certificates, book credits, or capital funds shall revert to the association at the discretion of the directors at any time after one year from the end of the fiscal year during which such distributions or redemptions have been declared. [1989 c 307 § 25; 1947 c 37 § 1; 1943 c 99 § 3; 1913 c 19 § 13; Rem. Supp. 1947 § 3916. Formerly RCW 23.56.160.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.170 Distribution of dividends. The profits or net earnings of such association shall be distributed to those entitled thereto at such time and in such manner not inconsistent with this chapter as its bylaws shall prescribe, which shall be as often as once a year. [1913 c 19 § 14; RRS § 3917. Formerly RCW 23.56.170.]

23.86.191 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

23.86.195 Cooperative associations organized under other statutes—Reorganization under chapter. Any cooperative association organized under any other statute may be reorganized under the provisions of this chapter by adopting and filing amendments to its articles of incorporation in accordance with the provisions of this chapter for amending articles of incorporation. The articles of incorporation as amended must conform to the requirements of this chapter, and shall state that the cooperative association accepts the benefits and will be bound by the provisions of this chapter. [1989 c 307 § 26; 1981 c 297 § 38.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Severability—1981 c 297: See note following RCW 15.36.110.

23.86.200 Definitions. For the purposes of RCW 23.86.200 through 23.86.230 a "domestic" cooperative association or "domestic" corporation is one formed under the laws of this state, and an "ordinary business" corporation is one formed or which could be formed under Title 23B RCW. [1991 c 72 § 17; 1971 ex.s. c 221 § 1.]

23.86.210 Conversion of cooperative association to domestic ordinary business corporation—Procedure. (1) A cooperative association may be converted to a domestic ordinary business corporation pursuant to the following procedures:

(a) The board of directors of the association shall, by affirmative vote of not less than two-thirds of all such directors, adopt a plan for such conversion setting forth:

(i) The reasons why such conversion is desirable and in the interests of the members of the association;

(ii) The proposed contents of articles of conversion with respect to items (ii) through (ix) of subparagraph (c) below; and

(iii) Such other information and matters as the board of directors may deem to be pertinent to the proposed plan.

(b) After adoption by the board of directors, the plan for conversion shall be submitted for approval or rejection to the members of the association at any regular meetings or at any special meetings called for that purpose, after notice of the proposed conversion has been given to all members entitled to vote thereon, in the manner provided by the bylaws. The notice of the meeting shall be accompanied by a full copy of the proposed plan for conversion or by a summary of its provisions. At the meeting members may vote upon the proposed conversion in person, or by written proxy, or by mailed ballot. The affirmative vote of two-thirds of the members voting thereon shall be required for approval of the plan of conversion. If the total vote upon the proposed conversion shall be less than twenty-five percent of the total

membership of the association, the conversion shall not be approved.

(c) Upon approval by the members of the association, the articles of conversion shall be executed in duplicate by the association by one of its officers and shall set forth:

(i) The dates and vote by which the plan for conversion was adopted by the board of directors and members respectively;

(ii) The corporate name of the converted organization. The name shall comply with requirements for names of business corporations formed under Title 23B RCW, and shall not contain the term "cooperative";

(iii) The purpose or purposes for which the converted corporation is to exist;

(iv) The duration of the converted corporation, which may be perpetual or for a stated term of years;

(v) The capitalization of the converted corporation and the class or classes of shares of stock into which divided, together with the par value, if any, of such shares, in accordance with statutory requirements applicable to ordinary business corporations, and the basis upon which outstanding shares of the association are converted into shares of the converted corporation;

(vi) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the converted corporation;

(vii) The address of the converted corporation's initial registered office and its initial registered agent at such address;

(viii) The names and addresses of the persons who are to serve as directors of the converted corporation until the first annual meeting of shareholders of the converted corporation or until their successors are elected and qualify;

(ix) Any additional provisions, not inconsistent with law, provided for by the plan for conversion for the regulation of the internal affairs of the converted corporation, including any provision restricting the transfer of shares or which under Title 23B RCW is required or permitted to be set forth in bylaws.

(d) The executed duplicate originals of the articles of conversion shall be delivered to the secretary of state. If the secretary of state finds that the articles of conversion conform to law, the secretary of state shall, when all the fees have been paid as in this section prescribed:

(i) Endorse on each of such originals the word "Filed", and the effective date of such filing;

(ii) File one of such originals; and

(iii) Issue a certificate of conversion to which one of such originals shall be affixed.

(e) The certificate of conversion, together with the original of the articles of conversion affixed thereto by the secretary of state, shall be returned to the converted corporation or its representative. The original affixed to the certificate of conversion shall be retained by the converted corporation.

(f) Upon filing the articles of conversion the converted corporation shall pay, and the secretary of state shall collect, the same filing and license fees as for filing articles of incorporation of a newly formed business corporation similarly capitalized.

(2) Upon filing by the secretary of state of the articles of conversion, the conversion of the cooperative association

to an ordinary business corporation shall become effective; the articles of conversion shall thereafter constitute and be treated in like manner as articles of incorporation; and the converted corporation shall be subject to all laws applicable to corporations formed under Title 23B RCW, and shall not thereafter be subject to laws applying only to cooperative associations. The converted corporation shall constitute and be deemed to constitute a continuation of the corporate substance of the cooperative association and the conversion shall in no way derogate from the rights of creditors of the former association. [1991 c 72 § 18; 1989 c 307 § 27; 1982 c 35 § 175; 1981 c 297 § 34; 1971 ex.s. c 221 § 2.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 297: See note following RCW 15.36.110.

23.86.220 Merger of cooperative association with one or more cooperative associations or business corporations—Procedure. (1) A cooperative association may merge with one or more domestic cooperative associations, or with one or more domestic ordinary business corporations, in accordance with the procedures and subject to the conditions set forth or referred to in this section.

(2) If the merger is into another domestic cooperative association, the board of directors of each of the associations shall approve by vote of not less than two-thirds of all the directors, a plan of merger setting forth:

- (a) The names of the associations proposing to merge;
- (b) The name of the association which is to be the surviving association in the merger;
- (c) The terms and conditions of the proposed merger;
- (d) The manner and basis of converting the shares of each merging association into shares or other securities or obligations of the surviving association;
- (e) A statement of any changes in the articles of incorporation of the surviving association to be effected by such merger; and
- (f) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

(3) Following approval by the boards of directors, the plan of merger shall be submitted to a vote of the members of each of the associations at any regular meeting or at any special meetings called for that purpose, after notice of the proposed merger has been given to all members entitled to vote thereon, in the manner provided in the bylaws. The notice of the meeting shall be in writing stating the purpose or purposes of the meeting and include or be accompanied by a copy or summary of the plan of merger. At the meeting members may vote upon the proposed merger in person, or by written proxy, or by mailed ballot. The affirmative vote of two-thirds of the members voting thereon, by each association, shall be required for approval of the plan of merger. If the total vote of either association upon the proposed merger shall be less than twenty-five percent of the total membership of such association, the merger shall not be approved.

(4) Upon approval by the members of the associations proposing to merge, articles of merger shall be executed in duplicate by each association by an officer of each association, and shall set forth:

- (a) The plan of merger;
 - (b) As to each association, the number of members and, if there is capital stock, the number of shares outstanding; and
 - (c) As to each association, the number of members who voted for and against such plan, respectively.
- (5) Duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, the secretary of state shall, when all fees have been paid as in this section prescribed:
- (a) Endorse on each of such originals the word "Filed", and the effective date of such filing;
 - (b) File one of such originals; and
 - (c) Issue a certificate of merger to which one of such originals shall be affixed.
- (6) The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the secretary of state shall be returned to the surviving association or its representative.

(7) For filing articles of merger hereunder the secretary of state shall charge and collect the same fees as apply to filing of articles of merger of ordinary business corporations.

(8) If the plan of merger is for merger of the cooperative association into a domestic ordinary business corporation, the association shall follow the same procedures as hereinabove provided for merger of domestic cooperative associations and the ordinary business corporation shall follow the applicable procedures set forth in RCW 23B.07.050 and chapter 23B.11 RCW.

(9) At any time prior to filing of the articles of merger, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger. [1991 c 72 § 19; 1989 c 307 § 28; 1982 c 35 § 176; 1981 c 297 § 35; 1971 ex.s. c 221 § 3.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 297: See note following RCW 15.36.110.

23.86.230 Merger of cooperative association with one or more cooperative associations or business corporations—Rights, powers, duties and liabilities of surviving entity—Articles. (1) Upon issuance of the certificate of merger by the secretary of state, the merger of the cooperative association into another cooperative association or ordinary business corporation, as the case may be, shall be effected.

(2) When merger has been effected:

(a) The several parties to the plan of merger shall be a single cooperative association or corporation, as the case may be, which shall be that cooperative association or corporation designated in the plan of merger as the survivor.

(b) The separate existence of all parties to the plan of merger, except that of the surviving cooperative association or corporation, shall cease.

(c) If the surviving entity is a cooperative association, it shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a cooperative association organized under chapter 23.86 RCW. If the surviving entity is an ordinary business corporation, it

shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized or existing under Title 23B RCW.

(d) Such surviving cooperative association or corporation, as the case may be, shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, both public and private of each of the merging organizations, to the extent that such rights, privileges, immunities, and franchises are not inconsistent with the corporate nature of the surviving organization; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the organizations so merged shall be taken and deemed to be transferred to and vested in such surviving cooperative association or corporation, as the case may be, without further act or deed; and the title to any real estate, or any interest therein, vested in any such merged cooperative association shall not revert or be in any way impaired by reason of such merger.

(3) The surviving cooperative association or corporation, as the case may be, shall, after the merger is effected, be responsible and liable for all the liabilities and obligations of each of the organizations so merged; and any claim existing or action or proceeding pending by or against any of such organizations may be prosecuted as if the merger had not taken place and the surviving cooperative association or corporation may be substituted in its place. Neither the right of creditors nor any liens upon the property of any cooperative association or corporation party to the merger shall be impaired by the merger.

(4) The articles of incorporation of the surviving cooperative association or of the surviving ordinary business corporation, as the case may be, shall be deemed to be amended to the extent, if any, that changes in such articles are stated in the plan of merger. [1991 c 72 § 20; 1989 c 307 § 29; 1971 ex.s. c 221 § 4.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.250 Dissolution. The members of any association may by the vote of two-thirds of the members voting thereon, at any regular meeting or at any special meeting called for that purpose, vote to dissolve said association after notice of the proposed dissolution has been given to all members entitled to vote thereon, in the manner provided by the bylaws, and thereupon such proceeding shall be had for the dissolution of said association as is provided by law for the dissolution of corporations organized under chapter 24.06 RCW: PROVIDED, That if the total vote upon the proposed dissolution shall be less than twenty-five percent of the total membership of the association, the dissolution shall not be approved. At the meeting, members may vote upon the proposed dissolution in person, or by written proxy, or by mailed ballot. [1981 c 297 § 36.]

Severability—1981 c 297: See note following RCW 15.36.110.

23.86.300 Application of RCW 24.06.055 and 24.06.060. The provisions of RCW 24.06.055 and 24.06.060 shall apply to every association subject to this chapter. [1989 c 307 § 14.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.310 Application of RCW 24.06.440. Effective January 1, 1990, every association subject to this chapter shall comply with the requirements set forth in RCW 24.06.440. [1989 c 307 § 15.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.320 Application of RCW 24.06.445. The provisions of RCW 24.06.445 shall apply to every association subject to this chapter. [1989 c 307 § 16.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.330 Application of RCW 23B.14.200 and 23B.14.210. The provisions of RCW 23B.14.200 and 23B.14.210 shall apply to every association subject to this chapter formed on or after July 23, 1989. [1991 c 72 § 21; 1989 c 307 § 17.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.340 Application of RCW 23B.14.220—Reinstatement. The provisions of RCW 23B.14.220 shall apply to every association subject to this chapter. An association may apply for reinstatement within three years after the effective date of dissolution. [1991 c 72 § 22; 1989 c 307 § 18.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.350 Application of RCW 24.06.100 and 24.06.105. The provisions of RCW 24.06.100 and 24.06.105 shall apply to every association subject to this chapter. [1989 c 307 § 20.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.360 Application of Title 23B RCW. The provisions of Title 23B RCW shall apply to the associations subject to this chapter, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter. The terms "shareholder" or "shareholders" as used in Title 23B RCW, or in chapter 24.06 RCW as incorporated by reference herein, shall be deemed to refer to "member" or "members" as defined in this chapter. When the terms "share" or "shares" are used with reference to voting rights in Title 23B RCW, or in chapter 24.06 RCW as incorporated by reference herein, such terms shall be deemed to refer to the vote or votes entitled to be cast by a member or members. [1991 c 72 § 23; 1989 c 307 § 32.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.370 Application of RCW 24.06.340 through 24.06.435. The provisions of RCW 24.06.340 through 24.06.435 shall apply to every foreign corporation which desires to conduct affairs in this state under the authority of this chapter. [1989 c 307 § 33.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.900 Application—1989 c 307. The provisions of this chapter relating to domestic cooperative associations shall apply to:

(1) All cooperative associations organized under this chapter; and

(2) All agricultural cooperative associations organized under *chapter 24.32 RCW. All such agricultural cooperatives are deemed to have been incorporated under this chapter. [1989 c 307 § 2.]

***Reviser's note:** Chapter 24.32 RCW was repealed by 1989 c 307.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Chapter 23.90

MASSACHUSETTS TRUSTS

Sections

- 23.90.010 Short title.
- 23.90.020 Massachusetts trust defined.
- 23.90.030 Form of association authorized.
- 23.90.040 Filing trust instrument, effect—Powers and duties of trust.
- 23.90.050 Fees for services by secretary of state.
- 23.90.060 Indemnification of agents of any corporation authorized.
- 23.90.900 Severability—1959 c 220.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

23.90.010 Short title. This chapter may be known and cited as the "Massachusetts Trust Act of 1959". [1959 c 220 § 1.]

23.90.020 Massachusetts trust defined. A Massachusetts trust is an unincorporated business association created at common law by an instrument under which property is held and managed by trustees for the benefit and profit of such persons as may be or may become the holders of transferable certificates evidencing beneficial interests in the trust estate, the holders of which certificates are entitled to the same limitation of personal liability extended to stockholders of private corporations. [1959 c 220 § 2.]

23.90.030 Form of association authorized. A Massachusetts trust is permitted as a recognized form of association for the conduct of business within the state of Washington. [1959 c 220 § 3.]

23.90.040 Filing trust instrument, effect—Powers and duties of trust. (1) Any Massachusetts trust desiring to do business in this state shall file with the secretary of state a verified copy of the trust instrument creating such a trust and any amendment thereto, the assumed business name, if any, and the names and addresses of its trustees.

(2) Any person dealing with such Massachusetts trust shall be bound by the terms and conditions of the trust instrument and any amendments thereto so filed.

(3) Any Massachusetts trust created under this chapter or entering this state pursuant thereto shall pay such taxes and fees as are imposed by the laws, ordinances, and resolutions of the state of Washington and any counties and

municipalities thereof on domestic and foreign corporations, respectively, on an identical basis therewith. In computing such taxes and fees, the shares of beneficial interest of such a trust shall have the character for tax purposes of shares of stock in private corporations.

(4) Any Massachusetts trust shall be subject to such applicable provisions of law, now or hereafter enacted, with respect to domestic and foreign corporations, respectively, as relate to the issuance of securities, filing of required statements or reports, service of process, general grants of power to act, right to sue and be sued, limitation of individual liability of shareholders, rights to acquire, mortgage, sell, lease, operate and otherwise to deal in real and personal property, and other applicable rights and duties existing under the common law and statutes of this state in a manner similar to those applicable to domestic and foreign corporations.

(5) The secretary of state, director of licensing, and the department of revenue of the state of Washington are each authorized and directed to prescribe binding rules and regulations applicable to said Massachusetts trusts consistent with this chapter. [1981 c 302 § 3; 1979 c 158 § 88; 1967 ex.s. c 26 § 21; 1959 c 220 § 4.]

Severability—1981 c 302: See note following RCW 19.76.100.

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

23.90.050 Fees for services by secretary of state. See RCW 43.07.120.

23.90.060 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

23.90.900 Severability—1959 c 220. Notwithstanding any other evidence of legislative intent, it is declared to be the controlling legislative intent that if any provision of this chapter, or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby. [1959 c 220 § 5.]

Title 23B

WASHINGTON BUSINESS CORPORATION ACT

Chapters

- 23B.01 General provisions.
- 23B.02 Incorporation.
- 23B.03 Powers and purposes.
- 23B.04 Name.
- 23B.05 Office and agent.
- 23B.06 Shares and distributions.
- 23B.07 Shareholders.
- 23B.08 Directors and officers.
- 23B.09 [Reserved.]
- 23B.10 Amendment of articles of incorporation and bylaws.
- 23B.11 Merger and share exchange.
- 23B.12 Sale of assets.
- 23B.13 Dissenters' rights.
- 23B.14 Dissolution.
- 23B.15 Foreign corporations.
- 23B.16 Records and reports.
- 23B.17 Miscellaneous provisions.
- 23B.18 Nonadmitted organizations.
- 23B.19 Significant business transactions.
- 23B.900 Construction.

Acknowledgment form, corporations: RCW 64.08.070.

Acquisition of corporate stock by another corporation to lessen competition declared unlawful—Exceptions—Judicial order to divest: RCW 19.86.060.

Actions by and against public corporations: RCW 4.08.110, 4.08.120.

Condominium act: Chapter 64.34 RCW.

Constitutional provisions, generally: State Constitution Art. 12.

Consumer loan act: Chapter 31.04 RCW.

Corporations for educational, social, religious, fraternal, etc., purposes: Title 24 RCW.

Crimes relating to corporations: Chapter 9.24 RCW.

Criminal procedure: RCW 10.01.070 through 10.01.100.

Dentistry, practice or solicitation prohibited: RCW 18.32.310.

Doing business without license, gross misdemeanor: RCW 9.24.040.

Eminent domain by corporations: Chapter 8.20 RCW.

False statements, penalty for filing: RCW 43.07.210.

Legal services, advertising of, penalty: RCW 30.04.260.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

Partnerships: Title 25 RCW.

"Person" defined: RCW 1.16.080.

Professional service corporations: Chapter 18.100 RCW.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this title: RCW 43.07.130.

Seals, effect of: RCW 64.04.105.

Secretary of state, duties: Chapter 43.07 RCW.

Chapter 23B.01

GENERAL PROVISIONS

Sections

- 23B.01.010 Short title.
- 23B.01.020 Reservation of power to amend or repeal.
- 23B.01.200 Filing requirements.
- 23B.01.210 Forms.
- 23B.01.220 Fees.
- 23B.01.230 Effective time and date of document.
- 23B.01.240 Correcting filed documents.
- 23B.01.250 Filing duty of secretary of state.
- 23B.01.260 Judicial review of secretary of state's refusal to file a document.
- 23B.01.270 Evidentiary effect of copy of filed document.
- 23B.01.280 Certificate of existence or authorization.
- 23B.01.290 Penalty for signing false document.
- 23B.01.300 Powers.
- 23B.01.400 Definitions.
- 23B.01.410 Notice.
- 23B.01.500 Domestic corporations—Notice of due date for payment of annual license fee and filing annual report.
- 23B.01.510 Foreign corporations—Notice of due date for payment of annual license fee and filing annual report.
- 23B.01.520 Domestic corporations—Filing and initial license fees.
- 23B.01.530 Domestic corporations—Annual license fee.
- 23B.01.540 Foreign corporations—Filing and license fees on qualification.
- 23B.01.550 Foreign corporations—Annual license fees.
- 23B.01.560 License fees for reinstated corporation.
- 23B.01.570 Penalty for nonpayment of annual corporate license fees and failure to file a substantially complete annual report—Payment of delinquent fees.
- 23B.01.580 Waiver of penalty fees.
- 23B.01.590 Public service companies entitled to deductions.

23B.01.010 Short title. This title shall be known and may be cited as the "Washington business corporation act." [1989 c 165 § 1.]

23B.01.020 Reservation of power to amend or repeal. The legislature has power to amend or repeal all or part of this title at any time and all domestic and foreign corporations subject to this title are governed by the amendment or repeal. [1989 c 165 § 2.]

23B.01.200 Filing requirements. (1) A document must satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the secretary of state.

(2) This title must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by this title. It may contain other information as well.

(4) The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) Unless otherwise indicated in this title, all documents submitted for filing must be executed:

(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and the capacity in which the person signs. The document may but need not contain: (a) The corporate seal; (b) an attestation by the secretary or an assistant secretary; or (c) an acknowledgment, verification, or proof.

(8) If the secretary of state has prescribed a mandatory form for the document under RCW 23B.01.210, the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the secretary of state for filing and must be accompanied by one exact or conformed copy, the correct filing fee or charge, including license fee, penalty and service fee, and any attachments which are required for the filing. [1991 c 72 § 24; 1989 c 165 § 3.]

23B.01.210 Forms. The secretary of state may prescribe and furnish on request, forms for: (1) An application for a certificate of existence; (2) a foreign corporation's application for a certificate of authority to transact business in this state; (3) a foreign corporation's application for a certificate of withdrawal; (4) an initial report; (5) an annual report; and (6) such other forms not in conflict with this title as may be prescribed by the secretary of state. If the secretary of state so requires, use of these forms is mandatory. [1991 c 72 § 25; 1989 c 165 § 4.]

23B.01.220 Fees. (1) The secretary of state shall collect in accordance with the provisions of this title:

(a) Fees for filing documents and issuing certificates;

(b) Miscellaneous charges;

(c) License fees as provided in RCW 23B.01.500 through 23B.01.550;

(d) Penalty fees; and

(e) Other fees as the secretary of state may establish by rule adopted under chapter 34.05 RCW.

(2) The secretary of state shall collect the following fees when the documents described in this subsection are delivered for filing:

(a) One hundred seventy-five dollars, pursuant to RCW 23B.01.520 and 23B.01.540, for:

(i) Articles of incorporation; and

(ii) Application for certificate of authority;

(b) Fifty dollars for an application for reinstatement;

(c) Twenty-five dollars for:

(i) Articles of correction;

(ii) Amendment of articles of incorporation;
(iii) Restatement of articles of incorporation, with or without amendment;

(iv) Articles of merger or share exchange;

(v) Articles of revocation of dissolution; and

(vi) Application for amended certificate of authority;

(d) Twenty dollars for an application for reservation, registration, or assignment of reserved name;

(e) Ten dollars for:

(i) Corporation's statement of change of registered agent or registered office, or both, except where this information is provided in conjunction with and on an initial report or an annual report form filed under RCW 23B.01.530, 23B.01.550, 23B.02.050, or 23B.16.220;

(ii) Agent's resignation, or statement of change of registered office, or both, for each affected corporation;

(iii) Initial report; and

(iv) Any document not listed in this subsection that is required or permitted to be filed under this title;

(f) No fee for:

(i) Agent's consent to act as agent;

(ii) Agent's resignation, if appointed without consent;

(iii) Articles of dissolution;

(iv) Certificate of judicial dissolution;

(v) Application for certificate of withdrawal; and

(vi) Annual report.

(3) The secretary of state shall collect a fee of twenty-five dollars per defendant served, upon being served process under this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.

(4) The secretary of state shall collect from every person or organization:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, ten dollars for the certificate, plus twenty cents for each page copied;

(b) For furnishing a certificate, under seal, attesting to the existence of a corporation, or any other certificate, ten dollars; and

(c) For furnishing copies of any document, instrument, or paper relating to a corporation, other than of an initial report or an annual report, one dollar for the first page and twenty cents for each page copied thereafter. The fee for furnishing a copy of the most recent annual report of a corporation (or of the initial report if no annual report has been filed) is one dollar, and the fee for furnishing a copy of any other annual report of a corporation is five dollars.

(5) For annual license fees for domestic and foreign corporations, see RCW 23B.01.500, 23B.01.510, 23B.01.530, and 23B.01.550. For penalties for nonpayment of annual license fees and failure to complete annual report, see RCW 23B.01.570. [1992 c 107 § 7; 1991 c 72 § 26; 1990 c 178 § 1; 1989 c 165 § 5.]

Effective dates—1992 c 107: See note following RCW 19.02.020.

Effective date—1990 c 178: "This act shall take effect July 1, 1990." [1990 c 178 § 13.]

23B.01.230 Effective time and date of document.

(1) Except as provided in subsection (2) of this section and RCW 23B.01.240(3), a document accepted for filing is effective on the date it is filed by the secretary of state and

at the time on that date specified in the document. If no time is specified in the document, the document is effective at the close of business on the date it is filed by the secretary of state.

(2) If a document specifies a delayed effective time and date, the document becomes effective at the time and date specified. If a document specifies a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

(3) When a document is received for filing by the secretary of state in a form which complies with the requirements of this title and which would entitle the document to be filed on receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of state's filing date shall relate back to and be shown as the date on which the secretary of state first received the document in acceptable form. [1989 c 165 § 6.]

23B.01.240 Correcting filed documents. (1) A domestic or foreign corporation may correct a document filed by the secretary of state if the document (a) contains an incorrect statement; or (b) was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document is corrected:

(a) By preparing articles of correction that (i) describe the document, including its filing date, or attach a copy of it to the articles of correction, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(b) By delivering the articles of correction to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed. [1989 c 165 § 7.]

23B.01.250 Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of RCW 23B.01.200, the secretary of state shall file it.

(2) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with the secretary of state's name and official title and the date of filing, on both the original and the document copy. After filing a document, the secretary of state shall deliver the document copy to the domestic or foreign corporation or its representative.

(3) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. Filing or refusal to file a document does not:

(a) Affect the validity or invalidity of the document in whole or part;

(b) Relate to the correctness or incorrectness of information contained in the document; or

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect. [1989 c 165 § 8.]

23B.01.260 Judicial review of secretary of state's refusal to file a document. If the secretary of state refuses to file a document delivered to the office for filing, the person submitting the document, in addition to any other legal remedy which may be available, shall have the right to judicial review of such refusal pursuant to the provisions of chapter 34.05 RCW. [1989 c 165 § 9.]

23B.01.270 Evidentiary effect of copy of filed document. A certificate bearing the manual or facsimile signature of the secretary of state and the seal of the state, when attached to or located on a document or a copy of a document filed by the secretary of state, is conclusive evidence that the original document is on file with the secretary of state. [1989 c 165 § 10.]

23B.01.280 Certificate of existence or authorization.

(1) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(2) A certificate of existence or authorization means that as of the date of its issuance:

(a) The domestic corporation is duly incorporated under the laws of this state, or that the foreign corporation is authorized to transact business in this state;

(b) All fees and penalties owed to this state under this title have been paid, if (i) payment is reflected in the records of the secretary of state, and (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;

(c) The corporation's initial report or its most recent annual report required by RCW 23B.16.220 has been delivered to the secretary of state; and

(d) Articles of dissolution or an application for withdrawal have not been filed by the secretary of state.

(3) A person may apply to the secretary of state to issue a certificate covering any fact of record.

(4) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in the corporate form in this state. [1991 c 72 § 27; 1989 c 165 § 11.]

23B.01.290 Penalty for signing false document. Any person who signs a document such person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW. [1989 c 165 § 12.]

23B.01.300 Powers. The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this title, including adoption, amendment, or repeal of rules for the efficient administration of this title. [1989 c 165 § 13.]

23B.01.400 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this title.

(5) "Deliver" includes (a) mailing and (b) for purposes of delivering a demand, consent, or waiver to the corporation or one of its officers, transmission by facsimile equipment.

(6) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrance of indebtedness by a corporation to or for the benefit of its shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) "Effective date of notice" has the meaning provided in RCW 23B.01.410.

(8) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(9) "Entity" includes a corporation and foreign corporation, not-for-profit corporation, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest, and the state, United States, and a foreign government.

(10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(11) "Foreign limited partnership" means a partnership formed under laws other than of this state and having as partners one or more general partners and one or more limited partners.

(12) "Governmental subdivision" includes authority, county, district, and municipality.

(13) "Includes" denotes a partial definition.

(14) "Individual" includes the estate of an incompetent or deceased individual.

(15) "Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(16) "Means" denotes an exhaustive definition.

(17) "Notice" has the meaning provided in RCW 23B.01.410.

(18) "Person" includes an individual and an entity.

(19) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(20) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(21) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute, and that has more than three hundred holders of record of its shares.

(22) "Record date" means the date established under chapter 23B.07 RCW on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(23) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under RCW 23B.08.400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(24) "Shares" means the units into which the proprietary interests in a corporation are divided.

(25) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(26) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(27) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(28) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(29) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group. [1991 c 269 § 35; 1991 c 72 § 28; 1989 c 165 § 14.]

Reviser's note: This section was amended by 1991 c 72 § 28 and by 1991 c 269 § 35, 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).

23B.01.410 Notice. (1) Notice under this title must be in writing except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.

(2) Written notice may be transmitted by: Mail, private carrier or personal delivery; telegraph or teletype; or telephone, wire or wireless equipment which transmits a facsimile of the notice. If these forms of written notice are impracticable, written notice may be transmitted by an advertisement in a newspaper of general circulation in the area where published. Oral notice may be communicated in person or by telephone, wire or wireless equipment which does not transmit a facsimile of the notice. If these forms of oral notice are impracticable, oral notice may be communi-

cated by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed with first-class postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(4) Written notice to a domestic or foreign corporation, authorized to transact business in this state, may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) If expressly authorized by the articles of incorporation or bylaws, and if notice is sent to the person's address, telephone number, or other number appearing on the records of the corporation, when dispatched by telegraph, teletype, or facsimile equipment;

(b) When received;

(c) Except as provided in subsection (3) of this section, five days after its deposit in the United States mail, as evidenced by the postmark, if mailed with first-class postage, prepaid and correctly addressed; or

(d) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if communicated in a comprehensible manner.

(7) If this title prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this title, those requirements govern. [1991 c 72 § 29; 1990 c 178 § 2; 1989 c 165 § 15.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.01.500 Domestic corporations—Notice of due date for payment of annual license fee and filing annual report. Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall mail to each domestic corporation, at its registered office within the state, by first-class mail, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if any domestic corporation shall fail to pay its annual license fee or to file its annual report it shall be dissolved and cease to exist. Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligations to pay the annual license fees and to file the annual reports required by this title. [1989 c 165 § 16.]

23B.01.510 Foreign corporations—Notice of due date for payment of annual license fee and filing annual report. Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall mail to each foreign corporation qualified to do business in this

state, by first-class mail addressed to its registered office within this state, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if it shall fail to pay its annual license fee or to file its annual report its certificate of authority to transact business within this state may be revoked. Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligations to pay the annual license fees and to obtain or file the annual reports required by this title. [1990 c 178 § 3; 1989 c 165 § 17.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.01.520 Domestic corporations—Filing and initial license fees. Every domestic corporation, except one for which existing law provides a different fee schedule, shall pay for filing of its articles of incorporation and its first year's license a fee of one hundred seventy-five dollars. [1989 c 165 § 18.]

23B.01.530 Domestic corporations—Annual license fee. For the privilege of doing business, every corporation organized under the laws of this state, except the corporations for which existing law provides a different fee schedule, shall make and file a statement in the form prescribed by the secretary of state and shall pay an annual license fee each year following incorporation, on or before the expiration date of its corporate license, to the secretary of state. The secretary of state shall collect an annual license fee of fifty dollars. [1989 c 165 § 19.]

23B.01.540 Foreign corporations—Filing and license fees on qualification. A foreign corporation doing an intrastate business or seeking to do an intrastate business in the state of Washington shall qualify so to do in the manner prescribed in this title and shall pay for the privilege of so doing the filing and license fees prescribed in this title for domestic corporations, including the same fees as are prescribed in RCW 23B.01.520, for the filing of articles of incorporation of a domestic corporation. [1989 c 165 § 20.]

23B.01.550 Foreign corporations—Annual license fees. All foreign corporations doing intrastate business, or hereafter seeking to do intrastate business in this state shall pay for the privilege of doing such intrastate business in this state the same fees as are prescribed by RCW 23B.01.530 for domestic corporations for annual license fees. All license fees shall be paid on or before the first day of July of each and every year or on the annual license expiration date as the secretary of state may establish under this title. [1989 c 165 § 21.]

23B.01.560 License fees for reinstated corporation. (1) A corporation seeking reinstatement shall pay the full amount of all annual corporation license fees which would have been assessed for the license years of the period of administrative dissolution had the corporation been in active status, plus a surcharge of twenty-five percent, and the license fee for the year of reinstatement.

(2) The penalties herein established shall be in lieu of any other penalties or interest which could have been

assessed by the secretary of state under the corporation laws or which, under those laws, would have accrued during any period of delinquency, dissolution, or expiration of corporate duration. [1989 c 165 § 22.]

23B.01.570 Penalty for nonpayment of annual corporate license fees and failure to file a substantially complete annual report—Payment of delinquent fees. In the event any corporation, foreign or domestic, fails to file a full and complete initial report under RCW 23B.02.050(4) and 23B.16.220(3) or does business in this state without having paid its annual corporate license fee and without having filed a substantially complete annual report under RCW 23B.16.220(1) when either is due, there shall become due and owing the state of Washington a penalty of twenty-five dollars.

A corporation organized under this title may at any time prior to its dissolution as provided in RCW 23B.14.200, and a foreign corporation qualified to do business in this state may at any time prior to the revocation of its certificate of authority as provided in RCW 23B.15.300, pay to the state of Washington its current annual license fee, provided it also pays an amount equal to all previously unpaid annual license fees plus the penalty specified in this section. [1991 c 72 § 30; 1989 c 165 § 23.]

23B.01.580 Waiver of penalty fees. The secretary of state may, where exigent or mitigating circumstances are presented, waive penalty fees due from any licensed corporation previously in good standing which would otherwise be penalized or lose its active status. Any corporation desiring to seek relief under this section shall, within fifteen days of discovery by corporate officials of the missed filing or lapse, notify the secretary of state in writing. The notification shall include the name and mailing address of the corporation, the corporate officer to whom correspondence should be sent, and a statement under oath by a responsible corporate officer, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. Upon receipt of the notice, the secretary of state shall investigate the circumstances of the missed filing or lapse. If the secretary of state is satisfied that sufficient exigent or mitigating circumstances exist, that the corporation has demonstrated good faith and a reasonable attempt to comply with the applicable corporate license statutes of this state, the secretary of state may issue an order allowing relief from the penalty. If the secretary of state determines the request does not comply with the requirements for relief, the secretary of state shall deny the relief and state the reasons for the denial. Any denial of relief by the secretary of state is not reviewable notwithstanding the provisions of chapter 34.05 RCW. [1990 c 178 § 4; 1989 c 165 § 24.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.01.590 Public service companies entitled to deductions. The annual fee required to be paid to the Washington utilities and transportation commission by any public service corporation shall be deducted from the annual license fee provided in this title and the excess only shall be collected.

It shall be the duty of the commission to furnish to the secretary of state on or before July 1st of each year a list of all public service corporations with the amount of annual license fees paid to the commission for the current year. [1989 c 165 § 25.]

Chapter 23B.02 INCORPORATION

Sections

23B.02.010	Incorporators.
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23B.02.010 Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing. [1989 c 165 § 26.]

23B.02.020 Articles of incorporation. (1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of RCW 23B.04.010;

(b) The number of shares the corporation is authorized to issue in accordance with RCW 23B.06.010 and 23B.06.020;

(c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office in accordance with RCW 23B.05.010; and

(d) The name and address of each incorporator in accordance with RCW 23B.02.010.

(2) The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010.

(3) Unless its articles of incorporation provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may adopt bylaws to be effective only in an emergency as provided by RCW 23B.02.070;

(b) A corporation has the purpose of engaging in any lawful business under RCW 23B.03.010;

(c) A corporation has perpetual existence and succession in its corporate name under RCW 23B.03.020;

(d) A corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including itemized powers under RCW 23B.03.020;

(e) All shares are of one class and one series, have unlimited voting rights, and are entitled to receive the net assets of the corporation upon dissolution under RCW 23B.06.010 and 23B.06.020;

(f) If more than one class of shares is authorized, all shares of a class must have preferences, limitations, and relative rights identical to those of other shares of the same class under RCW 23B.06.010;

(g) If the board of directors is authorized to designate the number of shares in a series, the board may, after the issuance of shares in that series, reduce the number of authorized shares of that series under RCW 23B.06.020;

(h) The board of directors must authorize any issuance of shares under RCW 23B.06.210;

(i) Shares may be issued pro rata and without consideration to shareholders under RCW 23B.06.230;

(j) Shares of one class or series may not be issued as a share dividend with respect to another class or series, unless there are no outstanding shares of the class or series to be issued, or a majority of votes entitled to be cast by such class or series approve as provided in RCW 23B.06.230;

(k) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation under RCW 23B.06.240;

(l) A shareholder has, and may waive, a preemptive right to acquire the corporation's unissued shares as provided in RCW 23B.06.300;

(m) Shares of a corporation acquired by it may be reissued under RCW 23B.06.310;

(n) The board may authorize and the corporation may make distributions not prohibited by statute under RCW 23B.06.400;

(o) The preferential rights upon dissolution of certain shareholders will be considered a liability for purposes of determining the validity of a distribution under RCW 23B.06.400;

(p) Unless this title requires otherwise, the corporation is required to give notice only to shareholders entitled to vote at a meeting and the notice for an annual meeting need not include the purpose for which the meeting is called under RCW 23B.07.050;

(q) A corporation that is a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(r) Subject to statutory exceptions, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting under RCW 23B.07.210;

(s) A majority of the votes entitled to be cast on a matter by a voting group constitutes a quorum, unless the title provides otherwise under RCW 23B.07.250 and 23B.07.270;

(t) Action on a matter, other than election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless this title requires a greater number of affirmative votes under RCW 23B.07.250;

(u) All shares of one or more classes or series that are entitled to vote will be counted together collectively on any matter at a meeting of shareholders under RCW 23B.07.260;

(v) Directors are elected by cumulative voting under RCW 23B.07.280;

(w) Directors are elected by a plurality of votes cast by shares entitled to vote under RCW 23B.07.280;

(x) A corporation must have a board of directors under RCW 23B.08.010;

(y) All corporate powers must be exercised by or under the authority of, and the business and affairs of the corpora-

tion managed under the direction of, its board of directors under RCW 23B.08.010;

(z) The shareholders may remove one or more directors with or without cause under RCW 23B.08.080;

(aa) A vacancy on the board of directors may be filled by the shareholders or the board of directors under RCW 23B.08.100;

(bb) A corporation shall indemnify a director who was wholly successful in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding under RCW 23B.08.520;

(cc) A director of a corporation who is a party to a proceeding may apply for indemnification of reasonable expenses incurred by the director in connection with the proceeding to the court conducting the proceeding or to another court of competent jurisdiction under RCW 23B.08.540;

(dd) An officer of the corporation who is not a director is entitled to mandatory indemnification under RCW 23B.08.520, and is entitled to apply for court-ordered indemnification under RCW 23B.08.540, in each case to the same extent as a director under RCW 23B.08.570;

(ee) The corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director under RCW 23B.08.570;

(ff) A corporation may indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract under RCW 23B.08.570;

(gg) A corporation's board of directors may adopt certain amendments to the corporation's articles of incorporation without shareholder action under RCW 23B.10.020;

(hh) Unless the title or the board of directors require a greater vote or a vote by voting groups, an amendment to the corporation's articles of incorporation must be approved by each voting group entitled to vote on the proposed amendment by two-thirds, or, in the case of a public company, a majority, of all the votes entitled to be cast by that voting group under RCW 23B.10.030;

(ii) A corporation's board of directors may amend or repeal the corporation's bylaws unless this title reserves this power exclusively to the shareholders in whole or in part, or unless the shareholders in amending or repealing a bylaw provide expressly that the board of directors may not amend or repeal that bylaw under RCW 23B.10.200;

(jj) Unless this title or the board of directors require a greater vote or a vote by voting groups, a plan of merger or share exchange must be approved by each voting group entitled to vote on the merger or share exchange by two-thirds of all the votes entitled to be cast by that voting group under RCW 23B.11.030;

(kk) Approval by the shareholders of the sale, lease, exchange, or other disposition of all, or substantially all, the corporation's property in the usual and regular course of business is not required under RCW 23B.12.010;

(ll) Approval by the shareholders of the mortgage, pledge, dedication to the repayment of indebtedness, or other encumbrance of any or all of the corporation's proper-

ty, whether or not in the usual and regular course of business, is not required under RCW 23B.12.010;

(mm) Unless the board of directors requires a greater vote or a vote by voting groups, a sale, lease, exchange, or other disposition of all or substantially all of the corporation's property, other than in the usual and regular course of business, must be approved by each voting group entitled to vote on such transaction by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.12.020;

(nn) Unless the board of directors requires a greater vote or a vote by voting groups, a proposal to dissolve must be approved by each voting group entitled to vote on the dissolution by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.14.020; and

(oo) A corporation with fewer than three hundred holders of record of its shares does not require special approval of interested shareholder transactions under RCW 23B.17.020.

(4) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may authorize the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;

(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;

(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;

(e) Members of the board of directors may participate in a meeting of the board by any means of similar communication by which all directors participating can hear each other during the meeting under RCW 23B.08.200;

(f) Action permitted or required by this title to be taken at a board of directors' meeting may be taken without a meeting if action is taken by all members of the board under RCW 23B.08.210;

(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;

(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;

(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;

(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;

(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and

(l) Unless approved by the shareholders, a corporation may indemnify, or make advances to, a director for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director

only to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580.

(5) The articles of incorporation may contain the following provisions:

(a) The names and addresses of the individuals who are to serve as initial directors;

(b) The par value of any authorized shares or classes of shares;

(c) Provisions not inconsistent with law related to the management of the business and the regulation of the affairs of the corporation;

(d) Any provision that under this title is required or permitted to be set forth in the bylaws;

(e) Provisions not inconsistent with law defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(f) If the articles of incorporation authorize dividing shares into classes, the election of all or a specified number of directors may be effected by the holders of one or more authorized classes of shares under RCW 23B.08.040;

(g) The terms of directors may be staggered under RCW 23B.08.060;

(h) Shares may be redeemable or convertible (i) at the option of the corporation, the shareholder, or another person, or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; or (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events under RCW 23B.06.010; and

(i) A director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director may be eliminated or limited under RCW 23B.08.320.

(6) The articles of incorporation or the bylaws may contain the following provisions:

(a) A restriction on the transfer or registration of transfer of the corporation's shares under RCW 23B.06.270;

(b) Shareholders may participate in a meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other under RCW 23B.07.080; and

(c) A quorum of the board of directors may consist of as few as one-third of the number of directors under RCW 23B.08.240.

(7) The articles of incorporation need not set forth any of the corporate powers enumerated in this title. [1989 c 165 § 27.]

23B.02.030 Effect of filing. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to the incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily to dissolve the corporation. [1989 c 165 § 28.]

23B.02.040 Liability for preincorporation transactions. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this title, are jointly and severally liable for liabilities created

while so acting except for any liability to any person who also knew that there was no incorporation. [1989 c 165 § 29.]

23B.02.050 Organization of corporation. (1) After incorporation:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this title to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

(4) A corporation's initial report containing the information described in RCW 23B.16.220(1) must be delivered to the secretary of state within one hundred twenty days of the date on which the corporation's articles of incorporation were filed. [1991 c 72 § 31; 1989 c 165 § 30.]

23B.02.060 Bylaws. (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010;

(3) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may authorize the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;

(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;

(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;

(e) Members of the board of directors may participate in a meeting of the board by means of a conference telephone or similar communication equipment under RCW 23B.08.200;

(f) Action permitted or required by this title to be taken at a board of directors' meeting may be taken without a

meeting if action is taken by all members of the board under RCW 23B.08.210;

(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;

(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;

(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;

(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;

(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and

(l) Unless approved by shareholders, a corporation may indemnify, or make advances to, a director only for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580 under RCW 23B.08.590.

(4) The bylaws of a corporation may contain any provision, not in conflict with law or the articles of incorporation, for managing the business and regulating the affairs of the corporation, including but not limited to the following:

(a) A restriction on the transfer or registration of transfer of the corporation's shares under RCW 23B.06.270;

(b) Shareholders may participate in a meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other under RCW 23B.07.080; and

(c) A quorum of the board of directors may consist of as few as one-third of the number of directors under RCW 23B.08.240. [1989 c 165 § 31.]

23B.02.070 Emergency bylaws. (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Binds the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee, or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be

assembled because of some catastrophic event. [1989 c 165 § 32.]

Chapter 23B.03 POWERS AND PURPOSES

Sections

23B.03.010	Purposes.
23B.03.020	General powers.
23B.03.030	Emergency powers.
23B.03.040	Ultra vires.

23B.03.010 Purposes. (1) Every corporation incorporated under this title has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) Corporations organized for the purposes of banking or engaging in business as an insurer shall not be organized under this title. [1989 c 165 § 33.]

23B.03.020 General powers. (1) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name.

(2) Unless its articles of incorporation provide otherwise, every corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, power:

(a) To sue and be sued, complain, and defend in its corporate name;

(b) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(c) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(d) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(e) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(f) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any person;

(g) To make contracts, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(h) To make guarantees respecting the contracts, securities, or obligations of any person; including, but not limited to, any shareholder, affiliated or unaffiliated individual, domestic or foreign corporation, partnership, association, joint venture or trust, if such guarantee may reasonably be expected to benefit, directly or indirectly, the guarantor corporation. As to the enforceability of the guarantee, the decision of the board of directors that the guarantee may be reasonably expected to benefit, directly or indirectly, the

guarantor corporation shall be binding in respect to the issue of benefit to the guarantor corporation;

(i) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(j) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(k) To conduct its business, locate offices, and exercise the powers granted by this title within or without this state;

(l) To elect, appoint, or hire officers, employees, and other agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(m) To fix the compensation of directors, and lend them money and credit;

(n) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(o) To make donations for the public welfare or for charitable, scientific, or educational purposes;

(p) To transact any lawful business that will aid governmental policy; and

(q) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation. [1989 c 165 § 34.]

23B.03.030 Emergency powers. (1) In anticipation of or during an emergency defined in subsection (4) of this section, the board of directors of a corporation may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency defined in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(b) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the business affairs of the corporation:

(a) Binds the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee, or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event. [1989 c 165 § 35.]

23B.03.040 Ultra vires. (1) Except as provided in subsection (2) of this section, corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) In a proceeding by a shareholder against the corporation to enjoin the act;

(b) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(c) In a proceeding by the attorney general under RCW 23B.14.300.

(3) In a shareholder's proceeding under subsection (2)(a) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, and may award damages for loss suffered by the corporation or another party because of enjoining or setting aside the unauthorized act. [1989 c 165 § 36.]

Chapter 23B.04

NAME

Sections

23B.04.010	Corporate name.
23B.04.020	Reserved name.
23B.04.030	Registered name.

23B.04.010 Corporate name. (1) A corporate name:

(a) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.;"

(b) Must not contain language stating or implying that the corporation is organized for a purpose other than those permitted by RCW 23B.03.010 and its articles of incorporation;

(c) Must not contain any of the following words or phrases:

"Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:

(i) The corporate name of a corporation incorporated or authorized to transact business in this state;

(ii) A corporate name reserved or registered under RCW 23B.04.020 or 23B.04.030;

(iii) The fictitious name adopted pursuant to RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state; and

(v) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter *25.08 or 25.10 RCW.

(2) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, holder, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(3) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation, or of a domestic or foreign limited partnership, that is used in this state if the other corporation is incorporated or authorized to transact business in this state, or if the limited partnership is formed or authorized to transact business in this state, and the proposed user corporation:

(a) Has merged with the other corporation or limited partnership; or

(b) Has been formed by reorganization of the other corporation.

(4) This title does not control the use of assumed business names or "trade names."

(5) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in the designation, under subsection (1)(a) of this section, used for the same name;

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name. [1991 c 269 § 36; 1989 c 165 § 37.]

Reviser's note: (1) This section was amended by 1991 c 72 § 32 and by 1991 c 269 § 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).

* (2) Chapter 25.08 RCW was repealed by 1981 c 51 § 72, effective January 1, 1982. See RCW 25.10.670 for application of chapter 25.10 RCW to previously existing partnerships.

23B.04.020 Reserved name. (1) A person may reserve the exclusive use of a corporate name, including a fictitious name adopted pursuant to RCW 23B.15.060 for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred eighty-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee. [1989 c 165 § 38.]

23B.04.030 Registered name. (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by RCW 23B.15.060, if the name is distinguishable upon the records of the secretary of state from the names specified in RCW 23B.04.010(1).

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by RCW 23B.15.060, by delivering to the secretary of state for filing an application that:

(a) Sets forth its corporate name, or its corporate name with any addition required by RCW 23B.15.060, and the state or country and date of its incorporation; and

(b) Is accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use upon the effective date of the application and until the close of the calendar year in which the application for registration is filed.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application, which complies with the requirements of subsection (2) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name, or consent in writing to the use of that name by a corporation thereafter incorporated under this title, by a limited partnership thereafter formed under chapter 25.10 RCW, or by another foreign corporation or limited partnership thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the domestic limited partnership is formed, or the foreign corporation qualifies or consents to the qualification of another foreign corporation or limited partnership under the registered name. [1989 c 165 § 39.]

Chapter 23B.05 OFFICE AND AGENT

Sections

- 23B.05.010 Registered office and registered agent.
23B.05.020 Change of registered office or registered agent.
23B.05.030 Resignation of registered agent.
23B.05.040 Service on corporation.

23B.05.010 Registered office and registered agent.

(1) Each corporation must continuously maintain in this state:

(a) A registered office that may be the same as any of its places of business. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in the same city as the registered office in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent that may be:

(i) An individual residing in this state whose business office is identical with the registered office;

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(iii) A foreign corporation or not-for-profit foreign corporation authorized to conduct affairs in this state whose business office is identical with the registered office.

(2) A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state. [1989 c 165 § 40.]

23B.05.020 Change of registered office or registered agent. (1) A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) The name of the corporation;

(b) If the current registered office is to be changed, the street address of the new registered office in accord with RCW 23B.05.010(1)(a);

(c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change. [1989 c 165 § 41.]

23B.05.030 Resignation of registered agent. (1) A registered agent may resign as agent by signing and delivering to the secretary of state for filing a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement the secretary of state shall mail a copy of the statement to the corporation at its principal office.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed. [1989 c 165 § 42.]

23B.05.040 Service on corporation. (1) A corporation's registered agent is the corporation's agent for

service of process, notice, or demand required or permitted by law to be served on the corporation.

(2) The secretary of state shall be an agent of a corporation upon whom any such process, notice, or demand may be served if:

(a) The corporation fails to appoint or maintain a registered agent in this state; or

(b) The registered agent cannot with reasonable diligence be found at the registered office.

(3) Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of the secretary of state's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the secretary of the corporation at the corporation's principal office as shown on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.

(4) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.

(5) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [1989 c 165 § 43.]

Chapter 23B.06

SHARES AND DISTRIBUTIONS

Sections

23B.06.010	Authorized shares.
23B.06.020	Terms of class or series.
23B.06.030	Issued and outstanding shares.
23B.06.040	Fractional shares.
23B.06.200	Subscription for shares before incorporation.
23B.06.210	Issuance of shares.
23B.06.220	Liability of shareholders.
23B.06.230	Share dividends.
23B.06.240	Share options.
23B.06.250	Certificates.
23B.06.260	Shares without certificates.
23B.06.270	Restriction on transfer of shares and other securities.
23B.06.280	Expense of issue.
23B.06.300	Shareholders' preemptive rights.
23B.06.310	Corporation's acquisition of its own shares.
23B.06.400	Distributions to shareholders.

23B.06.010 Authorized shares. (1) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue.

(a) If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation.

(b) Any of the designations, preferences, limitations, or relative rights of any class or series may be made dependent

upon facts ascertainable outside the articles of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issuance of shares adopted by the board of directors pursuant to authority expressly vested in it by the corporation's articles of incorporation, if the manner in which such facts shall operate on the designations, preferences, limitations, or relative rights of such class or series is clearly and expressly set forth in the articles of incorporation or in the resolution or resolutions providing for the issue of such shares adopted by the board of directors.

(c) All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by RCW 23B.06.020.

(2) The articles of incorporation must authorize (a) one or more classes of shares that together have unlimited voting rights, and (b) one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this title;

(b) Are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event, (ii) for cash, indebtedness, securities, or other property, (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section is not exhaustive. [1989 c 165 § 44.]

23B.06.020 Terms of class or series. (1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits set forth in this section of (a) any class of shares before the issuance of any shares of that class, or (b) one or more series within a class, and designate the number of shares within that series, before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder action, that set forth:

- (a) The name of the corporation;
- (b) The text of the amendment determining the terms of the class or series of shares;
- (c) The date it was adopted; and
- (d) The statement that the amendment was duly adopted by the board of directors.

(5) Unless the articles of incorporation provide otherwise, the board of directors may, after the issuance of shares of a series whose number it is authorized to designate, amend the resolution establishing the series to decrease, but not below the number of shares of such series then outstanding, the number of authorized shares of that series, by filing articles of amendment, which are effective without shareholder action, in the manner provided in subsection (4) of this section. [1989 c 165 § 45.]

23B.06.030 Issued and outstanding shares. (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (4) of this section and to RCW 23B.06.400.

(3) Redeemable shares are deemed to have been redeemed and not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

(4) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding. [1989 c 165 § 46.]

23B.06.040 Fractional shares. (1) A corporation may:

- (a) Issue fractions of a share or pay in money the value of fractions of a share;
- (b) Arrange for disposition of fractional shares by the shareholders;
- (c) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by RCW 23B.06.250(2).

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

- (a) That the scrip will become void if not exchanged for full shares before a specified date; and

- (b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders. [1989 c 165 § 47.]

23B.06.200 Subscription for shares before incorporation. (1) A written subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to RCW 23B.06.210. [1989 c 165 § 48.]

23B.06.210 Issuance of shares. (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) Any issuance of shares must be authorized by the board of directors. Shares may be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) A good faith determination by the board of directors that the consideration received or to be received for the shares to be issued is adequate is conclusive insofar as the adequacy of consideration relates to whether the shares are validly issued, fully paid and nonassessable. When the board of directors has made such a determination and the corporation has received the consideration, the shares issued therefor are fully paid and nonassessable.

(4) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect to the shares against their purchase price, until the services are performed, the benefits are received, or the note is paid. If the services are not performed, the benefits are not received, or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(5) Where it cannot be determined that outstanding shares are fully paid and nonassessable, there shall be a conclusive presumption that such shares are fully paid and

nonassessable if the board of directors makes a good faith determination that there is no substantial evidence that the full consideration for such shares has not been paid. [1989 c 165 § 49.]

23B.06.220 Liability of shareholders. A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued under RCW 23B.06.210 or specified in the subscription agreement under RCW 23B.06.200. [1989 c 165 § 50.]

23B.06.230 Share dividends. (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect to shares of another class or series unless (a) the articles of incorporation so authorize, (b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (c) there are no outstanding shares of the class or series to be issued. [1989 c 165 § 51.]

23B.06.240 Share options. Unless the articles of incorporation provide otherwise, a corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued. [1989 c 165 § 52.]

23B.06.250 Certificates. (1) Shares may but need not be represented by certificates. Unless this title or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(2) At a minimum each share certificate must state on its face:

- (a) The name of the issuing corporation and that it is organized under the laws of this state;
- (b) The name of the person to whom issued; and
- (c) The number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series, must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information without charge on request in writing.

(4) Each share certificate (a) must be signed, either manually or in facsimile, by two officers designated in the

bylaws or by the board of directors and (b) may bear the corporate seal or its facsimile.

(5) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid. [1989 c 165 § 53.]

23B.06.260 Shares without certificates. (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by RCW 23B.06.250 (2) and (3), and, if applicable, RCW 23B.06.270. [1989 c 165 § 54.]

23B.06.270 Restriction on transfer of shares and other securities. (1) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by RCW 23B.06.260(2). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares is authorized:

(a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) To preserve exemptions under federal or state securities law; or

(c) For any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

(a) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(d) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares. [1989 c 165 § 55.]

23B.06.280 Expense of issue. A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares. [1989 c 165 § 56.]

23B.06.300 Shareholders' preemptive rights. (1) Unless the articles of incorporation provide otherwise, and subject to the limitations in subsections (3) and (4) of this section, the shareholders of a corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(2) Unless the articles of incorporation provide otherwise, a shareholder may waive the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(3) Unless the articles of incorporation provide otherwise, there is no preemptive right with respect to:

(a) Shares issued as compensation to directors, officers, agents, or employees of the corporation, or its subsidiaries or affiliates;

(b) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, or its subsidiaries or affiliates;

(c) Shares issued pursuant to the corporation's initial plan of financing; and

(d) Shares sold otherwise than for money.

(4) Unless the articles of incorporation provide otherwise:

(a) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class; and

(b) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(5) Unless the articles of incorporation provide otherwise, shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(6) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares. [1989 c 165 § 57.]

23B.06.310 Corporation's acquisition of its own shares. (1) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(3) The board of directors may adopt articles of amendment under this section without shareholder action and deliver them to the secretary of state for filing. The articles must set forth:

(a) The name of the corporation;

(b) The reduction in the number of authorized shares, itemized by class and series; and

(c) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares. [1989 c 165 § 58.]

23B.06.400 Distributions to shareholders. (1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (2) of this section.

(2) No distribution may be made if, after giving it effect:

(a) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(3) For purposes of determinations under subsection (2) of this section:

(a) The board of directors may base a determination that a distribution is not prohibited under subsection (2) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances; and

(b) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section.

(4) The effect of a distribution under subsection (2) of this section is measured:

(a) In the case of a distribution of indebtedness, the terms of which provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made; or

(b) In the case of any other distribution:

(i) If the distribution is by purchase, redemption, or other acquisition of the corporation's shares, the effect of the distribution is measured as of the earlier of the date any money or other property is transferred or debt incurred by

the corporation, or the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(ii) If the distribution is of indebtedness other than that described in subsection (4) (a) and (b)(i) of this section, the effect of the distribution is measured as of the date the indebtedness is distributed; and

(iii) In all other cases, the effect of the distribution is measured as of the date the distribution is authorized if payment occurs within one hundred twenty days after the date of authorization, or the date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

(5) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent provided otherwise by agreement.

(6) In circumstances to which this section and related sections of this title are applicable, such provisions supersede the applicability of any other statutes of this state with respect to the legality of distributions. [1990 c 178 § 10; 1989 c 165 § 59.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

Chapter 23B.07 SHAREHOLDERS

Sections

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23B.07.010 Annual meeting. (1) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action. [1989 c 165 § 60.]

23B.07.020 Special meeting. (1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) Except as set forth in subsections (2) and (3) of this section, if the holders of at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(2) The right of shareholders of a public company to call a special meeting may be limited or denied to the extent provided in the articles of incorporation.

(3) If the corporation is other than a public company, the articles or bylaws may require the demand specified in subsection (1)(b) of this section be made by a greater percentage, not in excess of twenty-five percent, of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting.

(4) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(5) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(6) Only business within the purpose or purposes described in the meeting notice required by RCW 23B.07.050(3) may be conducted at a special shareholders' meeting. [1989 c 165 § 61.]

23B.07.030 Court-ordered meeting. (1) The superior court of the county in which the corporation's registered office is located may, after notice to the corporation, summarily order a meeting to be held:

(a) On application of any shareholder of the corporation entitled to vote in the election of directors at an annual meeting, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or

(b) On application of a shareholder who signed a demand for a special meeting valid under RCW 23B.07.020, if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may, after notice to the corporation, fix the time and place of the meeting, determine the shares and shareholders entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the manner, form, and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary

to accomplish the purpose or purposes of the meeting. [1989 c 165 § 62.]

23B.07.040 Action without meeting. (1) Action required or permitted by this title to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (1) of this section.

(3) A shareholder may withdraw consent only by delivering a written notice of withdrawal to the corporation prior to the time when all consents have been delivered to the corporation.

(4) Action taken under this section is effective when all consents have been delivered to the corporation, unless the consent specifies a later effective date.

(5) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(6) If this title requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least ten days before the action is taken. The notice must contain or be accompanied by the same material that, under this title, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to such shareholders for action. [1991 c 72 § 33; 1989 c 165 § 63.]

23B.07.050 Notice of meeting. (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting. Such notice shall be given no fewer than ten nor more than sixty days before the meeting date, except that notice of a shareholders' meeting to act on an amendment to the articles of incorporation, a plan of merger or share exchange, a proposed sale of assets pursuant to RCW 23B.12.020, or the dissolution of the corporation shall be given no fewer than twenty nor more than sixty days before the meeting date. Unless this title or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless this title or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(4) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different

date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under RCW 23B.07.070, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date. [1989 c 165 § 64.]

23B.07.060 Waiver of notice. (1) A shareholder may waive any notice required by this title, the articles of incorporation, or bylaws before or after the date and time of the meeting that is the subject of such notice, or in the case of notice required by RCW 23B.07.040(6), before or after the action to be taken by written consent is effective. Except as provided by subsections (2) and (3) of this section, the waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

(3) A shareholder waives objection to consideration of a particular matter at a meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented. [1991 c 72 § 34; 1989 c 165 § 65.]

23B.07.070 Record date. (1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(2) If not otherwise fixed under subsection (1) of this section or RCW 23B.07.030, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

(4) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

(5) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of shareholders.

(6) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(7) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date. [1989 c 165 § 66.]

23B.07.080 Shareholder participation by means of communication equipment. If the articles of incorporation or bylaws so provide, shareholders may participate in any meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting. [1989 c 165 § 67.]

23B.07.200 Shareholders' list for meeting. (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders on the record date who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, beginning ten days prior to the meeting and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder, the shareholder's agent, or the shareholder's attorney to inspect the shareholders' list before or at the meeting, the superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection is complete.

(5) A shareholder's right to copy the shareholders' list, and a shareholder's right to otherwise inspect and copy the record of shareholders, is governed by RCW 23B.16.020(3).

(6) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting. [1989 c 165 § 68.]

23B.07.210 Voting entitlement of shares. (1) Except as provided in subsections (2) and (3) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) The shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second

corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity. [1989 c 165 § 69.]

23B.07.220 Proxies. (1) A shareholder may vote the shareholder's shares in person or by proxy.

(2) A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form, either personally or by the shareholder's attorney-in-fact or agent.

(3) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment form.

(4) An appointment of a proxy is revocable by the shareholder unless the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) A pledgee;

(b) A person who purchased or agreed to purchase the shares;

(c) A creditor of the corporation who extended it credit under terms requiring the appointment;

(d) An employee of the corporation whose employment contract requires the appointment; or

(e) A party to a voting agreement created under RCW 23B.07.310.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(6) An appointment made irrevocable under subsection (4) of this section is revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to RCW 23B.07.240 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment. [1989 c 165 § 70.]

23B.07.230 Shares held by nominees. (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth:

(a) The types of nominees to which it applies;

(b) The rights or privileges that the corporation recognizes in a beneficial owner;

(c) The manner in which the procedure is selected by the nominee;

(d) The information that must be provided when the procedure is selected;

(e) The period for which selection of the procedure is effective; and

(f) Other aspects of the rights and duties created. [1989 c 165 § 71.]

23B.07.240 Corporation's acceptance of votes. (1)

If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(a) The shareholder is an entity and the name signed purports to be that of an officer, partner, or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coowners and the person signing appears to be acting on behalf of all the coowners.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under

this section is valid unless a court of competent jurisdiction determines otherwise. [1989 c 165 § 72.]

23B.07.250 Quorum and voting requirements. (1)

Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this title provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting other than solely to object to holding the meeting or transacting business at the meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, is approved by a voting group if the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action, unless the articles of incorporation or this title require a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing, or deleting either (i) a quorum for a voting group greater or lesser than specified in subsection (1) of this section, or (ii) a voting requirement for a voting group greater than specified in subsection (3) of this section, is governed by RCW 23B.07.270.

(5) The election of directors is governed by RCW 23B.07.280. [1989 c 165 § 73.]

23B.07.260 Action by single and multiple voting groups. (1)

If the articles of incorporation or this title provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in RCW 23B.07.250.

(2) If the articles of incorporation or this title provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in RCW 23B.07.250. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter. [1989 c 165 § 74.]

23B.07.270 Greater or lesser quorum or voting requirements. (1)

The articles of incorporation may provide for a greater or lesser quorum, but not less than one-third of the votes entitled to be cast, for shareholders, or voting groups of shareholders, than is provided for by this title.

(2) The articles of incorporation may provide for a greater voting requirement for shareholders, or voting groups of shareholders, than is provided for by this title.

(3) Under RCW 23B.10.030, 23B.11.030, 23B.12.020, and 23B.14.020, the articles of incorporation may provide for a lesser vote than is otherwise prescribed in those sections or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the plan or transaction is not less than a majority of all the votes entitled to be cast on the plan or transaction by that voting group.

(4) Except as provided in subsection (5) of this section, an amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement for a particular corporate action must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect for the corporate action.

(5) An amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement for a merger, share exchange, sale of substantially all assets, or dissolution must be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect for the particular corporate action, or the quorum and voting requirements then in effect for amendments to articles of incorporation, whichever is greater. [1990 c 178 § 11; 1989 c 165 § 75.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.07.280 Voting for directors—Cumulative voting. (1) Unless otherwise provided in the articles of incorporation, shareholders entitled to vote at any election of directors are entitled to cumulate votes by multiplying the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and to cast the product for a single candidate or distribute the product among two or more candidates.

(2) Unless otherwise provided in the articles of incorporation, in any election of directors the candidates elected are those receiving the largest numbers of votes cast by the shares entitled to vote in the election, up to the number of directors to be elected by such shares. [1989 c 165 § 76.]

23B.07.300 Voting trusts. (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each owner of a beneficial interest transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than ten years after its effective date unless extended under subsection (3) of this section.

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid only until the earlier of ten years from the date the first shareholder signs the extension agreement or the date of expiration of the extension. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An

extension agreement binds only those parties signing it. [1989 c 165 § 77.]

23B.07.310 Voting agreements. (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of RCW 23B.07.300.

(2) A voting agreement created under this section is specifically enforceable. [1989 c 165 § 78.]

23B.07.400 Derivative proceedings procedure. (1) A person may not commence a proceeding in the right of a domestic or foreign corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time.

(2) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why a demand was not made. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(3) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

(4) On termination of the proceeding the court may require the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(5) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on behalf of the beneficial owner. [1989 c 165 § 79.]

Chapter 23B.08

DIRECTORS AND OFFICERS

Sections

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23B.08.010 Requirement for and duties of board of directors. (1) Except as provided in subsection (3) of this section, each corporation must have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

(3) A corporation may dispense with or limit the authority of its board of directors by describing in its articles of incorporation who will perform some or all of the duties of the board of directors. [1989 c 165 § 80.]

23B.08.020 Qualifications of directors. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe. [1989 c 165 § 81.]

23B.08.030 Number and election of directors. (1) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under RCW 23B.08.060. [1989 c 165 § 82.]

23B.08.040 Election of directors by certain classes or series of shares. If the articles of incorporation authorize dividing the shares into classes or series, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes or series of shares. A class, or classes, or series of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors. [1989 c 165 § 83.]

23B.08.050 Terms of directors—Generally. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under RCW 23B.08.060.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(5) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualified or until there is a decrease in the number of directors. [1989 c 165 § 84.]

23B.08.060 Staggered terms for directors. (1) The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

(2) If cumulative voting is authorized, any provision establishing staggered terms of directors shall provide that at least three directors shall be elected at each annual shareholders' meeting. [1989 c 165 § 85.]

23B.08.070 Resignation of directors. (1) A director may resign at any time by delivering written notice to the board of directors, its chairperson, the president, or the secretary.

(2) A resignation is effective when the notice is delivered unless the notice specifies a later effective date. [1989 c 165 § 86.]

23B.08.080 Removal of directors by shareholders. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by holders of one or more authorized classes or series of shares, only the holders of those classes or series of shares may participate in the vote to remove the director.

(3) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director.

(4) A director may be removed by the shareholders only at a special meeting called for the purpose of removing the director and the meeting notice must state that the purpose,

or one of the purposes, of the meeting is removal of the director. [1989 c 165 § 87.]

23B.08.090 Removal of directors by judicial proceeding. (1) The superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent of the outstanding shares of any class if the court finds that (a) the director engaged in fraudulent or dishonest conduct with respect to the corporation, and (b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders commence a proceeding under subsection (1) of this section, they shall make the corporation a party defendant. [1989 c 165 § 88.]

23B.08.100 Vacancy on board of directors. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The shareholders may fill the vacancy;

(b) The board of directors may fill the vacancy; or

(c) If the directors in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors in office.

(2) If the vacant office was held by a director elected by holders of one or more authorized classes or series of shares, only the holders of those classes or series of shares are entitled to vote to fill the vacancy.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under RCW 23B.08.070(2) or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs. [1989 c 165 § 89.]

23B.08.110 Compensation of directors. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors. [1989 c 165 § 90.]

23B.08.200 Meetings and action of the board. (1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless the articles of incorporation or bylaws provide otherwise, any or all directors may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating can hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. [1989 c 165 § 91.]

23B.08.210 Action without meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this title to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describ-

ing the action taken, signed by each director either before or after the action taken, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a later effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. [1989 c 165 § 92.]

23B.08.220 Notice of meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws. [1989 c 165 § 93.]

23B.08.230 Waiver of notice. (1) A director may waive any notice required by this title, the articles of incorporation, or bylaws before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided by subsection (2) of this section, the waiver must be in writing, signed by the director entitled to the notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting. [1989 c 165 § 94.]

23B.08.240 Quorum and voting. (1) Unless the articles of incorporation or bylaws require a greater or lesser number, a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) Notwithstanding subsection (1) of this section, a quorum of a board of directors may in no event be less than one-third of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors when action is taken is deemed to have assented to the action taken unless: (a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding it or transacting business at the meeting; (b) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or (c) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment

or to the corporation within a reasonable time after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken. [1991 c 72 § 35; 1989 c 165 § 95.]

23B.08.250 Committees. (1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees of directors. Each committee must have two or more members, who serve at the pleasure of the board of directors.

(2) The creation of a committee and appointment of members to it must be approved by the greater of (a) a majority of all the directors in office when the action is taken or (b) the number of directors required by the articles of incorporation or bylaws to take action under RCW 23B.08.240.

(3) RCW 23B.08.200 through 23B.08.240, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under RCW 23B.08.010.

(5) A committee may not, however:

(a) Authorize or approve a distribution except according to a general formula or method prescribed by the board of directors;

(b) Approve or propose to shareholders action that this title requires be approved by shareholders;

(c) Fill vacancies on the board of directors or on any of its committees;

(d) Amend articles of incorporation pursuant to RCW 23B.10.020;

(e) Adopt, amend, or repeal bylaws;

(f) Approve a plan of merger not requiring shareholder approval; or

(g) Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee, or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(6) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in RCW 23B.08.300. [1989 c 165 § 96.]

23B.08.300 General standards for directors. (1) A director shall discharge the duties of a director, including duties as member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging the duties of a director, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section. [1989 c 165 § 97.]

23B.08.310 Liability for unlawful distributions. (1) A director who votes for or assents to a distribution made in violation of RCW 23B.06.400 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating RCW 23B.06.400 or the articles of incorporation if it is established that the director did not perform the director's duties in compliance with RCW 23B.08.300. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of RCW 23B.06.400 or the articles of incorporation.

(3) A proceeding under this section is barred unless it is commenced within two years after the date on which the effect of the distribution was measured under RCW 23B.06.400(4). [1989 c 165 § 98.]

23B.08.320 Limitation on liability of directors. The articles of incorporation may contain provisions not inconsistent with law that eliminate or limit the personal liability of a director to the corporation or its shareholders for monetary damages for conduct as a director, provided that such provisions shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, for conduct violating RCW 23B.08.310, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. [1989 c 165 § 99.]

23B.08.400 Officers. (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one office in a corporation. [1989 c 165 § 100.]

23B.08.410 Duties of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by an officer authorized by the board of directors to prescribe the duties of other officers. [1989 c 165 § 101.]

23B.08.420 Standards of conduct for officers. (1) An officer with discretionary authority shall discharge the officer's duties under that authority:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the officer reasonably believes to be in the best interests of the corporation.

(2) In discharging the officer's duties, the officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) An officer is not liable for any action taken as an officer, or any failure to take any action, if the officer performed the duties of the officer's office in compliance with this section. [1989 c 165 § 102.]

23B.08.430 Resignation and removal of officers. (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

(2) A board of directors may remove any officer at any time with or without cause. An officer or assistant officer, if appointed by another officer, may be removed by any officer authorized to appoint officers or assistant officers. [1989 c 165 § 103.]

23B.08.440 Contract rights of officers. (1) The appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer. [1989 c 165 § 104.]

23B.08.500 Indemnification definitions. For purposes of RCW 23B.08.510 through 23B.08.600:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means: (a) When used with respect to a director, the office of director in a corporation; and (b) when used with respect to an individual other than a director, as contemplated in RCW 23B.08.570, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal. [1989 c 165 § 105.]

23B.08.510 Authority to indemnify. (1) Except as provided in subsection (4) of this section, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

(a) The individual acted in good faith; and

(b) The individual reasonably believed:

(i) In the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in its best interests; and

(ii) In all other cases, that the individual's conduct was at least not opposed to its best interests; and

(c) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(b)(ii) of this section.

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding. [1989 c 165 § 106.]

23B.08.520 Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because of being a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding. [1989 c 165 § 107.]

23B.08.530 Advance for expenses. (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) The director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in RCW 23B.08.510; and

(b) The director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct.

(2) The undertaking required by subsection (1)(b) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Authorization of payments under this section may be made by provision in the articles of incorporation or bylaws, by resolution adopted by the shareholders or board of directors, or by contract. [1989 c 165 § 108.]

23B.08.540 Court-ordered indemnification. Unless a corporation's articles of incorporation provide otherwise, a director of a corporation who is a party to a proceeding

may apply for indemnification or advance of expenses to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification or advance of expenses if it determines:

(1) The director is entitled to mandatory indemnification under RCW 23B.08.520, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification;

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in RCW 23B.08.510 or was adjudged liable as described in RCW 23B.08.510(4), but if the director was adjudged so liable the director's indemnification is limited to reasonable expenses incurred unless the articles of incorporation or a bylaw, contract, or resolution approved or ratified by the shareholders pursuant to RCW 23B.08.560 provides otherwise; or

(3) In the case of an advance of expenses, the director is entitled pursuant to the articles of incorporation, bylaws, or any applicable resolution or contract, to payment or reimbursement of the director's reasonable expenses incurred as a party to the proceeding in advance of final disposition of the proceeding. [1989 c 165 § 109.]

23B.08.550 Determination and authorization of indemnification. (1) A corporation may not indemnify a director under RCW 23B.08.510 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in RCW 23B.08.510.

(2) The determination shall be made:

(a) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) If a quorum cannot be obtained under (a) of this subsection, by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding;

(c) By special legal counsel:

(i) Selected by the board of directors or its committee in the manner prescribed in (a) or (b) of this subsection; or

(ii) If a quorum of the board of directors cannot be obtained under (a) of this subsection and a committee cannot be designated under (b) of this subsection, selected by majority vote of the full board of directors, in which selection directors who are parties may participate; or

(d) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those

entitled under subsection (2)(c) of this section to select counsel. [1989 c 165 § 110.]

23B.08.560 Shareholder authorized indemnification and advancement of expenses. (1) If authorized by the articles of incorporation, a bylaw adopted or ratified by the shareholders, or a resolution adopted or ratified, before or after the event, by the shareholders, a corporation shall have power to indemnify or agree to indemnify a director made a party to a proceeding, or obligate itself to advance or reimburse expenses incurred in a proceeding, without regard to the limitations in RCW 23B.08.510 through 23B.08.550, provided that no such indemnity shall indemnify any director from or on account of:

(a) Acts or omissions of the director finally adjudged to be intentional misconduct or a knowing violation of law;

(b) Conduct of the director finally adjudged to be in violation of RCW 23B.08.310; or

(c) Any transaction with respect to which it was finally adjudged that such director personally received a benefit in money, property, or services to which the director was not legally entitled.

(2) Unless the articles of incorporation, or a bylaw or resolution adopted or ratified by the shareholders, provide otherwise, any determination as to any indemnity or advance of expenses under subsection (1) of this section shall be made in accordance with RCW 23B.08.550. [1989 c 165 § 111.]

23B.08.570 Indemnification of officers, employees, and agents. Unless a corporation's articles of incorporation provide otherwise:

(1) An officer of the corporation who is not a director is entitled to mandatory indemnification under RCW 23B.08.520, and is entitled to apply for court-ordered indemnification under RCW 23B.08.540, in each case to the same extent as a director;

(2) The corporation may indemnify and advance expenses under RCW 23B.08.510 through 23B.08.560 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract. [1989 c 165 § 112.]

23B.08.580 Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the

individual against the same liability under RCW 23B.08.510 or 23B.08.520. [1989 c 165 § 113.]

23B.08.590 Validity of indemnification or advance for expenses. (1) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its shareholders or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with RCW 23B.08.500 through 23B.08.580. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles of incorporation.

(2) RCW 23B.08.500 through 23B.08.580 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding. [1989 c 165 § 114.]

23B.08.600 Report to shareholders. If a corporation indemnifies or advances expenses to a director under RCW 23B.08.510, 23B.08.520, 23B.08.530, 23B.08.540, or 23B.08.560 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting. [1989 c 165 § 115.]

23B.08.700 Definitions. For purposes of RCW 23B.08.710 through 23B.08.730:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, if:

(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(b) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction: (i) An entity, other than the corporation, of which the director is a director, general partner, agent, or employee; (ii) a person that controls one or more of the entities specified in (b)(i) of this subsection or an entity that

is controlled by, or is under common control with, one or more of the entities specified in (b)(i) of this subsection; or (iii) an individual who is a general partner, principal, or employer of the director.

(2) "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, respecting which a director of the corporation has a conflicting interest.

(3) "Related person" of a director means (a) the spouse, or a parent or sibling thereof, of the director, or a child, grandchild, sibling, parent, or spouse of any thereof, of the director, or an individual having the same home as the director, or a trust or estate of which an individual specified herein is a substantial beneficiary; or (b) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

(4) "Required disclosure" means disclosure by the director who has a conflicting interest of (a) the existence and nature of the director's conflicting interest, and (b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage. [1989 c 165 § 116.]

23B.08.710 Judicial action. (1) A transaction effected or proposed to be effected by a corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because a director of the corporation, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction.

(2) A director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because the director, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction, if:

(a) Directors' action respecting the transaction was at any time taken in compliance with RCW 23B.08.720;

(b) Shareholders' action respecting the transaction was at any time taken in compliance with RCW 23B.08.730; or

(c) The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation. [1989 c 165 § 117.]

23B.08.720 Directors' action. (1) Directors' action respecting a transaction is effective for purposes of RCW

23B.08.710(2)(a) if the transaction received the affirmative vote of a majority, but no fewer than two, of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (2) of this section, provided that action by a committee is so effective only if:

(a) All its members are qualified directors; and

(b) Its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(2) If a director has a conflicting interest respecting a transaction, but neither the director nor a related person of the director specified in RCW 23B.08.700(3)(a) is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in RCW 23B.08.700(4)(b), then disclosure is sufficient for purposes of subsection (1) of this section if the director (a) discloses to the directors voting on the transaction the existence and nature of the director's conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction, and (b) plays no part, directly or indirectly, in their deliberations or vote.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

(4) For purposes of this section "qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either (a) a conflicting interest respecting the transaction, or (b) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction. [1989 c 165 § 118.]

23B.08.730 Shareholders' action. (1) Shareholders' action respecting a transaction is effective for purposes of RCW 23B.08.710(2)(b) if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after (a) notice to shareholders describing the director's conflicting interest transaction, (b) provision of the information referred to in subsection (4) of this section, and (c) required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

(2) For purposes of this section, "qualified shares" means any shares entitled to vote with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary, or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned, or the voting of which is controlled, by a director who has a conflicting interest

respecting the transaction or by a related person of the director, or both.

(3) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (4) and (5) of this section, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or the voting, of shares that are not qualified shares.

(4) For purposes of compliance with subsection (1) of this section, a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary, or other officer or agent of the corporation authorized to tabulate votes, of the number, and the identity of persons holding or controlling the vote, of all shares that the director knows are beneficially owned, or the voting of which is controlled, by the director, or by a related person of the director, or both.

(5) If a shareholders' vote does not comply with subsection (1) of this section solely because of a failure of a director to comply with subsection (4) of this section, and if the director establishes that the director's failure did not determine and was not intended by the director to influence the outcome of the vote, the court may, with or without further proceedings respecting RCW 23B.08.710(2)(c), take such action respecting the transaction and the director, and give such effect, if any, to the shareholders' vote, as it considers appropriate in the circumstances. [1989 c 165 § 119.]

Chapter 23B.09 [RESERVED]

Chapter 23B.10 AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

Sections

23B.10.010	Authority to amend articles of incorporation.
23B.10.020	Amendment of articles of incorporation by board of directors.
23B.10.030	Amendment of articles of incorporation by board of directors and shareholders.
23B.10.040	Voting on amendments to articles of incorporation by voting groups.
23B.10.050	Amendment of articles of incorporation before issuance of shares.
23B.10.060	Articles of amendment.
23B.10.070	Restated articles of incorporation.
23B.10.080	Amendment of articles of incorporation pursuant to reorganization.
23B.10.090	Effect of amendment of articles of incorporation.
23B.10.200	Amendment of bylaws by board of directors or shareholders.
23B.10.210	Bylaw increasing quorum or voting requirements for directors.

23B.10.010 Authority to amend articles of incorporation. (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorpora-

tion. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation. [1989 c 165 § 120.]

23B.10.020 Amendment of articles of incorporation by board of directors. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) If the corporation has only one class of shares outstanding, to provide, change, or eliminate any provision with respect to the par value of any class of shares;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;

(4) If the corporation has only one class of shares outstanding, solely to change the number of authorized shares to effectuate a split of, or stock dividend in, the corporation's own shares, or solely to do so and to change the number of authorized shares in proportion thereto;

(5) To change the corporate name; or

(6) To make any other change expressly permitted by this title to be made without shareholder action. [1989 c 165 § 121.]

23B.10.030 Amendment of articles of incorporation by board of directors and shareholders. (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposed amendment on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with *RCW 23B.07.050. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

(5) Unless this title, the articles of incorporation, or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by each voting

group entitled to vote thereon by two-thirds, or, in the case of a public company, a majority, of all the votes entitled to be cast by that voting group. The articles of incorporation of a corporation other than a public company may provide for a lesser vote than that provided for in this subsection, or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the amendment is not less than a majority of all the votes entitled to be cast on the amendment by that voting group. [1989 c 165 § 122.]

***Reviser's note:** The reference to "section 62 of this act" has been translated to "RCW 23B.07.050," the section dealing with notice of shareholder meetings. A literal translation would have been "RCW 23B.07.030," which appears to be erroneous.

23B.10.040 Voting on amendments to articles of incorporation by voting groups. (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this title, on a proposed amendment if the amendment would:

- (a) Increase or decrease the aggregate number of authorized shares of the class;
- (b) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;
- (c) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;
- (d) Change the designation, rights, preferences, or limitations of all or part of the shares of the class;
- (e) Change the shares of all or part of the class into a different number of shares of the same class;
- (f) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
- (g) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;
- (h) Limit or deny an existing preemptive right of all or part of the shares of the class; or
- (i) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect only a series of a class of shares in one or more of the ways described in subsection (1) of this section, only the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles two or more series of shares within a class to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series within the class so affected must vote together as a single voting group on the proposed amendment.

(4) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares. [1989 c 165 § 123.]

23B.10.050 Amendment of articles of incorporation before issuance of shares. If a corporation has not yet issued shares, its board of directors, or incorporators if initial directors were not named in the articles of incorporation and have not been elected, may adopt one or more amendments to the corporation's articles of incorporation. [1989 c 165 § 124.]

23B.10.060 Articles of amendment. A corporation amending its articles of incorporation shall deliver to the secretary of state for filing articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment adopted;
- (3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;
- (4) The date of each amendment's adoption;
- (5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and
- (6) If shareholder action was required, a statement that the amendment was duly approved by the shareholders in accordance with the provisions of RCW 23B.10.030 and 23B.10.040. [1989 c 165 § 125.]

23B.10.070 Restated articles of incorporation. (1) Any officer of the corporation may restate its articles of incorporation at any time.

(2) A restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment not requiring shareholder approval, it must be adopted by the board of directors. If the restatement includes an amendment requiring shareholder approval, it must be adopted in accordance with RCW 23B.10.030.

(3) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.

(4) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

- (a) If the restatement does not include an amendment to the articles of incorporation, a statement to that effect;
- (b) If the restatement contains an amendment to the articles of incorporation not requiring shareholder approval, a statement that the board of directors adopted the restatement and the date of such adoption;
- (c) If the restatement contains an amendment to the articles of incorporation requiring shareholder approval, the information required by RCW 23B.10.060; and

(d) Both the articles of restatement and the certificate must be executed.

(5) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(6) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (4) of this section. [1991 c 72 § 36; 1989 c 165 § 126.]

23B.10.080 Amendment of articles of incorporation pursuant to reorganization. (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by RCW 23B.02.020.

(2) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

- (a) The name of the corporation;
- (b) The text of each amendment approved by the court;
- (c) The date of the court's order or decree approving the articles of amendment;
- (d) The title of the reorganization proceeding in which the order or decree was entered; and
- (e) A statement that the court had jurisdiction of the proceeding under federal statute.

(3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan. [1989 c 165 § 127.]

23B.10.090 Effect of amendment of articles of incorporation. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name. [1989 c 165 § 128.]

23B.10.200 Amendment of bylaws by board of directors or shareholders. (1) A corporation's board of directors may amend or repeal the corporation's bylaws, or adopt new bylaws, unless:

- (a) The articles of incorporation or this title reserve this power exclusively to the shareholders in whole or part; or
- (b) The shareholders, in amending or repealing a particular bylaw, provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws, or adopt new bylaws, even though the bylaws may also be amended or repealed, or new bylaws

may also be adopted, by its board of directors. [1989 c 165 § 129.]

23B.10.210 Bylaw increasing quorum or voting requirements for directors. (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) If originally adopted by the shareholders, only by the shareholders; or

(b) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) If the corporation is a public company, action by the board of directors under subsection (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the quorum requirement and be adopted by the vote required to take action under the quorum and voting requirement then in effect.

(4) If the corporation is not a public company, action by the board of directors under subsection (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater. [1989 c 165 § 130.]

Chapter 23B.11

MERGER AND SHARE EXCHANGE

Sections

23B.11.010	Merger.
23B.11.020	Share exchange.
23B.11.030	Action on plan of merger or share exchange.
23B.11.040	Merger of subsidiary.
23B.11.050	Articles of merger or share exchange.
23B.11.060	Effect of merger or share exchange.
23B.11.070	Merger or share exchange with foreign corporation.
23B.11.080	Merger with limited partnership.
23B.11.090	Articles of merger—Limited partnership.
23B.11.100	Effect of merger with limited partnership.
23B.11.110	Merger with foreign limited partnerships and corporations—Effect.

23B.11.010 Merger. (1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by RCW 23B.11.030, approve a plan of merger.

(2) The plan of merger must set forth:

(a) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation; and

(b) Other provisions relating to the merger. [1989 c 165 § 131.]

23B.11.020 Share exchange. (1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by RCW 23B.11.030, approve the exchange.

(2) The plan of exchange must set forth:

(a) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(b) The terms and conditions of the exchange;

(c) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(3) The plan of exchange may set forth other provisions relating to the exchange.

(4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise. [1989 c 165 § 132.]

23B.11.030 Action on plan of merger or share exchange. (1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) The shareholders entitled to vote must approve the plan.

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(5) Unless this title, the articles of incorporation, or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the plan of merger to be authorized must be approved by each voting group entitled to vote separately on the plan by two-thirds of all the votes entitled to be cast on the plan by that voting group. The articles of incorporation may provide for a lesser vote than that provided in this subsection, or for a lesser vote by separate voting groups, so long as the vote

provided for each voting group entitled to vote separately on the plan of merger is not less than a majority of all the votes entitled to be cast on the plan of merger by that voting group. Separate voting by voting groups is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under RCW 23B.10.040.

(6) Unless this title, the articles of incorporation, or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the plan of share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by two-thirds of all the votes entitled to be cast on the plan by that voting group. The articles of incorporation may provide for a lesser vote than that provided in this subsection, or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the plan of share exchange is not less than a majority of all the votes entitled to be cast on the plan of share exchange by that voting group. Separate voting by voting groups is required on a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in RCW 23B.10.020, from its articles of incorporation before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of voting shares of the surviving corporation authorized by its articles of incorporation immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of participating shares authorized by its articles of incorporation immediately before the merger.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is

set forth, in the manner determined by the board of directors. [1989 c 165 § 133.]

23B.11.040 Merger of subsidiary. (1) A parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

(2) The board of directors of the parent shall adopt a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

(3) Within ten days after the corporate action is taken, the parent shall mail a copy of the plan of merger to each shareholder of the subsidiary.

(4) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation, except for amendments enumerated in RCW 23B.10.020. [1989 c 165 § 134.]

23B.11.050 Articles of merger or share exchange.

After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the secretary of state for filing articles of merger or share exchange setting forth:

(1) The plan of merger or share exchange;

(2) If shareholder approval was not required, a statement to that effect; or

(3) If approval of the shareholders of one or more corporations party to the merger or share exchange was required, a statement that the merger or share exchange was duly approved by the shareholders pursuant to RCW 23B.11.030. [1989 c 165 § 135.]

23B.11.060 Effect of merger or share exchange. (1)

When a merger takes effect:

(a) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(b) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(c) The surviving corporation has all liabilities of each corporation party to the merger;

(d) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(f) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the articles of merger or to their rights under chapter 23B.13 RCW.

(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the

plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under chapter 23B.13 RCW. [1989 c 165 § 136.]

23B.11.070 Merger or share exchange with foreign corporation. (1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) The foreign corporation complies with RCW 23B.11.050 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) Each domestic corporation complies with the applicable provisions of RCW 23B.11.010 through 23B.11.040 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with RCW 23B.11.050.

(2) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

(a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under chapter 23B.13 RCW.

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise. [1989 c 165 § 137.]

23B.11.080 Merger with limited partnership. (1)

One or more domestic corporations may merge with one or more limited partnerships if:

(a) The board of directors of each corporation adopts and the shareholders of each corporation approve, if approval would be necessary, the plan of merger as required by RCW 23B.11.030; and

(b) The partners of each limited partnership approve the plan of merger as required by RCW 25.10.810.

(2) The plan of merger must set forth:

(a) The name of each corporation and limited partnership planning to merge and the name of the surviving corporation or limited partnership into which each other corporation or limited partnership plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation and the partnership interests of each limited partnership into shares, partnership interests, obligations or other securities of the surviving corporation or limited

partnership, or into cash or other property, including shares, obligations, or securities of any other corporation, and partnership interests, obligations, or securities of any other limited partnership, in whole or in part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation;

(b) Amendments to the certificate of limited partnership of the surviving limited partnership; and

(c) Other provisions relating to the merger. [1991 c 269 § 38.]

23B.11.090 Articles of merger—Limited partnership. After a plan of merger for one or more corporations and one or more limited partnerships is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), and is approved by the partners for each limited partnership as required by RCW 25.10.810, the surviving entity must:

(1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:

(a) The plan of merger;

(b) A statement that the merger was duly approved by the shareholders of each corporation pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and

(c) A statement that the merger was duly approved by the partners of each limited partnership pursuant to RCW 25.10.810.

(2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.820. [1991 c 269 § 39.]

23B.11.100 Effect of merger with limited partnership. When a merger of one or more corporations and one or more limited partnerships takes effect, and a corporation is the surviving entity:

(1) Every other corporation and every limited partnership party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation, and every limited partnership, ceases;

(2) The title to all real estate and other property owned by each corporation and limited partnership party to the merger is vested in the surviving corporation without reversion or impairment;

(3) The surviving corporation has all the liabilities of each corporation and limited partnership party to the merger;

(4) A proceeding pending against any corporation or limited partnership party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation or limited partnership whose existence ceased;

(5) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger;

(6) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the plan of merger or to their rights under chapter 23B.13 RCW; and

(7) The former holders of partnership interests of every limited partnership party to the merger are entitled only to the rights provided in the plan of merger or to their rights under chapter 25.10 RCW. [1991 c 269 § 40.]

23B.11.110 Merger with foreign limited partnerships and corporations—Effect. (1) One or more foreign limited partnerships and one or more foreign corporations may merge with one or more domestic corporations, provided that:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized and the law of the state or country under which each foreign corporation was incorporated and each foreign limited partnership or foreign corporation complies with that law in effecting the merger;

(b) If the surviving entity is a foreign or domestic corporation, that corporation complies with RCW 23B.11.090;

(c) If the surviving entity is a foreign or domestic limited partnership, that limited partnership complies with RCW 25.10.820;

(d) Each domestic corporation complies with RCW 23B.11.080; and

(e) Each domestic limited partnership complies with RCW 25.10.810.

(2) Upon the merger taking effect, a surviving foreign corporation or limited partnership is deemed:

(a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders or partners of each domestic corporation or domestic limited partnership party to the merger; and

(b) To agree that it will promptly pay to the dissenting shareholders or partners of each domestic corporation or domestic limited partnership party to the merger the amount, if any, to which they are entitled under chapter 23B.13 RCW, in the case of dissenting shareholders, or under chapter 25.10 RCW, in the case of dissenting partners. [1991 c 269 § 41.]

Chapter 23B.12 SALE OF ASSETS

Sections

- 23B.12.010 Sale of assets in regular course of business and mortgage of assets.
23B.12.020 Sale of assets other than in the regular course of business.

23B.12.010 Sale of assets in regular course of business and mortgage of assets. (1) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business; or

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) of this section is not required. [1990 c 178 § 12; 1989 c 165 § 138.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.12.020 Sale of assets other than in the regular course of business. (1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction to be authorized:

(a) The board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) The shareholders entitled to vote must approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(5) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by two-thirds of all the votes entitled to be cast on the transaction. The articles of incorporation may provide for a lesser vote than that provided for in this subsection, or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the transaction is not less than a majority of all the votes entitled to be cast on the transaction by that voting group.

(6) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholder action.

(7) A transaction that constitutes a distribution is governed by RCW 23B.06.400 and not by this section. [1989 c 165 § 139.]

Chapter 23B.13

DISSENTERS' RIGHTS

Sections

23B.13.010	Definitions.
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23B.13.030	Dissent by nominees and beneficial owners.
23B.13.200	Notice of dissenters' rights.

23B.13.210	Notice of intent to demand payment.
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23B.13.270	After-acquired shares.
23B.13.280	Procedure if shareholder dissatisfied with payment or offer.
23B.13.300	Court action.
23B.13.310	Court costs and counsel fees.

23B.13.010 Definitions. As used in this chapter:

(1) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(2) "Dissenter" means a shareholder who is entitled to dissent from corporate action under RCW 23B.13.020 and who exercises that right when and in the manner required by RCW 23B.13.200 through 23B.13.280.

(3) "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effective date of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(5) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(6) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(7) "Shareholder" means the record shareholder or the beneficial shareholder. [1989 c 165 § 140.]

23B.13.020 Right to dissent. (1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party (i) if shareholder approval is required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation and the shareholder is entitled to vote on the merger, or (ii) if the corporation is a subsidiary that is merged with its parent under RCW 23B.11.040;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be

distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation that materially reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under RCW 23B.06.040; or

(e) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.900 through 25.10.955, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

(a) The proposed corporate action is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or

(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation. [1991 c 269 § 37; 1989 c 165 § 141.]

23B.13.030 Dissent by nominees and beneficial owners. (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in the shareholder's name only if the shareholder dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf the shareholder asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which the dissenter dissents and the dissenter's other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on the beneficial shareholder's behalf only if:

(a) The beneficial shareholder submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) The beneficial shareholder does so with respect to all shares of which such shareholder is the beneficial shareholder or over which such shareholder has power to direct the vote. [1989 c 165 § 142.]

23B.13.200 Notice of dissenters' rights. (1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

(2) If corporate action creating dissenters' rights under RCW 23B.13.020 is taken without a vote of shareholders, the corporation, within ten days after [the] effective date of such corporate action, shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in RCW 23B.13.220. [1989 c 165 § 143.]

23B.13.210 Notice of intent to demand payment.

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights must (a) deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed action is effected, and (b) not vote such shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) of this section is not entitled to payment for the shareholder's shares under this chapter. [1989 c 165 § 144.]

23B.13.220 Dissenters' notice. (1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of RCW 23B.13.210.

(2) The dissenters' notice must be sent within ten days after the effective date of the corporate action, and must:

(a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1) of this section is delivered; and

(e) Be accompanied by a copy of this chapter. [1989 c 165 § 145.]

23B.13.230 Duty to demand payment. (1) A shareholder sent a dissenters' notice described in RCW 23B.13.220 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to RCW 23B.13.220(2)(c), and deposit the shareholder's certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits the shareholder's share certificates under subsection (1) of this section retains all other rights of a shareholder until the proposed corporate action is effected.

(3) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for the shareholder's shares under this chapter. [1989 c 165 § 146.]

23B.13.240 Share restrictions. (1) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is effected or the restriction is released under RCW 23B.13.260.

(2) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until the effective date of the proposed corporate action. [1989 c 165 § 147.]

23B.13.250 Payment. (1) Except as provided in RCW 23B.13.270, within thirty days of the later of the effective date of the proposed corporate action, or the date the payment demand is received, the corporation shall pay each dissenter who complied with RCW 23B.13.230 the amount the corporation estimates to be the fair value of the shareholder's shares, plus accrued interest.

(2) The payment must be accompanied by:

(a) The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(b) An explanation of how the corporation estimated the fair value of the shares;

(c) An explanation of how the interest was calculated;

(d) A statement of the dissenter's right to demand payment under RCW 23B.13.280; and

(e) A copy of this chapter. [1989 c 165 § 148.]

23B.13.260 Failure to take action. (1) If the corporation does not effect the proposed action within sixty days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release any transfer restrictions imposed on uncertificated shares.

(2) If after returning deposited certificates and releasing transfer restrictions, the corporation wishes to undertake the proposed action, it must send a new dissenters' notice under RCW 23B.13.220 and repeat the payment demand procedure. [1989 c 165 § 149.]

23B.13.270 After-acquired shares. (1) A corporation may elect to withhold payment required by RCW 23B.13.250 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1) of this section, after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The corporation shall send with

its offer an explanation of how it estimated the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under RCW 23B.13.280. [1989 c 165 § 150.]

23B.13.280 Procedure if shareholder dissatisfied with payment or offer. (1) A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and amount of interest due, and demand payment of the dissenter's estimate, less any payment under RCW 23B.13.250, or reject the corporation's offer under RCW 23B.13.270 and demand payment of the dissenter's estimate of the fair value of the dissenter's shares and interest due, if:

(a) The dissenter believes that the amount paid under RCW 23B.13.250 or offered under RCW 23B.13.270 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

(b) The corporation fails to make payment under RCW 23B.13.250 within sixty days after the date set for demanding payment; or

(c) The corporation does not effect the proposed action and does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the corporation of the dissenter's demand in writing under subsection (1) of this section within thirty days after the corporation made or offered payment for the dissenter's shares. [1989 c 165 § 151.]

23B.13.300 Court action. (1) If a demand for payment under RCW 23B.13.280 remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(3) The corporation shall make all dissenters, whether or not residents of this state, whose demands remain unsettled, parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The corporation may join as a party to the proceeding any shareholder who claims to be a dissenter but who has not, in the opinion of the corporation, complied with the provisions of this chapter. If the court determines that such shareholder has not complied with the provisions of this chapter, the shareholder shall be dismissed as a party.

(5) The jurisdiction of the court in which the proceeding is commenced under subsection (2) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(6) Each dissenter made a party to the proceeding is entitled to judgment (a) for the amount, if any, by which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the corporation, or (b) for the fair value, plus accrued interest, of the dissenter's after-acquired shares for which the corporation elected to withhold payment under RCW 23B.13.270. [1989 c 165 § 152.]

23B.13.310 Court costs and counsel fees. (1) The court in a proceeding commenced under RCW 23B.13.300 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess the costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under RCW 23B.13.280.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of RCW 23B.13.200 through 23B.13.280; or

(b) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by chapter 23B.13 RCW.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited. [1989 c 165 § 153.]

Chapter 23B.14 DISSOLUTION

Sections

23B.14.010	Dissolution by initial directors or incorporators.
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23B.14.340	Survival of remedy after dissolution.
23B.14.400	Deposit with state treasurer.

23B.14.010 Dissolution by initial directors or incorporators. A majority of the initial directors, or, if initial directors were not named in the articles of incorporation and have not been elected, the incorporators of a corporation that either has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing:

(1) A copy of a revenue clearance certificate issued pursuant to RCW 82.32.260; and

(2) Articles of dissolution that set forth:

(a) The name of the corporation;

(b) The date of its incorporation;

(c) Either (i) that none of the corporation's shares have been issued or (ii) that the corporation has not commenced business;

(d) That no debt of the corporation remains unpaid;

(e) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(f) That a majority of the initial directors authorized the dissolution, or that initial directors were not named in the articles of incorporation and have not been elected and a majority of incorporators authorized the dissolution. [1989 c 165 § 154.]

23B.14.020 Dissolution by board of directors and shareholders. (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal for dissolution on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the proposal to dissolve must be approved by two-thirds of all the votes entitled to be cast on that proposal in order to be adopted. The articles of incorporation may provide for a lesser vote than that provided for in this subsection, or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the proposal to dissolve is not less than a majority of all the votes entitled to be cast on the proposal by that voting group. [1989 c 165 § 155.]

23B.14.030 Articles of dissolution. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing:

- (a) A copy of a revenue clearance certificate issued pursuant to RCW 82.32.260; and
 - (b) Articles of dissolution setting forth:
 - (i) The name of the corporation;
 - (ii) The date dissolution was authorized; and
 - (iii) If shareholder approval was required for dissolution, a statement that dissolution was duly approved by the shareholders in accordance with RCW 23B.14.020.
- (2) A corporation is dissolved upon the effective date of its articles of dissolution. [1989 c 165 § 156.]

23B.14.040 Revocation of dissolution. (1) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (a) The name of the corporation and a statement that such name satisfies the requirements of RCW 23B.04.010; if the name is not available, the corporation must file articles of amendment changing its name with the articles of revocation of dissolution;
 - (b) The effective date of the dissolution that was revoked;
 - (c) The date that the revocation of dissolution was authorized;
 - (d) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;
 - (e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
 - (f) If shareholder action was required to revoke the dissolution, a statement that revocation of the dissolution was duly approved by the shareholders in accordance with RCW 23B.14.040(2) and 23B.14.020.
- (4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.
- (5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred. [1989 c 165 § 157.]

23B.14.050 Effect of dissolution. (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (a) Collecting its assets;
- (b) Disposing of its properties that will not be distributed in kind to its shareholders;

(c) Discharging or making provision for discharging its liabilities;

(d) Distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

- (a) Transfer title to the corporation's property;
- (b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in chapter 23B.08 RCW;

(d) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(e) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) Terminate the authority of the registered agent of the corporation. [1989 c 165 § 158.]

23B.14.060 Known claims against a dissolved corporation. (1) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

- (a) Describe information that must be included in a claim;
- (b) Provide a mailing address where a claim may be sent;
- (c) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
- (d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

- (a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline; or
- (b) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution. [1989 c 165 § 159.]

23B.14.200 Administrative dissolution—Grounds. The secretary of state may administratively dissolve a corporation under RCW 23B.14.210 if:

- (1) The corporation does not pay any license fees or penalties, imposed by this title, when they become due;

(2) The corporation does not deliver its completed initial report or annual report to the secretary of state when it is due;

(3) The corporation is without a registered agent or registered office in this state;

(4) The corporation does not notify the secretary of state that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) The corporation's period of duration stated in its articles of incorporation expired after July 1, 1990; or

(6) The corporation's period of duration stated in its articles of incorporation expired prior to July 1, 1990, but the corporation has timely paid all license fees imposed by this title, has timely filed annual reports with the secretary of state, has never been without a registered agent or registered office in this state for sixty days or more, and has never failed to notify the secretary of state of changes in a registered agent or registered office within sixty days of such change. [1991 c 72 § 37; 1990 c 178 § 5; 1989 c 165 § 160.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.14.210 Administrative dissolution—Procedure and effect. (1) If the secretary of state determines that one or more grounds exist under RCW 23B.14.200 for dissolving a corporation, the secretary of state shall give the corporation written notice of the determination by first-class mail, postage prepaid.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is effective, the secretary of state shall administratively dissolve the corporation and give the corporation written notice of the dissolution that recites the ground or grounds therefor and its effective date.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under RCW 23B.14.050 and notify claimants under RCW 23B.14.060.

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent. [1989 c 165 § 161.]

23B.14.220 Reinstatement following administrative dissolution. (1) A corporation administratively dissolved under RCW 23B.14.210 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must:

(a) Recite the name of the corporation and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) State that the corporation's name satisfies the requirements of RCW 23B.04.010.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of state shall reinstate the corporation and give the corporation

written notice of the reinstatement that recites the effective date of reinstatement. If the name is not available, the corporation must file articles of amendment changing its name with its application for reinstatement.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred. [1989 c 165 § 162.]

23B.14.300 Judicial dissolution—Grounds. The superior courts may dissolve a corporation:

(1) In a proceeding by the attorney general if it is established that:

(a) The corporation obtained its articles of incorporation through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(b) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(d) The corporate assets are being misapplied or wasted;

(3) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment was returned unsatisfied, and the corporation is insolvent; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision. [1989 c 165 § 163.]

23B.14.310 Judicial dissolution—Procedure. (1) Venue for any proceeding to dissolve a corporation brought by any party named in RCW 23B.14.300 lies in the county where a corporation's registered office is or was last located.

(2) It is not necessary to make shareholders or directors parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held. [1989 c 165 § 164.]

23B.14.320 Receivership or custodianship. (1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court, and (ii) may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state; and

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court, during a receivership, may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and counsel from the assets of the corporation or proceeds from the sale of the assets. [1989 c 165 § 165.]

23B.14.330 Decree of dissolution. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in RCW 23B.14.300 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with RCW 23B.14.050 and the notification of claimants in accordance with RCW 23B.14.060. [1989 c 165 § 166.]

23B.14.340 Survival of remedy after dissolution. The dissolution of a corporation either: (1) By the issuance of a certificate of dissolution by the secretary of state, (2) by a decree of court, or (3) by expiration of its period of duration shall not take away or impair any remedy available against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding against the

corporation may be defended by the corporation in its corporate name. [1990 c 178 § 6; 1989 c 165 § 167.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.14.400 Deposit with state treasurer. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them may be reduced to cash and deposited with the state treasurer for safekeeping. If assets are transferred to the state treasurer, and if the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay such person or such person's representative that amount. [1989 c 165 § 168.]

Chapter 23B.15

FOREIGN CORPORATIONS

Sections

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23B.15.010 Authority to transact business required.

(1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1) of this section:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(c) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this state before becoming binding

contracts and where the contracts do not involve any local performance other than delivery and installation;

(g) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(k) Transacting business in interstate commerce; or

(l) Owning and controlling a subsidiary corporation incorporated in or transacting business within this state.

(3) The list of activities in subsection (2) of this section is not exhaustive. [1990 c 178 § 7; 1989 c 165 § 169.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.15.020 Consequences of transacting business without authority. (1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation which transacts business in this state without a certificate of authority is liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this title upon such corporation had it applied for and received a certificate of authority to transact business in this state as required by this title and thereafter filed all reports required by this title, plus all penalties imposed by this title for failure to pay such fees.

(5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state. [1990 c 178 § 8; 1989 c 165 § 170.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.15.030 Application for certificate of authority.

(1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must state:

(a) That the name of the foreign corporation meets the requirements stated in RCW 23B.15.060;

(b) The name of the state or country under whose law it is incorporated;

(c) Its date of incorporation and period of duration;

(d) The street address of its principal office;

(e) The street address of its registered office in this state and the name of its registered agent at that office, in accordance with RCW 23B.15.070; and

(f) The names and usual business addresses of its current directors and officers.

(2) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, issued no more than sixty days before the date of the application and duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated. [1989 c 165 § 171.]

23B.15.040 Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:

(a) Its corporate name; or

(b) The period of its duration.

(2) A foreign corporation may apply for an amended certificate of authority by delivering an application to the secretary of state for filing that sets forth:

(a) The name of the foreign corporation and the name in which the corporation is authorized to transact business in Washington, if different;

(b) The name of the state or country under whose law it is incorporated;

(c) The date it was authorized to transact business in this state;

(d) A statement of the change or changes being made;

(e) In the event the change or changes include a name change to a name that does not meet the requirements of RCW 23B.15.060, a fictitious name for use in Washington, and a copy of the resolution of the board of directors, certified by the corporation's secretary, adopting the fictitious name; and

(f) A copy of the document filed in the state or country of incorporation showing that jurisdiction's "filed" stamp. [1991 c 72 § 38; 1989 c 165 § 172.]

23B.15.050 Effect of certificate of authority. (1) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this title.

(2) A foreign corporation holding a valid certificate of authority shall have no greater rights and privileges than a domestic corporation of like character. Except as otherwise provided by this title, a foreign corporation is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.

(3) Except as otherwise provided in *chapter 23B.19 RCW, this title does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state. [1989 c 165 § 173.]

***Reviser's note:** The reference to "sections 202 through 205 of this act" has been translated to "chapter 23B.19 RCW," dealing with significant business transactions. A literal translation would be "RCW 23B.900.010 through 23B.900.040" which appears to be erroneous.

23B.15.060 Corporate name of foreign corporation.

(1) No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(a) Contains the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.,";

(b) Does not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RCW 23B.03.010 and its articles of incorporation;

(c) Does not contain any of the following words or phrases: "Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(d) Except as authorized by subsections (3) and (4) of this section, is distinguishable upon the records of the secretary of state from:

(i) The corporate name of a corporation incorporated or authorized to transact business in this state;

(ii) A corporate name reserved or registered under RCW 23B.04.020 or 23B.04.030;

(iii) The fictitious name adopted pursuant to subsection (2) of this section by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state; and

(v) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW.

(2) If the corporate name of a foreign corporation does not satisfy the requirements of subsection (1) of this section, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(a) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.," to its corporate name for use in this state; or

(b) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(3) A foreign corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1)(d) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, holder, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) Has merged with the other corporation; or

(b) Has been formed by reorganization of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of subsection (1) of this section, it may not transact business in this state under the changed name until it adopts a name satisfying such requirements and obtains an amended certificate of authority under RCW 23B.15.040. [1989 c 165 § 174.]

23B.15.070 Registered office and registered agent of foreign corporation. (1) Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(a) A registered office which may be, but need not be, the same as its place of business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, building address, or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in the same city as the registered office to be used in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.

(b) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office;

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(iii) A foreign corporation or foreign not-for-profit corporation authorized to transact business or conduct affairs in this state whose business office is identical with the registered office.

(2) A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records. [1989 c 165 § 175.]

23B.15.080 Change of registered office or registered agent of foreign corporation. (1) A foreign corporation

authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

- (a) Its name;
- (b) If the current registered office is to be changed, the street address of its new registered office;
- (c) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and
- (d) That, after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change. [1989 c 165 § 176.]

23B.15.090 Resignation of registered agent of foreign corporation. (1) The registered agent of a foreign corporation may resign as agent by signing and delivering to the secretary of state for filing a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall mail a copy of the statement to the foreign corporation at its principal office address shown in its most recent annual report, or in the application for certificate of authority if no annual report has been filed.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed. [1989 c 165 § 177.]

23B.15.100 Service on foreign corporation. (1) The registered agent appointed by a foreign corporation authorized to transact business in this state shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(2) The secretary of state shall be an agent of a foreign corporation upon whom any process, notice, or demand may be served, if:

- (a) The corporation is authorized to transact business in this state, and it fails to appoint or maintain a registered agent in this state, or its registered agent cannot with reasonable diligence be found at the registered office;
- (b) The corporation's authority to transact business in this state has been revoked under RCW 23B.15.310; or
- (c) The corporation has been authorized to transact business in this state and has withdrawn under RCW 23B.15.200.

(3) Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving

with the secretary of state, or with any duly authorized clerk of the corporation department of the secretary of state's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the secretary of the corporation at its principal office as shown on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.

(4) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.

(5) This section does not limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [1989 c 165 § 178.]

23B.15.200 Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must be accompanied by a copy of a revenue clearance certificate issued pursuant to RCW 82.32.260, and must set forth:

(a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under (c) of this subsection; and

(e) A commitment to notify the secretary of state in the future of any change in its mailing address.

(3) After the withdrawal of the corporation is effective, service of process on the secretary of state under RCW 23B.15.100 is service on the foreign corporation. [1989 c 165 § 179.]

23B.15.300 Revocation—Grounds. The secretary of state may revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its completed initial report or annual report to the secretary of state when it is due;

(2) The foreign corporation does not pay any license fees or penalties, imposed by this title, when they become due;

(3) The foreign corporation is without a registered agent or registered office in this state;

(4) The foreign corporation does not inform the secretary of state under RCW 23B.15.080 or 23B.15.090 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(6) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger. [1991 c 72 § 39; 1990 c 178 § 9; 1989 c 165 § 180.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.15.310 Revocation—Procedure and effect. (1)

If the secretary of state determines that one or more grounds exist under RCW 23B.15.300 for revocation of a certificate of authority, the secretary of state shall give the foreign corporation written notice of the determination by first-class mail, postage prepaid.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is effective, the secretary of state shall revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and mail a copy to the foreign corporation.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under RCW 23B.15.100 is service on the foreign corporation.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation. [1989 c 165 § 181.]

Chapter 23B.16

RECORDS AND REPORTS

Sections

23B.16.010	Corporate records.
23B.16.020	Inspection of records by shareholders.
23B.16.030	Scope of inspection right.
23B.16.040	Court-ordered inspection.
23B.16.200	Financial statements for shareholders.
23B.16.220	Initial and annual reports for secretary of state.

23B.16.010 Corporate records. (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors exercising the authority of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office:

(a) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Its bylaws or restated bylaws and all amendments to them currently in effect;

(c) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;

(d) The financial statements described in RCW 23B.16.200(1), for the past three years;

(e) All written communications to shareholders generally within the past three years;

(f) A list of the names and business addresses of its current directors and officers; and

(g) Its initial report or most recent annual report delivered to the secretary of state under RCW 23B.16.220. [1991 c 72 § 40; 1989 c 165 § 182.]

23B.16.020 Inspection of records by shareholders.

(1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in RCW 23B.16.010(5) if the shareholder gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) of this section and gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while exercising the authority of the board of directors, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (1) of this section;

(b) Accounting records of the corporation; and

(c) The record of shareholders.

(3) A shareholder may inspect and copy the records described in subsection (2) of this section only if:

(a) The shareholder's demand is made in good faith and for a proper purpose;

(b) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(c) The records are directly connected with the shareholder's purpose.

(4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section does not affect:

(a) The right of a shareholder to inspect records under RCW 23B.07.200 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) The power of a court, independently of this title, to compel the production of corporate records for examination.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf. [1989 c 165 § 183.]

23B.16.030 Scope of inspection right. (1) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder.

(2) The right to copy records under *RCW 23B.16.020 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means, including copies in electronic or other nonwritten form if the shareholder so requests.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any records provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under RCW 23B.16.020(2)(c) by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand. [1989 c 165 § 184.]

***Reviser's note:** The reference to "section 184 of this act" has been translated to "RCW 23B.16.020." A literal translation would be "RCW 23B.16.030" which is the section above and appears to be erroneous.

23B.16.040 Court-ordered inspection. (1) If a corporation does not allow a shareholder who complies with RCW 23B.16.020(1) to inspect and copy any records required by that subsection to be available for inspection, the superior court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with RCW 23B.16.020 (2) and (3) may apply to the superior court of the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall

dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder. [1989 c 165 § 185.]

23B.16.200 Financial statements for shareholders.

(1) Not later than four months after the close of each fiscal year, and in any event prior to the annual meeting of shareholders, each corporation shall prepare (a) a balance sheet showing in reasonable detail the financial condition of the corporation as of the close of its fiscal year, and (b) an income statement showing the results of its operation during its fiscal year. Such statements may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate. If financial statements are prepared by the corporation for any purpose on the basis of generally accepted accounting principles, the annual statements must also be prepared, and disclose that they are prepared, on that basis. If financial statements are prepared only on a basis other than generally accepted accounting principles, they must be prepared, and disclose that they are prepared, on the same basis as other reports and statements prepared by the corporation for the use of others.

(2) Upon written request, the corporation shall promptly mail to any shareholder a copy of the most recent balance sheet and income statement. If prepared for other purposes, the corporation shall also furnish upon written request a statement of sources and applications of funds, and a statement of changes in shareholders' equity, for the most recent fiscal year.

(3) If the annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(a) Stating the person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the basis used for statements prepared for the preceding year.

(4) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf. [1989 c 165 § 186.]

23B.16.220 Initial and annual reports for secretary of state. (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing initial and annual reports that set forth:

(a) The name of the corporation and the state or country under whose law it is incorporated;

(b) The street address of its registered office and the name of its registered agent at that office in this state;

(c) In the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated;

(d) The address of the principal place of business of the corporation in this state;

(e) The names and addresses of its directors, if the corporation has dispensed with or limited the authority of its board of directors pursuant to RCW 23B.08.010 or analogous authority, the names and addresses of persons who will perform some or all of the duties of the board of directors;

(f) A brief description of the nature of its business; and

(g) The names and addresses of its chairperson of the board of directors, if any, president, secretary, and treasurer, or of individuals, however designated, performing the functions of such officers.

(2) Information in an initial report or an annual report must be current as of the date the report is executed on behalf of the corporation.

(3) A corporation's initial report must be delivered to the secretary of state within one hundred twenty days of the date on which the articles of incorporation for a domestic corporation were filed, or on which a foreign corporation's certificate of authority was filed. Subsequent annual reports must be delivered to the secretary of state on, or prior to, the date on which the domestic or foreign corporation is required to pay its annual corporate license fee, and at such additional times as the corporation elects. [1991 c 72 § 41; 1989 c 165 § 187.]

Chapter 23B.17

MISCELLANEOUS PROVISIONS

Sections

- 23B.17.010 Application to existing corporations.
 23B.17.020 Transactions involving interested shareholders.
 23B.17.030 Limitation on liability of directors—Indemnification.

23B.17.010 Application to existing corporations. (1) Unless otherwise provided, this title applies to all domestic corporations in existence on July 1, 1990, that were incorporated under any general statute of this state providing for incorporation of corporations for profit.

(2) Unless otherwise provided, a foreign corporation authorized to transact business in this state on July 1, 1990, is subject to this title but is not required to obtain a new certificate of authority to transact business under this title. [1989 c 165 § 188.]

23B.17.020 Transactions involving interested shareholders. (1) For purposes of this section:

(a) An interested shareholder transaction means any transaction between a corporation, or any subsidiary thereof, and an interested shareholder of such corporation or an affiliated person of an interested shareholder that must be authorized pursuant to the provisions of chapters 23B.11 and 23B.14 RCW, or RCW 23B.12.020;

(b) An interested shareholder:

(i) Includes any person or group of affiliated persons who beneficially own twenty percent or more of the outstanding voting shares of a corporation. An affiliated person is any person who either acts jointly or in concert with, or directly or indirectly controls, is controlled by, or is under common control with another person; and

(ii) Excludes any person who, in good faith and not for the purpose of circumventing this section, is an agent, bank, broker, nominee, or trustee for another person, if such other person is not an interested shareholder under (b)(i) of this subsection.

(2) Except as provided in subsection (3) of this section, an interested shareholder transaction must be approved by each voting group entitled to vote separately on the transaction by two-thirds of the votes entitled to be counted under this subsection for that voting group. The votes of all outstanding shares entitled to vote under this title or the articles of incorporation shall be entitled to be counted under this subsection except that the votes of shares owned by or voted under the control of an interested shareholder may not be counted to determine whether shareholders have approved a transaction for purposes of this subsection. The votes of shares owned by or voted under the control of an interested shareholder, however, shall be counted in determining whether a transaction is approved under other sections of this title and for purposes of determining a quorum.

(3) This section shall not apply to a transaction:

(a) Unless the articles of incorporation provide otherwise, by a corporation with fewer than three hundred holders of record of its shares;

(b) Approved by a majority vote of the corporation's board of directors. For such purpose, the votes of directors who are directors or officers of, or have a material financial interest in an interested shareholder, or who were nominated for election as a director as a result of an arrangement with an interested shareholder and first elected as a director within twenty-four months of the proposed transaction, shall not be counted in determining whether the transaction is approved by such directors;

(c) In which a majority of directors whose votes are entitled to be counted under (3)(b) of this section determines that the fair market value of the consideration to be received by noninterested shareholders for shares of any class of which shares are owned by any interested shareholder is not less than the highest fair market value of the consideration paid by any interested shareholder in acquiring shares of the same class within twenty-four months of the proposed transaction; or

(d) By a corporation whose original articles of incorporation have a provision, or whose shareholders adopt an amendment to the articles of incorporation by two-thirds of the votes entitled to be counted under this subsection, expressly electing not to be covered by this section. The votes of all outstanding shares entitled to vote under this title or the articles of incorporation shall be entitled to be counted under this subsection except that the votes of shares owned by or voted under the control of an interested shareholder may not be counted to determine whether shareholders have voted to approve the amendment. The votes of shares owned by or voted under the control of an interested shareholder, however, shall be counted in determining

whether the amendment is approved under other sections of this title and for purposes of determining a quorum.

(4) The requirements imposed by this section are in addition to, and not in lieu of, requirements imposed on any transaction by any other provision in this title, the articles of incorporation, or the bylaws of the corporation, or otherwise. [1989 c 165 § 189.]

23B.17.030 Limitation on liability of directors—Indemnification. The provisions of RCW 23B.08.320 and 23B.08.500 through 23B.08.600 shall apply to any corporation, other than a municipal corporation, incorporated under the laws of the state of Washington. [1989 c 165 § 190.]

Chapter 23B.18

NONADMITTED ORGANIZATIONS

Sections

- 23B.18.010 Ownership and enforcement of notes secured by real estate mortgages.
- 23B.18.020 Mortgage foreclosure.
- 23B.18.030 Transacting business.
- 23B.18.040 Service of process.
- 23B.18.050 Service of process—Procedure.
- 23B.18.060 Venue.

23B.18.010 Ownership and enforcement of notes secured by real estate mortgages. Any corporation, bank, trust company, mutual savings bank, savings and loan association, national banking association, or other corporation or association organized and existing under the laws of the United States or under the laws of any state or territory of the United States other than the state of Washington, including, without restriction of the generality of the foregoing description, employee pension fund organizations, charitable foundations, trust funds, or other funds, foundations or trusts engaged in the investment of moneys, and trustees of such organizations, foundations, funds or trusts, and which are not admitted to conduct business in the state of Washington under the provisions of this title, and which are not otherwise specifically authorized to transact business in this state, herein collectively referred to as "nonadmitted organizations," may purchase, acquire, hold, sell, assign, transfer, and enforce notes secured by real estate mortgages covering real property situated in this state and the security interests thereby provided, and may make commitments to purchase or acquire such notes so secured. [1989 c 165 § 191.]

23B.18.020 Mortgage foreclosure. Such nonadmitted organizations shall have the right to foreclose such mortgages under the laws of this state or to receive voluntary conveyance in lieu of foreclosure, and in the course of such foreclosure or of such receipt of conveyance in lieu of foreclosure, to acquire the mortgaged property, and to hold and own such property and to dispose thereof. Such nonadmitted organizations however, shall not be allowed to hold, own, and operate said property for a period exceeding five years. In the event said nonadmitted organizations do hold, own, and operate said property for a period in excess of five years, it shall be forthwith required to appoint an

agent as required by RCW 23B.15.070 for foreign corporations doing business in this state. [1989 c 165 § 192.]

23B.18.030 Transacting business. The activities authorized by RCW 23B.18.010 and 23B.18.020 by such nonadmitted organizations shall not constitute "transacting business" within the meaning of chapter 23B.15 RCW. [1989 c 165 § 193.]

23B.18.040 Service of process. In any action in law or equity commenced by the obligor or obligors, it, his, her, or their assignee or assignees against the said nonadmitted organizations on the said notes secured by said real estate mortgages purchased by said nonadmitted organizations, service of all legal process may be had by serving the secretary of state of the state of Washington. [1989 c 165 § 194.]

23B.18.050 Service of process—Procedure. Duplicate copies of legal process against said nonadmitted organizations shall be served upon the secretary of state by registered mail. At the time of service the plaintiff shall pay to the secretary of state twenty-five dollars taxable as costs in the action and shall also furnish the secretary of state the home office address of said nonadmitted organization. The secretary of state shall forthwith send one of the copies of process by certified mail to the said nonadmitted organization to its home office. The secretary of state shall keep a record of the day, month, and year of service upon the secretary of state of all legal process. No proceedings shall be had against the nonadmitted organization nor shall it be required to appear, plead, or answer until the expiration of forty days after the date of service upon the secretary of state. [1989 c 165 § 195.]

23B.18.060 Venue. Suit upon causes of action arising against the said nonadmitted organizations shall be brought in the county where the property is situated which is the subject of the mortgage purchased by the said nonadmitted organizations. If the property covered by the said mortgage is situated in more than one county, venue may be had in any of said counties where the property lies. [1989 c 165 § 196.]

Chapter 23B.19

SIGNIFICANT BUSINESS TRANSACTIONS

Sections

- 23B.19.010 Legislative findings—Intent.
- 23B.19.020 Definitions.
- 23B.19.030 Transactions excluded from chapter.
- 23B.19.040 Approval of significant business transaction required—Violation.
- 23B.19.050 Provisions of chapter additional to other requirements.

23B.19.010 Legislative findings—Intent. The legislature finds that:

(1) Corporations that offer employment and health, retirement, and other benefits to citizens of the state of Washington are vital to the economy of this state and the well-being of all of its citizens;

(2) The welfare of the employees of these corporations is of paramount interest and concern to this state;

(3) Many businesses in this state rely on these corporations to purchase goods and services;

(4) Hostile or unfriendly attempts to gain control of or influence otherwise publicly held corporations can cause corporate management to dissipate a corporation's assets in an effort to resist the takeover by selling or distributing cash or assets, redeeming stock, or taking other steps to increase the short-term gain to shareholders and to dissipate energies required for strategic planning, market development, capital investment decisions, assessment of technologies, and evaluation of competitive challenges that can damage the long-term interests of shareholders and the economic health of the state by reducing or eliminating the ability to finance investments in research and development, new products, facilities and equipment, and by undermining the planning process for those purposes;

(5) Hostile or unfriendly attempts to gain control or influence otherwise publicly held corporations are often highly leveraged pursuant to financing arrangements which assume that an acquirer will promptly obtain access to an acquired corporation's cash or assets and use them, or the proceeds of their sale, to repay acquisition indebtedness;

(6) Hostile or unfriendly attempts to gain control of or influence otherwise publicly held corporations can harm the economy of the state by weakening corporate performance, and causing unemployment, plant closings, reduced charitable donations, declining population base, reduced income to fee-supported local government services, reduced tax base, and reduced income to other businesses; and

(7) The state has a substantial and legitimate interest in regulating domestic corporations and those foreign corporations that have their most significant business contacts with this state and in regulating hostile or unfriendly attempts to gain control of or influence otherwise publicly held domestic corporations and those foreign corporations that employ a large number of citizens of the state, pay significant taxes, and have a substantial economic base in the state.

The legislature intends this chapter to balance the substantial and legitimate interests of the state in domestic corporations and those foreign corporations that employ a large number of citizens of the state and that have a substantial economic base in the state with: The interests of citizens of other states who own shares of such corporations; the interests of the state of incorporation of such foreign corporations in regulating the internal affairs of corporations incorporated in that state; and the interests of promoting interstate commerce. To this effect, the legislature intends to regulate certain transactions between publicly held corporations and acquiring persons that will tend to harm the long-term health of domestic corporations and of foreign corporations that have their principal executive office and a majority of their assets in this state and that employ a large number of citizens of this state. [1989 c 165 § 197.]

23B.19.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Acquiring person" means a person or group of persons, other than the target corporation or a subsidiary of the target corporation, who beneficially owns ten percent or

more of the outstanding voting shares of the target corporation. The term "acquiring person" does not include a person who (a) beneficially owns ten percent or more of the outstanding voting shares of the target corporation on March 23, 1988; (b) acquires its shares by gift, inheritance, or in a transaction in which no consideration is exchanged; or (c) exceeds the ten percent threshold as a result of action taken solely by the target corporation, such as redemption of shares, unless that person, by its own action, acquires additional shares of the target corporation. An agent, bank, broker, nominee, or trustee for another person, if the other person is not an acquiring person, who acts in good faith and not for the purpose of circumventing this chapter, is not an acquiring person.

(2) "Affiliate" means a person who directly or indirectly controls, or is controlled by, or is under common control with, a person.

(3) "Associate" means (a) a domestic or foreign corporation or organization of which a person is an officer, director, or partner or in which a person performs a similar function; (b) a direct or indirect beneficial owner of ten percent or more of any class of equity securities of a person; (c) a trust or estate in which a person has a beneficial interest or as to which a person serves as trustee or in a similar fiduciary capacity; and (d) if having the same residence as a person, the person's relative, spouse, or spouse's relative.

(4) "Beneficial ownership," when used with respect to any shares, means ownership by a person:

(a) Who, individually or with or through any of its affiliates or associates, beneficially owns such shares, directly or indirectly; or

(b) Who, individually or with or through any of its affiliates or associates, has (i) the right to acquire the shares, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise. A person is not the beneficial owner of shares tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange; or (ii) the right to vote the shares pursuant to any agreement, arrangement, or understanding, whether or not in writing. A person is not the beneficial owner of any shares under (b)(ii) of this subsection if the agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report; or

(c) Who has any agreement, arrangement, or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy or consent as described in (b)(ii) of this subsection, or disposing of the shares with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.

(5) "Control," "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the

ownership of voting shares, by contract, or otherwise. A person's beneficial ownership of ten percent or more of a domestic or foreign corporation's outstanding voting shares shall create a presumption that such person has control of such corporation. However, a person does not have control of a domestic or foreign corporation if the person holds voting shares, in good faith and not for the purpose of circumventing this chapter, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control of such corporation.

(6) "Exchange act" means the federal securities exchange act of 1934, as amended.

(7) "Market value," in the case of property other than cash or shares, means the fair market value of the property on the date in question as determined by the board of directors of the target corporation in good faith.

(8) "Person" means an individual, domestic or foreign corporation, partnership, trust, unincorporated association, or other entity; an affiliate or associate of any such person; or any two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding, or dispersing of securities of a domestic or foreign corporation.

(9) "Significant business transaction" means:

(a) A merger or consolidation of a target corporation or a subsidiary of a target corporation with (i) an acquiring person, or (ii) any other domestic or foreign corporation which is, or after the merger or consolidation would be, an affiliate or associate of the acquiring person;

(b) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition or encumbrance, whether in one transaction or a series of transactions, to or with an acquiring person or an affiliate or associate of an acquiring person of assets of a target corporation or a subsidiary of a target corporation (i) having an aggregate market value equal to five percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the target corporation, (ii) having an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the target corporation, or (iii) representing five percent or more of the earning power or net income, determined on a consolidated basis, of the target corporation;

(c) The termination, while the corporation has an acquiring person and as a result of the acquiring person's acquisition of ten percent or more of the shares of the corporation, of five percent or more of the employees of the target corporation or its subsidiaries employed in this state, whether at one time or over the five-year period following the share acquisition date. For the purposes of (c) of this subsection, a termination other than an employee's death or disability or bona fide voluntary retirement, transfer, resignation, or leave of absence shall be presumed to be a termination resulting from the acquiring person's acquisition of shares, which presumption may be rebutted by clear and convincing evidence. A bona fide voluntary transfer of employees between the target corporation and its subsidiaries or between its subsidiaries is not a termination for the purposes of (c) of this subsection;

(d) The issuance, transfer, or redemption by a target corporation or a subsidiary of a target corporation, whether in one transaction or a series of transactions, of shares or of

options, warrants, or rights to acquire shares of a target corporation or a subsidiary of a target corporation to or beneficially owned by an acquiring person or an affiliate or associate of an acquiring person except pursuant to the exercise of warrants or rights to purchase shares offered, or a dividend, distribution, or redemption paid or made pro rata to, all shareholders or holders of options, warrants, or rights to acquire shares of the target corporation, and except for involuntary redemptions permitted by the target corporation's charter or by the law of this state or the state of incorporation;

(e) The adoption of a plan or proposal for the sale of assets, liquidation, or dissolution of a target corporation proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person;

(f) A reclassification of securities, including, without limitation, any stock split, stock dividend, or other distribution of stock in respect of stock, or any reverse stock split, or recapitalization of a target corporation, or a merger or consolidation of a target corporation with a subsidiary of the target corporation, or any other transaction, whether or not with or into or otherwise involving an acquiring person, proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person, that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of a class or series of voting shares or securities convertible into voting shares of a target corporation or a subsidiary of the target corporation that is directly or indirectly owned by an acquiring person or an affiliate or associate of an acquiring person, except as a result of immaterial changes due to fractional share adjustments;

(g) A receipt by an acquiring person or an affiliate or associate of an acquiring person of the benefit, directly or indirectly, except proportionately as a shareholder of a target corporation, of loans, advances, guarantees, pledges, or other financial assistance or tax credits or other tax advantages provided by or through a target corporation; or

(h) An agreement, contract, or other arrangement providing for any of the transactions in this subsection.

(10) "Share acquisition date" means the date on which a person first becomes an acquiring person of a target corporation.

(11) "Subsidiary" means a domestic or foreign corporation that has a majority of its outstanding voting shares owned, directly or indirectly, by another domestic or foreign corporation.

(12) "Tangible assets" means tangible real and personal property of all kinds. It shall also include leasehold interests in tangible real and personal property.

(13) "Target corporation" means:

(a) Every domestic corporation organized under chapter 23B.02 RCW or any predecessor provision if, as of the share acquisition date, the corporation's principal executive office is located in the state and either a majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with its subsidiaries, employs more than one thousand residents of the state; and

(b) Every foreign corporation required to have a certificate of authority to transact business in this state pursuant to chapter 23B.15 RCW, if, as of the share acquisition date:

(i) The corporation's principal executive office is located in the state;

(ii) The corporation has: (A) More than ten percent of its shareholders of record resident in the state; or (B) more than ten percent of its shares owned of record by state residents; or (C) one thousand or more shareholders of record resident in the state;

(iii) A majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with its subsidiaries, employs more than one thousand residents of the state; and

(iv) A majority of the corporation's tangible assets, together with those of its subsidiaries, measured by market value, are located in the state or the corporation, together with its subsidiaries, has more than fifty million dollars' worth of tangible assets located in the state.

For purposes of this subsection, the record date for determining the percentages and numbers of shareholders and shares shall be the last shareholder record date before the event requiring that the determination be made. A shareholder record date shall be determined pursuant to RCW 23B.07.070 for a domestic corporation and the comparable provision of the law of the state in which a foreign corporation is incorporated. If a shareholder record date has not been fixed by the board of directors within the preceding four months, the determination shall be made as of the end of the domestic or foreign corporation's most recent fiscal quarter.

The residence of each shareholder is presumed to be the address appearing in the records of the domestic or foreign corporation. Shares held of record by brokers or nominees shall be disregarded for purposes of calculating the percentages and numbers specified in this subsection. Shares of a domestic or foreign corporation allocated to the account of an employee or former employee or beneficiaries of employees or former employees of a domestic or foreign corporation and held in a plan that is qualified under section 401(a) of the federal internal revenue code of 1986, as amended, and is a defined contribution plan within the meaning of section 414(i) of the code shall be deemed, for the purposes of this subsection, to be held of record by the employee to whose account such shares are allocated.

A domestic or foreign corporation shall be deemed to be a target corporation if the domestic or foreign corporation's failure to satisfy the requirements of this subsection is caused by the action of, or is the result of a proposal by, an acquiring person or affiliate or associate of an acquiring person. [1989 c 165 § 198.]

23B.19.030 Transactions excluded from chapter.

This chapter does not apply to:

(1) A significant business transaction of a target corporation that does not have a class of voting stock registered with the securities and exchange commission pursuant to section 12 of the exchange act [15 U.S.C. Sec. 78L]; or

(2) A significant business transaction of a target corporation with an acquiring person of the target corporation which became an acquiring person inadvertently, if the acquiring person (a) as soon as practicable, divests itself of a sufficient amount of the voting shares of the target corporation so that it no longer is the beneficial owner, directly or indirectly, of ten percent or more of the outstanding voting shares of the target corporation, and (b) would not at any time within the five-year period preceding the date of the first public announcement of the significant business transaction have been an acquiring person but for the inadvertent acquisition. [1989 c 165 § 199.]

23B.19.040 Approval of significant business transaction required—Violation. (1)(a) Notwithstanding any provision of this title, a target corporation shall not engage in any significant business transaction for a period of five years following the acquiring person's share acquisition date unless the significant business transaction or the purchase of shares made by the acquiring person on the share acquisition date is approved prior to the acquiring person's share acquisition date by a majority of the members of the board of directors of the target corporation.

(b) If a good faith proposal for a significant business transaction is made in writing to the board of directors of the target corporation prior to the significant business transaction or prior to the share acquisition date, the board of directors shall respond in writing, within thirty days or such shorter period, if any, as may be required by the exchange act setting forth its reasons for its decision regarding the proposal. If a good faith proposal to purchase shares is made in writing to the board of directors of the target corporation, the board of directors, unless it responds affirmatively in writing within thirty days or a shorter period, if any, as may be required by the exchange act shall be deemed to have disapproved such share purchase.

(2) A target corporation that engages in a significant business transaction that violates subsection (1) of this section and that is not exempt under RCW 23B.19.010 shall have its certificate of incorporation or certificate of authority to transact business in this state revoked under RCW 23B.14.200 or 23B.15.300 for domestic or foreign target corporations, respectively. In addition, such significant transaction shall be void. [1989 c 165 § 200.]

23B.19.050 Provisions of chapter additional to other requirements. The requirements imposed by this chapter are to be in addition to, and not in lieu of, requirements imposed on a transaction by any provision in the articles of incorporation or the bylaws of the target corporation, or otherwise. [1989 c 165 § 201.]

Chapter 23B.900 CONSTRUCTION

Sections

23B.900.010 Savings provisions—1989 c 165.
23B.900.020 Severability—1989 c 165.
23B.900.030 Repealer—1989 c 165.
23B.900.040 Effective date—1989 c 165.
23B.900.050 Section headings—1989 c 165.

23B.900.010 Savings provisions—1989 c 165. (1)

Except as provided in subsection (2) of this section, the repeal of a statute by this title does not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(c) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or

(d) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute repealed by this title is reduced by this title, the penalty or punishment if not already imposed shall be imposed in accordance with this title. [1989 c 165 § 202.]

23B.900.020 Severability—1989 c 165. If any provision of this title or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the title that can be given effect without the invalid provision or application, and to this end the provisions of the title are severable. [1989 c 165 § 203.]

23B.900.030 Repealer—1989 c 165. See 1989 c 165 § 204.

23B.900.040 Effective date—1989 c 165. This title shall take effect July 1, 1990. [1989 c 165 § 205.]

23B.900.050 Section headings—1989 c 165. Section headings as used in this title do not constitute any part of the law. [1989 c 165 § 206.]

Title 24

CORPORATIONS AND ASSOCIATIONS (NONPROFIT)

Chapters

- 24.03** Washington nonprofit corporation act.
- 24.06** Nonprofit miscellaneous and mutual corporations act.
- 24.12** Corporations sole.
- 24.20** Fraternal societies.
- 24.24** Building corporations composed of fraternal society members.
- 24.28** Granges.
- 24.34** Agricultural processing and marketing associations.
- 24.36** Fish marketing act.
- 24.40** Tax reform act of 1969, state implementation—Not for profit corporations.
- 24.44** Uniform management of institutional funds act.
- 24.46** Foreign trade zones.

Acknowledgment form, corporations: RCW 64.08.070.

Actions by and against public corporations: RCW 4.08.110, 4.08.120.

Constitutional provisions, generally: State Constitution Art. 12.

Consumer loan act: Chapter 31.04 RCW.

Contribution of corporate funds, public, charitable, etc., purposes: RCW 23B.03.020(2)(o).

Crimes relating to corporations: Chapter 9.24 RCW.

Criminal procedure: RCW 10.01.070 through 10.01.100.

Dentistry, practice or solicitation prohibited: RCW 18.32.675.

Doing business without license, gross misdemeanor: RCW 9.24.040.

Eminent domain by corporations: Chapter 8.20 RCW.

False statements, penalty for filing: RCW 43.07.210.

Foreign corporations

generally: RCW 23B.16.220 and chapters 23B.01 and 23B.15 RCW.

nonadmitted, powers relative to secured interests: Chapter 23B.18 RCW.

Legal services, advertising of, penalty: RCW 30.04.260.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

Partnerships: Title 25 RCW.

"Person" defined: RCW 1.16.080.

Seals, effect of: RCW 64.04.105.

Secretary of state, duties: Chapter 43.07 RCW.

Chapter 24.03

WASHINGTON NONPROFIT CORPORATION ACT

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- 24.03.010 Applicability.
- 24.03.015 Purposes.
- 24.03.017 Corporation may elect to have chapter apply to it—Procedure.
- 24.03.020 Incorporators.
- 24.03.025 Articles of incorporation.
- 24.03.027 Filing false statements—Penalty.
- 24.03.030 Limitations.
- 24.03.035 General powers.

- 24.03.040 Defense of ultra vires.
- 24.03.043 Indemnification of agents of any corporation authorized.
- 24.03.045 Corporate name.
- 24.03.046 Reservation of exclusive right to use a corporate name.
- 24.03.047 Registration of corporate name.
- 24.03.048 Renewal of registration of corporate name.
- 24.03.050 Registered office and registered agent.
- 24.03.055 Change of registered office or registered agent.
- 24.03.060 Service of process on corporation.
- 24.03.065 Members.
- 24.03.070 Bylaws.
- 24.03.075 Meetings of members.
- 24.03.080 Notice of members' meetings.
- 24.03.085 Voting.
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- 24.03.100 Number and election or appointment of directors.
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- 24.03.275 Qualification of receivers—Bond.
- 24.03.280 Filing of claims in liquidation proceedings.
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- 24.03.905 Savings—1967 c 235.
- 24.03.910 Severability—1967 c 235.
- 24.03.915 Notice to existing corporations.
- 24.03.920 Repealer—Exception.
- 24.03.925 Effective date—1967 c 235.

Organization of condominium unit owners' association: RCW 64.34.300.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

24.03.005 Definitions. As used in this chapter, unless the context otherwise requires, the term:

- (1) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this chapter, except a foreign corporation.
- (2) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this state.

(3) "Not for profit corporation" or "nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors or officers.

(4) "Articles of incorporation" and "articles" mean the original articles of incorporation and all amendments thereto, and includes articles of merger and restated articles.

(5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(6) "Member" means an individual or entity having membership rights in a corporation in accordance with the provisions of its articles or incorporation or bylaws.

(7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated in the articles or bylaws.

(8) "Insolvent" means inability of a corporation to pay debts as they become due in the usual course of its affairs.

(9) "Duplicate originals" means two copies, original or otherwise, each with original signatures, or one original with original signatures and one copy thereof.

(10) "Conforms to law" as used in connection with duties of the secretary of state in reviewing documents for filing under this chapter, means the secretary of state has determined that the document complies as to form with the applicable requirements of this chapter.

(11) "Effective date" means, in connection with a document filing made by the secretary of state, the date which is shown by affixing a "filed" stamp on the documents. When a document is received for filing by the secretary of state in a form which complies with the requirements of this chapter and which would entitle the document to be filed immediately upon receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of state's filing date shall relate back to the date on which the secretary of state first received the document in acceptable form. An applicant may request a specific effective date no more than thirty days later than the receipt date which might otherwise be applied as the effective date.

(12) "Executed by an officer of the corporation," or words of similar import, means that any document signed by such person shall be and is signed by that person under penalties of perjury and in an official and authorized capacity on behalf of the corporation or person making the document submission with the secretary of state.

(13) "An officer of the corporation" means, in connection with the execution of documents submitted for filing with the secretary of state, the president, a vice president, the secretary, or the treasurer of the corporation.

(14) "Public benefit not for profit corporation" or "public benefit nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors, or officers and that holds a current tax exempt status as provided under 26 U.S.C. Sec. 501(c)(3) or is specifically exempted from the requirement to apply for its tax exempt status under 26 U.S.C. Sec. 501(c)(3). [1989 c 291 § 3; 1986 c 240 § 1; 1982 c 35 § 72; 1967 c 235 § 2.]

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.010 Applicability. The provisions of this chapter relating to domestic corporations shall apply to:

- (1) All corporations organized hereunder; and
- (2) All not for profit corporations heretofore organized under any act hereby repealed, for a purpose or purposes for which a corporation might be organized under this chapter; and
- (3) Any corporation to which this chapter does not otherwise apply, which is authorized to elect, and does elect, in accordance with the provisions of this chapter, as now or hereafter amended, to have the provisions of this chapter apply to it.

The provisions of this chapter relating to foreign corporations shall apply to all foreign not for profit corporations conducting affairs in this state for a purpose or purposes for which a corporation might be organized under this chapter. [1971 ex.s. c 53 § 1; 1967 c 235 § 3.]

Repealer—Savings—1967 c 235: See RCW 24.03.920, 24.03.905.

24.03.015 Purposes. Corporations may be organized under this chapter for any lawful purpose or purposes, including, without being limited to, any one or more of the following purposes: Charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial or trade association; but labor unions, cooperative organizations, and organizations subject to any of the provisions of the banking or insurance laws of this state may not be organized under this chapter: PROVIDED, That any not for profit corporation heretofore organized under any act hereby repealed and existing for the purpose of providing health care services as defined in RCW 48.44.010(1) or 48.46.020(1), as now or hereafter amended, shall continue to be organized under this chapter. [1986 c 240 § 2; 1983 c 106 § 22; 1967 c 235 § 4.]

Repealer—Savings—1967 c 235: See RCW 24.03.920, 24.03.905.

Fish marketing act: Chapter 24.36 RCW.

Granges: Chapter 24.28 RCW.

Insurance: Title 48 RCW.

Labor unions: Chapter 49.36 RCW.

24.03.017 Corporation may elect to have chapter apply to it—Procedure. Any corporation organized under any act of the state of Washington for any one or more of the purposes for which a corporation may be organized under this chapter and for no purpose other than those permitted by this chapter, and to which this chapter does not otherwise apply, may elect to have this chapter and the provisions thereof apply to such corporation. Such corporation may so elect by having a resolution to do so adopted by the governing body of such corporation and by delivering to the secretary of state a statement of election in accordance with this section. Such statement of election shall be executed in duplicate by the corporation by an officer of the corporation, and shall set forth:

- (1) The name of the corporation;

- (2) The act which created the corporation or pursuant to which it was organized;

- (3) That the governing body of the corporation has elected to have this chapter and the provisions thereof apply to said corporation.

Duplicate originals of such statement of election shall be delivered to the secretary of state. If the secretary of state finds that the statement of election conforms to law, the secretary of state shall, when fees in the same amount as required by this chapter for filing articles of incorporation have been paid, endorse on each of such duplicates the word "filed" and the effective date of the filing thereof, shall file one of such duplicate originals, and shall issue a certificate of elective coverage to which the other duplicate original shall be affixed.

The certificate of elective coverage together with the duplicate original affixed thereto by the secretary of state shall be returned to the corporation or its representative. Upon the filing of the statement of elective coverage, the provisions of this chapter shall apply to said corporation which thereafter shall be subject to and shall have the benefits of this chapter and the provisions thereof as they exist on the date of filing such statement of election and as they may be amended from time to time thereafter, including, without limiting the generality of the foregoing, the power to amend its charter or articles of incorporation, whether or not created by special act of the legislature, delete provisions therefrom and add provisions thereto in any manner and to any extent it may choose to do from time to time so long as its amended articles shall not be inconsistent with the provisions of this chapter. [1982 c 35 § 73; 1971 ex.s. c 53 § 2.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.020 Incorporators. One or more persons of the age of eighteen years or more, or a domestic or foreign, profit or nonprofit, corporation, may act as incorporator or incorporators of a corporation by signing and delivering to the secretary of state articles of incorporation for such corporation. [1986 c 240 § 3; 1982 c 35 § 74; 1967 c 235 § 5.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.025 Articles of incorporation. The articles of incorporation shall set forth:

- (1) The name of the corporation.
- (2) The period of duration, which may be perpetual or for a stated number of years.
- (3) The purpose or purposes for which the corporation is organized.
- (4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including provisions regarding:
 - (a) Distribution of assets on dissolution or final liquidation;
 - (b) The definition, limitation, and regulation of the powers of the corporation, the directors, and the members, if any;

(c) Eliminating or limiting the personal liability of a director to the corporation or its members, if any, for monetary damages for conduct as a director: PROVIDED, That such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision may eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective; and

(d) Any provision which under this title is required or permitted to be set forth in the bylaws.

(5) The address of its initial registered office, including street and number, and the name of its initial registered agent at such address.

(6) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors.

(7) The name and address of each incorporator.

(8) The name of any person or corporations to whom net assets are to be distributed in the event the corporation is dissolved.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling. [1987 c 212 § 703; 1982 c 35 § 75; 1967 c 235 § 6.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Amending articles of incorporation: RCW 24.03.160 through 24.03.180.

Bylaws: RCW 24.03.070.

24.03.027 Filing false statements—Penalty. See RCW 43.07.210.

24.03.030 Limitations. A corporation subject to this chapter:

(1) Shall not have or issue shares of stock;

(2) Shall not make any disbursement of income to its members, directors or officers;

(3) Shall not loan money or credit to its officers or directors;

(4) May pay compensation in a reasonable amount to its members, directors or officers for services rendered;

(5) May confer benefits upon its members in conformity with its purposes; and

(6) Upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income. [1986 c 240 § 4; 1967 c 235 § 7.]

24.03.035 General powers. Each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(4) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) To lend money or credit to its employees other than its officers and directors.

(7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country.

(11) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(13) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities.

(14) To indemnify any director or officer or former director or officer or other person in the manner and to the extent provided in RCW 23B.08.500 through 23B.08.600, as now existing or hereafter amended.

(15) To make guarantees respecting the contracts, securities, or obligations of any person (including, but not limited to, any member, any affiliated or unaffiliated individual, domestic or foreign, profit or not for profit, corporation, partnership, association, joint venture or trust)

if such guarantee may reasonably be expected to benefit, directly or indirectly, the guarantor corporation. As to the enforceability of the guarantee, the decision of the board of directors that the guarantee may be reasonably expected to benefit, directly or indirectly, the guarantor corporation shall be binding in respect to the issue of benefit to the guarantor corporation.

(16) To pay pensions and establish pension plans, pension trusts, and other benefit plans for any or all of its directors, officers, and employees.

(17) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other enterprise.

(18) To be a trustee of a charitable trust, to administer a charitable trust and to act as executor in relation to any charitable bequest or devise to the corporation. This subsection shall not be construed as conferring authority to engage in the general business of trusts nor in the business of trust banking.

(19) To cease its corporate activities and surrender its corporate franchise.

(20) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized. [1991 c 72 § 42; 1986 c 240 § 5; 1967 c 235 § 8.]

Unauthorized assumption of corporate power: RCW 24.03.470.

24.03.040 Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the officers or directors of the corporation for exceeding their authority.

(3) In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from performing unauthorized acts, or in any other proceeding by the attorney general. [1967 c 235 § 9.]

Dissolution: RCW 24.03.220 through 24.03.270.

24.03.043 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

24.03.045 Corporate name. The corporate name:

(1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(2) Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any act of this state, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, any domestic or foreign limited partnership on file with the secretary, or a limited partnership existing under chapter 25.10 RCW, or a corporate name reserved or registered as permitted by the laws of this state. This subsection shall not apply if the applicant files with the secretary of state either of the following: (a) The written consent of the other corporation, limited partnership, or holder of a reserved name to use the same or deceptively similar name and one or more words are added or deleted to make the name distinguishable from the other name as determined by the secretary of state, or (b) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this state.

(3) Shall be transliterated into letters of the English alphabet, if it is not in English.

(4) Shall not include or end with "incorporated," "company," "corporation," "partnership," "limited partnership," or "Ltd.," or any abbreviation thereof, but may use "club," "league," "association," "services," "committee," "fund," "society," "foundation," ".", a nonprofit corporation," or any name of like import.

(5) May only include the term "public benefit" or names of like import if the corporation has been designated as a public benefit nonprofit corporation by the secretary in accordance with this chapter. [1989 c 291 § 10; 1987 c 55 § 39; 1986 c 240 § 6; 1982 c 35 § 76; 1967 c 235 § 10.]

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Corporate name of foreign corporation: RCW 24.03.315.

24.03.046 Reservation of exclusive right to use a corporate name. The exclusive right to the use of a corporate name may be reserved by:

(1) Any person intending to organize a corporation under this title.

(2) Any domestic corporation intending to change its name.

(3) Any foreign corporation intending to make application for a certificate of authority to transact business in this state.

(4) Any foreign corporation authorized to transact business in this state and intending to change its name.

(5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by or on behalf of the applicant. If the secretary of state finds that the name is available for corporate use, the secretary of state shall reserve the same for the exclusive use of the applicant for a period of one hundred and eighty days. Such reservation shall be limited to one filing and one renewal for a like period.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state, a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee. [1982 c 35 § 77.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.047 Registration of corporate name. Any corporation, organized and existing under the laws of any state or territory of the United States may register its corporate name under this title, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, the name of any foreign corporation authorized to transact business in this state, the name of any limited partnership on file with the secretary, or any corporate name reserved or registered under this title.

Such registration shall be made by:

(1) Filing with the secretary of state: (a) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged, and (b) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations, and

(2) Paying to the secretary of state the applicable registration fee.

The registration shall be effective until the close of the calendar year in which the application for registration is filed. [1987 c 55 § 40; 1986 c 240 § 7; 1982 c 35 § 78.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.048 Renewal of registration of corporate name. A corporation which has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying the applicable fee. A renewal application may be filed between the first day of October and the thirty-first day of December in each year, and shall extend the registration for the following calendar year. [1986 c 240 § 8; 1982 c 35 § 79.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.050 Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its principal office. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with such registered office. A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

No Washington corporation or foreign corporation authorized to conduct affairs in this state may be permitted to maintain any action in any court in this state until the corporation complies with the requirements of this section. [1986 c 240 § 9; 1982 c 35 § 80; 1969 ex.s. c 163 § 1; 1967 c 235 § 11.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.055 Change of registered office or registered agent. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state in the form prescribed by the secretary of state a statement setting forth:

(1) The name of the corporation.
 (2) If the address of its registered office is to be changed, the address to which the registered office is to be changed.

(3) If its registered agent is to be changed, the name of its successor registered agent.

(4) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

(5) That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by an officer of the corporation, and delivered to the secretary

of state, together with a written consent of the registered agent to his or its appointment, if applicable. If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary of state shall endorse thereon the word "Filed," and the month, day, and year of the filing thereof, and file the statement. The change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective upon filing unless a later date is specified.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation in care of an officer, who is not the resigning registered agent, at the address of such officer as shown by the most recent annual report of the corporation. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

If a registered agent changes the agent's business address to another place within the state, the agent may change such address and the address of the registered office of any corporation of which the agent is a registered agent, by filing a statement as required by this section except that it need be signed only by the registered agent, it need not be responsive to subsection (3) or (5) of this section, and it must recite that a copy of the statement has been mailed to the secretary of the corporation. [1986 c 240 § 10; 1982 c 35 § 81; 1967 c 235 § 12.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.060 Service of process on corporation. The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of the secretary of state's office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, the secretary of state shall immediately cause one of the copies thereof to be forwarded by certified mail, addressed to the secretary of the corporation as shown on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon the secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner

now or hereafter permitted by law. [1986 c 240 § 11; 1982 c 35 § 82; 1967 c 235 § 13.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.065 Members. A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. Unless otherwise specified in the articles of incorporation or the bylaws, an individual, domestic or foreign profit or nonprofit corporation, a general or limited partnership, an association or other entity may be a member of a corporation. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein. [1986 c 240 § 12; 1967 c 235 § 14.]

24.03.070 Bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation. The board may adopt emergency bylaws in the manner provided by RCW 23B.02.070. [1991 c 72 § 43; 1986 c 240 § 13; 1967 c 235 § 15.]

24.03.075 Meetings of members. Meetings of members may be held at such place, either within or without this state, as may be stated in or fixed in accordance with the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this state.

An annual meeting of the members shall be held at such time as may be stated in or fixed in accordance with the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

Except as may be otherwise restricted by the articles of incorporation or the bylaws, members of the corporation may participate in a meeting of members by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting. [1986 c 240 § 14; 1967 c 235 § 16.]

24.03.080 Notice of members' meetings. Written or printed notice stating the place, day and hour of the annual meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. Notice of regular meetings other than annual shall be made by providing each member with the adopted schedule of regular meetings for the ensuing year at any time after the annual meeting and ten days prior to the next succeeding regular meeting and at any time when requested by a member or by such other notice as may be prescribed by the bylaws. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. [1969 ex.s. c 115 § 1; 1967 c 235 § 17.]

Waiver of notice: RCW 24.03.460.

24.03.085 Voting. The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

A member may vote in person or, if so authorized by the articles of incorporation or the bylaws, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates. [1969 ex.s. c 115 § 2; 1967 c 235 § 18.]

Greater voting requirements: RCW 24.03.455.

24.03.090 Quorum. The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this chapter, the articles of incorporation or the bylaws. [1967 c 235 § 19.]

Greater voting requirements: RCW 24.03.455.

24.03.095 Board of directors. The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors. [1967 c 235 § 20.]

24.03.100 Number and election or appointment of directors. The board of directors of a corporation shall consist of one or more individuals. The number of directors shall be fixed by or in the manner provided in the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of incorporation or the bylaws, but a decrease shall not have the effect of shortening the term of any incumbent director. In the absence of a bylaw providing for the number of directors, the number shall be the same as that provided for in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. Directors may be divided into classes and the terms of office and manner of election or appointment need not be uniform. Each director shall hold office for the term for which the director is elected or appointed and until the director's successor shall have been selected and qualified. [1986 c 240 § 15; 1967 c 235 § 21.]

24.03.103 Removal of directors. The bylaws or articles of incorporation may contain a procedure for removal of directors. If the articles of incorporation or bylaws provide for the election of any director or directors by members, then in the absence of any provision regarding removal of directors:

(1) Any director elected by members may be removed, with or without cause, by two-thirds of the votes cast by members having voting rights with regard to the election of any director, represented in person or by proxy at a meeting of members at which a quorum is present;

(2) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against that director's removal would be sufficient to elect that director if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he or she is a part; and

(3) Whenever the members of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the members of that class and not to the vote of the members as a whole. [1986 c 240 § 16.]

24.03.105 Vacancies. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining board of directors even though less than a quorum is present unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. [1986 c 240 § 17; 1967 c 235 § 22.]

24.03.110 Quorum of directors. A majority of the number of directors fixed by, or in the manner provided in the bylaws, or in the absence of a bylaw fixing or providing for the number of directors, then of the number fixed by or in the manner provided in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter, the articles of incorporation or the bylaws. [1986 c 240 § 18; 1967 c 235 § 23.]

Greater voting requirements: RCW 24.03.455.

24.03.113 Assent presumed—Procedures for dissent or abstention. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the director's dissent or abstention shall be entered in the minutes of the meeting or unless the director shall file his or her written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent or abstention by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a director who voted in favor of such action. [1986 c 240 § 19.]

24.03.115 Committees. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation: PROVIDED, That no such committee shall have the authority of the board of directors in reference to amending, altering or repealing the bylaws; electing, appointing or removing any member of any such committee or any director or officer of the corporation; amending the articles of incorporation; adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, or exchange of all or substantially all of the property and assets of the corporation

not in the ordinary course of business; authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; adopting a plan for the distribution of the assets of the corporation; or amending, altering or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director of any responsibility imposed upon it or him by law. [1986 c 240 § 20; 1967 c 235 § 24.]

24.03.120 Place and notice of directors' meetings. Meetings of the board of directors, regular or special, may be held either within or without this state.

Regular meetings of the board of directors or of any committee designated by the board of directors may be held with or without notice as prescribed in the bylaws. Special meeting of the board of directors or any committee designated by the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director or a committee member at a meeting shall constitute a waiver of notice of such meeting, except where a director or a committee member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors or any committee designated by the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated by the board of directors may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting. [1986 c 240 § 21; 1967 c 235 § 25.]

Waiver of notice: RCW 24.03.460.

24.03.125 Officers. The officers of a corporation shall consist of a president, one or more vice presidents, a secretary, and a treasurer, each of whom shall be elected or appointed at such time and in such manner and for such terms as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the articles or bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary. Such other officers and assistant officers or agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the articles or bylaws.

The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

The officers of a corporation may be designated by such additional titles as may be provided in the articles of

incorporation or the bylaws. [1986 c 240 § 22; 1967 c 235 § 26.]

24.03.127 Duties of a director. A director shall perform the duties of a director, including the duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matter presented;

(2) Counsel, public accountants, or other persons as to matters which the director believes to be within such person's professional or expert competence; or

(3) A committee of the board upon which the director does not serve, duly designated in accordance with a provision in the articles of incorporation or bylaws, as to matters within its designated authority, which committee the director believes to merit confidence; so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted. [1986 c 240 § 23.]

24.03.130 Removal of officers. Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights. [1967 c 235 § 27.]

24.03.135 Records. Each corporation shall keep at its registered office, its principal office in this state, or at its secretary's office if in this state, the following:

(1) Current articles and bylaws;

(2) A record of members, including names, addresses, and classes of membership, if any;

(3) Correct and adequate records of accounts and finances;

(4) A record of officers' and directors' names and addresses;

(5) Minutes of the proceedings of the members, if any, the board, and any minutes which may be maintained by committees of the board. Records may be written, or electronic if capable of being converted to writing.

The records shall be open at any reasonable time to inspection by any member of more than three months standing or a representative of more than five percent of the membership.

Cost of inspecting or copying shall be borne by such member except for costs for copies of articles or bylaws. Any such member must have a purpose for inspection

reasonably related to membership interests. Use or sale of members' lists by such member if obtained by inspection is prohibited.

The superior court of the corporation's or such member's residence may order inspection and may appoint independent inspectors. Such member shall pay inspection costs unless the court orders otherwise. [1986 c 240 § 24; 1967 c 235 § 28.]

24.03.140 Loans to directors and officers prohibited. No loans shall be made by a corporation to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof. [1967 c 235 § 29.]

24.03.145 Filing of articles of incorporation. Duplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, the secretary of state shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the effective date of the filing thereof.

(2) File one of such duplicate originals.

(3) Issue a certificate of incorporation to which the other duplicate original shall be affixed.

The certificate of incorporation together with the duplicate original of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative. [1982 c 35 § 83; 1967 c 235 § 30.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.150 Effect of filing the articles of incorporation. Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary or administrative dissolution. [1986 c 240 § 25; 1982 c 35 § 84; 1967 c 235 § 31.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.155 Organization meetings. After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting. Any action permitted to be taken at

the organization meeting of the directors may be taken without a meeting if each director signs an instrument stating the action so taken. [1986 c 240 § 26; 1967 c 235 § 32.]

24.03.160 Right to amend articles of incorporation.

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this chapter. [1967 c 235 § 33.]

24.03.165 Procedure to amend articles of incorporation. Amendments to the articles of incorporation shall be made in the following manner:

(1) Where there are members having voting rights, with regard to the question, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, with regard to the question, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Any number of amendments may be submitted and voted upon at any one meeting. [1986 c 240 § 27; 1967 c 235 § 34.]

24.03.170 Articles of amendment. The articles of amendment shall be executed in duplicate by the corporation by an officer of the corporation, and shall set forth:

- (1) The name of the corporation.
- (2) The amendment so adopted.

(3) Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(4) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office. [1982 c 35 § 85; 1967 c 235 § 35.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.175 Filing of articles of amendment. Duplicate originals of the articles of amendment shall be delivered

to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, the secretary of state shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the effective date of the filing thereof.

(2) File one of such duplicate originals.

(3) Issue a certificate of amendment to which the other duplicate original shall be affixed.

The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative. [1982 c 35 § 86; 1967 c 235 § 36.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Fees: RCW 24.03.405, 24.03.410.

24.03.180 Effect of filing of articles of amendment.

Upon the filing of the articles of amendment by the secretary of state, or on such later date, not more than thirty days subsequent to the filing thereof by the secretary of state, as may be provided in the articles of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending action to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason. [1986 c 240 § 28; 1982 c 35 § 87; 1967 c 235 § 37.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.183 Restated articles of incorporation. A domestic corporation may at any time restate its articles of incorporation by a resolution adopted by the board of directors. A corporation may amend and restate in one resolution, but may not present the amendments and restatement for filing by the secretary in a single document. Separate articles of amendment, under RCW 24.03.165 and articles of restatement, under this section, must be presented notwithstanding the corporation's adoption of a single resolution of amendment and restatement.

Upon the adoption of the resolution, restated articles of incorporation shall be executed in duplicate by the corporation by one of its officers. The restated articles shall set forth all of the operative provisions of the articles of incorporation together with a statement that the restated articles of incorporation correctly set forth without change the provisions of the articles of incorporation as amended and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

Duplicate originals of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to law, the secretary of state shall, when all fees required by this title have been paid:

(1) Endorse on each duplicate original the word "Filed" and the date of the filing thereof;

(2) File one duplicate original; and

(3) Issue a restated certificate of incorporation, to which the other duplicate original shall be affixed.

The restated certificate of incorporation, together with the duplicate original of the restated articles of incorporation affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Upon the filing of the restated articles of incorporation by the secretary of state, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto. [1986 c 240 § 29; 1982 c 35 § 88.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.185 Procedure for merger. Any two or more domestic corporations subject to this chapter may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

Each corporation shall adopt a plan of merger setting forth:

(1) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(2) The terms and conditions of the proposed merger.

(3) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(4) Such other provisions with respect to the proposed merger as are deemed necessary or desirable. [1986 c 240 § 30; 1967 c 235 § 38.]

24.03.190 Procedure for consolidation. Any two or more domestic corporations subject to this chapter may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

Each corporation shall adopt a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(2) The terms and conditions of the proposed consolidation.

(3) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

(4) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. [1986 c 240 § 31; 1967 c 235 § 39.]

24.03.195 Approval of merger or consolidation. A plan of merger or consolidation shall be adopted in the following manner:

(1) Where the members of any merging or consolidating corporation have voting rights with regard to the question, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members having

voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast.

(2) Where any merging or consolidating corporation has no members, or no members having voting rights with regard to the question, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. [1986 c 240 § 32; 1967 c 235 § 40.]

24.03.200 Articles of merger or consolidation. (1) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by an officer of each corporation, and shall set forth:

(a) The plan of merger or the plan of consolidation;

(b) Where the members of any merging or consolidating corporation have voting rights, then as to each such corporation (i) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (ii) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(c) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

(2) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, the secretary of state shall, when all fees have been paid as in this chapter prescribed:

(a) Endorse on each of such duplicate originals the word "Filed," and the date of the filing thereof;

(b) File one of such duplicate originals; and

(c) Issue a certificate of merger or a certificate of consolidation to which the other duplicate original shall be affixed.

The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative. [1986 c 240 § 33; 1982 c 35 § 89; 1967 c 235 § 41.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.205 Merger or consolidation—When effective.

A merger or consolidation shall become effective upon the filing of the articles of merger or articles of consolidation with the secretary of state, or on such later date, not more than thirty days after the filing thereof with the secretary of state, as shall be provided for in the plan. [1986 c 240 § 34; 1982 c 35 § 90; 1967 c 235 § 42.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.207 Merger or consolidation of domestic and foreign corporation. One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

(1) Each domestic corporation shall comply with the provisions of this title with respect to the merger or consolidation as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(2) If the surviving or new corporation in a merger or consolidation is to be governed by the laws of any state other than this state, it shall comply with the provisions of this title with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

(a) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to the merger or consolidation and in any proceeding for the enforcement of the rights, if any, of a member of any such domestic corporation against the surviving or new corporation; and

(b) An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding.

The effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except as the laws of the other state provide otherwise.

(3) At any time prior to the effective date of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provision therefor, if any, set forth in the plan of merger or consolidation. In the event the merger or consolidation is abandoned, the parties thereto shall execute a notice of abandonment in triplicate signed by an officer for each corporation signing the notice. If the secretary of state finds the notice conforms to law, the secretary of state shall:

(a) Endorse on each of the originals the word "Filed" and the date of the filing;

(b) File one of the triplicate originals in the secretary of state's office; and

(c) Issue the other triplicate originals to the respective parties or their representatives. [1986 c 240 § 35; 1982 c 35 § 91.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.210 Effect of merger or consolidation. When such merger or consolidation has been affected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation. [1967 c 235 § 43.]

24.03.215 Sale, lease, exchange, or other disposition of assets not in the ordinary course of business. A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a corporation, if not in the ordinary course of business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal,

including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(1) Where there are members having voting rights with regard to the question, the board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this chapter for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(2) Where there are no members, or no members having voting rights with regard to the question, a sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office. [1986 c 240 § 36; 1967 c 235 § 44.]

24.03.217 Sale, lease, exchange, or disposition of assets in course of business—Mortgage and pledge of assets. The sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or not in the usual course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, obligations, or other securities of any other corporation, domestic or foreign, as shall be authorized by its board of directors. In any such case, no other authorization or consent of any member shall be required. [1986 c 240 § 37.]

24.03.220 Voluntary dissolution. A corporation may dissolve and wind up its affairs in the following manner:

(1) Where there are members having voting rights with regard to the question, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having such voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to

each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights with regard to the question, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except in so far as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, to the attorney general with respect to assets subject to RCW 24.03.225(3), and to the department of revenue, and shall proceed to collect its assets and apply and distribute them as provided in this chapter. [1986 c 240 § 38; 1982 c 35 § 92; 1967 c 235 § 45.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.225 Distribution of assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

(5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in this chapter. [1967 c 235 § 46.]

24.03.230 Plan of distribution. A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the

process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.

If the plan of distribution includes assets received and held by the corporation subject to limitations described in subsection (3) of RCW 24.03.225, notice of the adoption of the proposed plan shall be submitted to the attorney general by registered or certified mail directed to him at his office in Olympia, at least twenty days prior to the meeting at which the proposed plan is to be adopted. No plan for the distribution of such assets may be adopted without the approval of the attorney general, or the approval of a court of competent jurisdiction in a proceeding to which the attorney general is made a party. In the event that an objection is not filed within twenty days after the date of mailing, his approval shall be deemed to have been given. [1969 ex.s. c 115 § 3; 1967 c 235 § 47.]

24.03.235 Revocation of voluntary dissolution proceedings. A corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of

directors upon receiving the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs. [1967 c 235 § 48.]

Notice of members' meetings: RCW 24.03.080.

24.03.240 Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation shall have been paid and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed in duplicate by the corporation by an officer of the corporation and shall set forth:

(1) The name of the corporation.

(2) Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office.

(4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.

(5) If a copy of any revenue clearance form under chapter 82.32 RCW is issued, it shall be attached to the articles of dissolution.

(6) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter.

(7) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit. [1982 c 35 § 93; 1967 c 235 § 49.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.245 Filing of articles of dissolution. Duplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, the secretary of state shall, when all requirements have been met as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the effective date of the filing thereof.

(2) File one of such duplicate originals.

(3) Issue a certificate of dissolution to which the other duplicate original shall be affixed.

The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the filing of such articles of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this chapter. [1982 c 35 § 94; 1967 c 235 § 50.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.250 Involuntary dissolution. A corporation may be dissolved involuntarily by a decree of the superior court in an action filed by the attorney general when it is established that:

(1) The corporation procured its articles of incorporation through fraud; or

(2) The corporation has continued to exceed or abuse the authority conferred upon it by law. [1969 ex.s. c 163 § 2; 1967 c 235 § 51.]

Filing annual report: RCW 24.03.400.

24.03.255 Notification to attorney general. The secretary of state shall certify, from time to time, the names of all corporations which have given cause for dissolution as provided in RCW 24.03.250, together with the facts pertinent thereto. Whenever the secretary of state shall certify the name of a corporation to the attorney general as having given any cause for dissolution, the secretary of state shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the attorney general shall file an action in the name of the state against such corporation for its dissolution. [1982 c 35 § 95; 1969 ex.s. c 163 § 3; 1967 c 235 § 52.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.260 Venue and process. Every action for the involuntary dissolution of a corporation shall be commenced by the attorney general either in the superior court of the county in which the registered office of the corporation is situated, or in the superior court of Thurston county. Summons shall issue and be served as in other civil actions. If process is returned not found, the attorney general shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. The attorney general may include in one notice the names of any number of corporations against which actions are then pending in the same court. The attorney general shall cause a copy of such notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the attorney general of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least

once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice. [1967 c 235 § 53.]

24.03.265 Jurisdiction of court to liquidate assets and affairs of corporation. Superior courts shall have full power to liquidate the assets and affairs of a corporation:

(1) In an action by a member, director, or the attorney general when it is made to appear:

(a) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(b) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(c) That the corporate assets are being misapplied or wasted; or

(d) That the corporation is unable to carry out its purposes.

(2) In an action by a creditor:

(a) When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(b) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(3) Upon application by a corporation to have its dissolution continued under the supervision of the court.

(4) When an action has been filed by the attorney general to dissolve a corporation under the provisions of this chapter and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

Proceedings under subsections (1), (2), or (3) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally. [1986 c 240 § 39; 1967 c 235 § 54.]

24.03.270 Procedure in liquidation of corporation by court. In proceedings to liquidate the assets and affairs of a corporation the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of

the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

The assets of the corporation or the proceeds resulting from the sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members; or any class or classes of members, or provide for distribution to others;

(5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, as the court may direct.

The court shall have power to allow, from time to time, as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated. [1967 c 235 § 55.]

24.03.275 Qualification of receivers—Bond. A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require. [1967 c 235 § 56.]

24.03.280 Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and affairs of a corporation the court may require all creditors of the

corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. [1967 c 235 § 57.]

24.03.285 Discontinuance of liquidation proceedings. The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. [1967 c 235 § 58.]

24.03.290 Decree of involuntary dissolution. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. [1967 c 235 § 59.]

24.03.295 Filing of decree of dissolution. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the clerk for issuance or by the secretary of state for the filing thereof. [1986 c 240 § 40; 1967 c 235 § 60.]

24.03.300 Survival of remedy after dissolution—Extension of duration of corporation. The dissolution of a corporation either (1) by the filing and issuance of a certificate of dissolution, voluntary or administrative, by the secretary of state, or (2) by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in this chapter, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such

remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years after expiration so as to extend its period of duration. If, during the period of dissolution, another person or corporation has reserved or adopted a corporate name which is identical to or deceptively similar to the dissolved corporation's name, the corporation extending its period of duration shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles of incorporation accordingly. The corporation shall also pay to the state all fees and penalties which would otherwise have been due if the corporate charter had not expired, plus a reinstatement fee as provided in this chapter. [1986 c 240 § 41; 1982 c 35 § 96; 1967 c 235 § 61.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.302 Administrative dissolution—Grounds—Notice—Reinstatement—Corporate name—Survival of actions. A corporation shall be administratively dissolved by the secretary of state upon the conditions prescribed in this section when the corporation:

- (1) Has failed to file or complete its annual report within the time required by law; or
- (2) Has failed for thirty days to appoint or maintain a registered agent in this state; or
- (3) Has failed for thirty days, after change of its registered agent or registered office, to file in the office of the secretary of state a statement of such change.

A corporation shall not be dissolved under this section unless the secretary of state has given the corporation not less than forty-five days' notice of its delinquency or omission, by first class mail, postage prepaid, addressed to the registered office, or, if there is no registered office, to the last known address of any officer or director as shown by the records of the secretary of state, and unless the corporation has failed to correct the omission or delinquency before expiration of the forty-five day period.

When a corporation has given cause for dissolution under this section, and has failed to correct the delinquency or omission as provided in this section, the secretary of state shall dissolve the corporation by issuing a certificate of administrative dissolution containing a statement that the corporation has been dissolved and the date and reason for which it was dissolved. The original certificate of administrative dissolution shall be filed in the records of the secretary of state, and a copy of the certificate shall forthwith be mailed to the corporation at its registered office or, if there is no registered office, to the last known address of the corporation or any officer, director, or incorporator of the corporation, as shown by the records of the secretary of state. Upon the filing of the certificate of administrative dissolution, the existence of the corporation shall cease, except as otherwise provided in this chapter, and its name shall be available to and may be adopted by another corporation after the dissolution.

Any notice provided by the secretary of state under this section shall be designed to clearly identify and warn the recipient of the contents thereof. A delinquency notice shall provide a succinct and readable description of the delinquen-

cy or omission, the date on which dissolution will occur, and the action necessary to cure the delinquency or omission prior to dissolution.

A corporation which has been dissolved by operation of this section may be reinstated within a period of three years following its dissolution if it shall complete and file all the annual reports which would have been required for the years of the period of administrative dissolution including those for the reinstatement year or if it shall appoint or maintain a registered agent, or if it shall file with the secretary of state a required statement of change of registered agent or registered office and in addition, if it shall pay a reinstatement fee of twenty-five dollars plus any other fees that may be due and owing the secretary of state. If, during the period of dissolution, another person or corporation has reserved or adopted a corporate name which is identical to or deceptively similar to the dissolved corporation's name, the dissolved corporation seeking reinstatement shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles of incorporation accordingly. When a corporation has been dissolved by operation of this section, remedies available to or against it shall survive in the manner provided in RCW 24.03.300 and the directors of the corporation shall hold the title to the property of the corporation as trustees for the benefit of its creditors and members. [1987 c 117 § 3; 1986 c 240 § 42; 1982 c 35 § 97; 1971 ex.s. c 128 § 1; 1969 ex.s. c 163 § 9.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.303 Reinstatement under certain circumstances—Request for relief. The secretary of state may, where exigent or mitigating circumstances are presented, reinstate to full active status any corporation previously in good standing which would otherwise be penalized or lose its active status. Any corporation desiring to seek relief under this section shall, within fifteen days of discovery by corporate officials of the missed filing or lapse, notify the secretary of state in writing. The notification shall include the name and mailing address of the corporation, the corporate officer to whom correspondence should be sent, and a statement under oath by a responsible corporate officer, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. Upon receipt of the notice, the secretary of state shall investigate the circumstances of the missed filing or lapse. If the secretary of state is satisfied that sufficient exigent or mitigating circumstances exist, that the corporation has demonstrated good faith and a reasonable attempt to comply with the applicable corporate license statutes of this state, that disproportionate harm would occur to the corporation if relief were not granted, and that relief would not be contrary to the public interest expressed in this title, the secretary may issue an order reinstating the corporation and specifying any terms and conditions of the relief. Reinstatement may relate back to the date of lapse or dissolution. If the secretary of state determines the request does not comply with the requirements for relief, the secretary shall issue an order denying the requested relief and stating the reasons for the denial. Any denial of relief by the secretary of state is final and is not appealable. The secretary of state shall keep records of all requests for relief

and the disposition of the requests. The secretary of state shall annually report to the legislature the number of relief requests received in the preceding year and a summary of the secretary's disposition of the requests. [1987 c 117 § 6.]

24.03.305 Admission of foreign corporation. No foreign corporation shall have the right to conduct affairs in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in this state any affairs which a corporation organized under this chapter is not permitted to conduct. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

Without excluding other activities which may not constitute conducting affairs in this state, a foreign corporation shall not be considered to be conducting affairs in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.
- (2) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.
- (3) Maintaining bank accounts.
- (4) Creating evidences of debt, mortgages or liens on real or personal property.
- (5) Securing or collecting debts due to it or enforcing any rights in property securing the same.
- (6) Effecting sales through independent contractors.
- (7) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.
- (8) Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property.
- (9) Securing or collecting debts or enforcing any rights in property securing the same.
- (10) Transacting any business in interstate commerce.
- (11) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature. [1986 c 240 § 43; 1967 c 235 § 62.]

24.03.310 Powers of foreign corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authorization is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter

imposed upon a domestic corporation of like character. [1967 c 235 § 63.]

24.03.315 Corporate name of foreign corporation—Fictitious name. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation complies with the provisions of RCW 24.03.045. However, a foreign corporation applying for a certificate of authority may file with the secretary of state a resolution of its board of directors adopting a fictitious name for use in transacting business in this state, if the fictitious name complies with RCW 24.03.045. [1982 c 35 § 98; 1967 c 235 § 64.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Registration of corporate name: RCW 24.03.047.

Reservation of exclusive right to use a corporate name: RCW 24.03.046.

24.03.320 Change of name by foreign corporation. Whenever a foreign corporation which is authorized to conduct affairs in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in this state until it has changed its name to a name which is available to it under the laws of this state or has otherwise complied with the provisions of this chapter. [1986 c 240 § 44; 1967 c 235 § 65.]

24.03.325 Application for certificate of authority. A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, shall make application therefor to the secretary of state, which application shall set forth:

- (1) The name of the corporation and the state or country under the laws of which it is incorporated.
- (2) If the name of the corporation contains the word "corporation," "company," "incorporated," or "limited," or contains an abbreviation of one of such words, then the name of the corporation which it elects for use in this state.
- (3) The date of incorporation and the period of duration of the corporation.
- (4) The address of the principal office of the corporation.
- (5) A statement that a registered agent has been appointed and the name and address of such agent, and that a registered office exists and the address of such registered office is identical to that of the registered agent.
- (6) The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state.
- (7) The names and respective addresses of the directors and officers of the corporation.
- (8) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this state.

The application shall be made in the form prescribed by the secretary of state and shall be executed in duplicate by the corporation by one of its officers.

The application shall be accompanied by a certificate of good standing which has been issued no more than sixty

days before the date of filing of the application for a certificate of authority to do business in this state and has been certified to by the proper officer of the state or country under the laws of which the corporation is incorporated. [1986 c 240 § 45; 1967 c 235 § 66.]

24.03.330 Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state.

If the secretary of state finds that such application conforms to law, the secretary of state shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such documents the word "Filed," and the date of the filing thereof.

(2) File one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto.

(3) Issue a certificate of authority to conduct affairs in this state to which the other duplicate original application shall be affixed.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative. [1986 c 240 § 46; 1982 c 35 § 99; 1969 ex.s. c 163 § 4; 1967 c 235 § 67.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.335 Effect of certificate of authority. Upon the filing of the application for certificate of authority by the secretary of state, the corporation shall be authorized to conduct affairs in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this chapter. [1982 c 35 § 100; 1967 c 235 § 68.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.340 Registered office and registered agent of foreign corporation. Each foreign corporation authorized to conduct affairs in this state shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its principal office. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized

to transact business or conduct affairs in this state, having an office identical with such registered office. A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

No foreign corporation authorized to transact business in this state may be permitted to maintain any action in any court in this state until the corporation complies with the requirements of this section. [1982 c 35 § 101; 1967 c 235 § 69.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.345 Change of registered office or registered agent of foreign corporation. A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state in a form approved by the secretary of state a statement setting forth:

(1) The name of the corporation.

(2) If the address of its registered office is to be changed, the address to which the registered office is to be changed.

(3) If its registered agent is to be changed, the name of its successor registered agent.

(4) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

(5) That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by an officer of the corporation, and delivered to the secretary of state, together with a written consent of the registered agent to his or its appointment, if applicable. If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary of state shall endorse thereon the word "Filed," and the month, day, and year of the filing thereof, and file the statement. The change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective upon filing unless a later date is specified.

Any registered agent in this state appointed by a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state who shall forthwith mail a copy thereof to the secretary of the foreign corporation at its principal office as shown by its most recent annual report. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

If a registered agent changes his business address to another place within the state, the registered agent may change such address and the address of the registered office of any corporation of which the registered agent is a registered agent by filing a statement as required by this section, except that it need be signed only by the registered agent, it

need not be responsive to subsection (3) or (5) of this section, and it must recite that a copy of the statement has been mailed to the corporation. [1986 c 240 § 47; 1982 c 35 § 102; 1967 c 235 § 70.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.350 Service on foreign corporation. The registered agent so appointed by a foreign corporation authorized to conduct affairs in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a foreign corporation authorized to conduct affairs in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of the secretary of state's office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, the secretary of state shall immediately cause one of such copies thereof to be forwarded by certified mail, addressed to the secretary of the corporation as shown on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon the secretary of state under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [1986 c 240 § 48; 1982 c 35 § 103; 1967 c 235 § 71.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.360 Merger of foreign corporation authorized to conduct affairs in this state. Whenever a foreign corporation authorized to conduct affairs in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state. [1986 c 240 § 49; 1967 c 235 § 73.]

Purposes: RCW 24.03.015.

24.03.365 Amended certificate of authority. A foreign corporation authorized to conduct affairs in this state shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority. [1967 c 235 § 74.]

24.03.370 Withdrawal of foreign corporation. A foreign corporation authorized to conduct affairs in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) That the corporation is not conducting affairs in this state.

(3) That the corporation surrenders its authority to conduct affairs in this state.

(4) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state may thereafter be made on such corporation by service thereof on the secretary of state.

(5) If a copy of a revenue clearance form under chapter 82.32 RCW is issued, it shall be attached to the application for withdrawal.

(6) A post office address to which the secretary of state may mail a copy of any process against the corporation that may be served on the secretary of state.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by an officer of the corporation, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee. [1982 c 35 § 104; 1967 c 235 § 75.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.375 Filing of application for withdrawal. Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, the secretary of state shall, when all requirements have been met as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the effective date of the filing thereof.

(2) File one of such duplicate originals.

(3) Issue a certificate of withdrawal to which the other duplicate original shall be affixed.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the filing of such application of withdrawal, the authority of the corporation to conduct affairs in this state shall cease. [1982 c 35 § 105; 1967 c 235 § 76.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Fees: RCW 24.03.405.

24.03.380 Revocation of certificate of authority—Notice. (1) The certificate of authority of a foreign corporation to conduct affairs in this state shall be revoked by the secretary of state upon the conditions prescribed in this section when:

(a) The corporation has failed to file its annual report within the time required by this chapter, or has failed to pay any fees or penalties prescribed by this chapter when they have become due and payable; or

(b) The corporation has failed for thirty days to appoint and maintain a registered agent in this state as required by this chapter; or

(c) The corporation has failed, for thirty days after change of its registered agent or registered office, to file in the office of the secretary of state a statement of such change as required by this chapter; or

(d) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(e) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(2) Prior to revoking a certificate of authority under subsection (1) of this section, the secretary of state shall give the corporation written notice of the corporation's delinquency or omission by first class mail, postage prepaid, addressed to the corporation's registered agent. If, according to the records of the secretary of state, the corporation does not have a registered agent, the notice may be given by mail addressed to the corporation at its last known address or at the address of any officer or director of the corporation, as shown by the records of the secretary of state. Notice is deemed to have been given five days after the date deposited in the United States mail, correctly addressed, and with correct postage affixed. The notice shall inform the corporation that its certificate of authority shall be revoked at the expiration of sixty days following the date the notice had been deemed to have been given, unless it corrects the delinquency or omission within the sixty-day period.

(3) Any notice provided by the secretary of state under this section shall be designed to clearly identify and warn the recipient of the contents thereof. A delinquency notice shall provide a succinct and readable description of the delinquency or omission, the date on which dissolution will occur, and the action necessary to cure the delinquency or omission prior to dissolution.

(4) The attorney general may take such action regarding revocation of a certificate of authority as is provided by RCW 24.03.250 for the dissolution of a domestic corporation. The procedures of RCW 24.03.250 shall apply to any action under this section. The clerk of any superior court

entering a decree of revocation of a certificate of authority shall file a certified copy, without cost or filing fee, with the office of the secretary of state. [1986 c 240 § 50; 1982 c 35 § 106; 1967 c 235 § 77.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.385 Issuance of certificate of revocation. Upon revoking any certificate of authority under RCW 24.03.380, the secretary of state shall:

(1) Issue a certificate of revocation in duplicate.

(2) File one of such certificates in the secretary of state's office.

(3) Mail the other duplicate certificate to such corporation at its registered office in this state or, if there is no registered office in this state, to the corporation at the last known address of any officer or director of the corporation, as shown by the records of the secretary of state.

Upon the filing of such certificate of revocation, the authority of the corporation to conduct affairs in this state shall cease. [1986 c 240 § 51; 1982 c 35 § 107; 1967 c 235 § 78.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.386 Foreign corporations—Application for reinstatement. (1) A corporation revoked under RCW 24.03.380 may apply to the secretary of state for reinstatement within five years after the effective date of revocation. An application filed within such five-year period may be amended or supplemented and any such amendment or supplement shall be effective as of the date of original filing. The application filed under this section shall be filed under and by authority of an officer of the corporation.

(2) The application shall:

(a) State the name of the corporation and, if applicable, the name the corporation had elected to use in this state at the time of revocation, and the effective date of its revocation;

(b) Provide an explanation to show that the grounds for revocation either did not exist or have been eliminated;

(c) State the name of the corporation at the time of reinstatement and, if applicable, the name the corporation elects to use in this state at the time of reinstatement which may be reserved under RCW 24.03.046;

(d) Appoint a registered agent and state the registered office address under RCW 24.03.340; and

(e) Be accompanied by payment of applicable fees and penalties.

(3) If the secretary of state determines that the application conforms to law, and that all applicable fees have been paid, the secretary of state shall cancel the certificate of revocation, prepare and file a certificate of reinstatement, and mail a copy of the certificate of reinstatement to the corporation.

(4) Reinstatement under this section relates back to and takes effect as of the date of revocation. The corporate authority shall be deemed to have continued without interruption from that date.

(5) In the event the application for reinstatement states a corporate name which the secretary of state finds to be

contrary to the requirements of RCW 24.03.046, the application, amended application, or supplemental application shall be amended to adopt another corporate name which is in compliance with RCW 24.03.046. In the event the reinstatement application so adopts a new corporate name for use in Washington, the application for authority shall be deemed to have been amended to change the corporation's name to the name so adopted for use in Washington, effective as of the effective date of the certificate of reinstatement. [1987 c 117 § 1; 1986 c 240 § 57.]

24.03.388 Foreign corporations—Fees for application for reinstatement—Annual reports. (1) An application processing fee as provided in RCW 24.03.405 shall be charged for an application for reinstatement under RCW 24.03.386.

(2) An application processing fee as provided in RCW 24.03.405 shall be charged for each amendment or supplement to an application for reinstatement.

(3) The corporation seeking reinstatement shall file all annual reports and pay the full amount of all annual corporation fees which would have been assessed for the years of the period of administrative revocation, had the corporation been in active status, including the reinstatement year. [1991 c 223 § 3; 1987 c 117 § 2; 1986 c 240 § 58.]

Effective date—1991 c 223: See note following RCW 24.03.405.

24.03.390 Conducting affairs without certificate of authority. No foreign corporation which is conducting affairs in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the conduct of affairs by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state.

A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section. [1986 c 240 § 52; 1967 c 235 § 79.]

24.03.395 Annual report of domestic and foreign corporations. Each domestic corporation, and each foreign corporation authorized to conduct affairs in this state, shall

file, within the time prescribed by this chapter, an annual report in the form prescribed by the secretary of state setting forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated;

(2) The address of the registered office of the corporation in this state including street and number and the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office;

(3) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this state;

(4) The names and respective addresses of the directors and officers of the corporation;

(5) An affirmative indication whether or not any change has been made in the corporation's purpose and if so, the nature and reason for the change along with accompanying documentation;

(6) Whether the corporation has filed an internal revenue service form 990 with the internal revenue service, which if filed, shall be made available upon request to the secretary of state's office;

(7) The gross revenue and any unrelated business income as required to be reported under federal law; and

(8) The corporation's unified business identifier number.

The information shall be given as of the date of the execution of the report. It shall be executed by the corporation by an officer of the corporation, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

The secretary of state may provide that correction or updating of information appearing on previous annual filings is sufficient to constitute the current annual filing. [1989 c 291 § 2; 1987 c 117 § 4; 1986 c 240 § 53; 1982 c 35 § 108; 1967 c 235 § 80.]

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.400 Filing of annual report of domestic and foreign corporations—Notice. Not less than thirty days prior to a corporation's renewal date, or by December 1 of each year for a nonstaggered renewal, the secretary of state shall mail to each domestic and foreign corporation, by first class mail addressed to its registered office, a notice that its annual report must be filed as required by this chapter, and stating that if it fails to file its annual report it shall be dissolved or its certificate of authority revoked, as the case may be. Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligation to file the annual reports required by this chapter.

Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the first day of March of each year, or on an annual renewal date as the secretary of state may establish.

If the secretary of state finds that such report substantially conforms to the requirements of this chapter, the

secretary of state shall file the same. [1986 c 240 § 54; 1982 c 35 § 109; 1973 c 90 § 1; 1967 c 235 § 81.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.405 Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

(1) Filing articles of incorporation or an application for reinstatement under RCW 24.03.386, thirty dollars.

(2) Filing articles of amendment or restatement or an amendment or supplement to an application for reinstatement, twenty dollars.

(3) Filing articles of merger or consolidation, twenty dollars.

(4) Filing a statement of change of address of registered office or change of registered agent, or revocation, resignation, or any combination of these, ten dollars. A separate fee for filing such statement shall not be charged if the statement appears in an amendment to articles of incorporation or in conjunction with the filing of the annual report.

(5) Filing articles of dissolution, no fee.

(6) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state, thirty dollars.

(7) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state, twenty dollars.

(8) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, no fee.

(9) Filing a certificate by a foreign corporation of the appointment of a registered agent, ten dollars. A separate fee for filing such certificate shall not be charged if the statement appears in conjunction with the filing of the annual report.

(10) Filing a certificate of election adopting the provisions of chapter 24.03 RCW, twenty dollars.

(11) Filing an application to reserve a corporate name, twenty dollars.

(12) Filing a notice of transfer of a reserved corporate name, twenty dollars.

(13) Filing a name registration, twenty dollars per year, or part thereof.

(14) Filing an annual report of a domestic or foreign corporation, ten dollars.

(15) Filing any other statement or report authorized for filing under this chapter, ten dollars. [1991 c 223 § 1; 1987 c 117 § 5; 1986 c 240 § 55; 1982 c 35 § 110; 1981 c 230 § 5; 1969 ex.s. c 163 § 5; 1967 c 235 § 82.]

Effective date—1991 c 223: "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 on July 1, 1991." [1991 c 223 § 4.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.410 Miscellaneous charges. The secretary of state shall charge and collect:

(1) For furnishing a certified copy of any charter document or any other document, instrument, or paper relating to a corporation, five dollars for the certificate, plus twenty cents for each page copied.

(2) For furnishing a certificate, under seal, attesting to the status of a corporation; or any other certificate, five dollars.

(3) For furnishing copies of any document, instrument or paper relating to a corporation, one dollar for the first page and twenty cents for each page copied thereafter.

(4) At the time of any service of process on him as registered agent of a corporation, twenty-five dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action. [1982 c 35 § 111; 1979 ex.s. c 133 § 2; 1969 ex.s. c 163 § 6; 1967 c 235 § 83.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Deposit of certain fees recovered under this section in secretary of state's revolving fund: RCW 43.07.130.

24.03.415 Disposition of fees. Any money received by the secretary of state under the provisions of this chapter shall be by him paid into the state treasury as provided by law. [1967 c 235 § 84.]

State officers—Daily remittance of moneys to treasury: RCW 43.01.050.

24.03.417 Fees for services by secretary of state. See RCW 43.07.120.

24.03.420 Penalties imposed upon corporation. Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this chapter interrogatories propounded by the secretary of state in accordance with the provisions of this chapter, shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding five hundred dollars. [1969 ex.s. c 163 § 7; 1967 c 235 § 85.]

Filing of annual report of domestic and foreign corporations: RCW 24.03.400.

24.03.425 Penalties imposed upon directors and officers. Each director and officer of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories propounded to him by the secretary of state in accordance with the provisions of this chapter, or who signs any articles, statement, report, application or other document filed with the secretary of state which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof may be fined in any amount not exceeding five hundred dollars. [1967 c 235 § 86.]

24.03.430 Interrogatories by secretary of state. The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of this chapter, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable the secretary of state to ascertain whether such corporation has complied with all the provisions of this chapter applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the secretary of state, and the answers thereto shall be full and complete and shall be made

in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary or assistant secretary thereof. The secretary of state need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this chapter. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter. [1982 c 35 § 112; 1967 c 235 § 87.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.435 Confidential nature of information disclosed by interrogatories. Interrogatories propounded by the secretary of state and the answers thereto shall not be open to public inspection nor shall the secretary of state disclose any facts or information obtained therefrom except in so far as the secretary of state's official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this state. [1982 c 35 § 113; 1967 c 235 § 88.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.440 Power and authority of secretary of state. The secretary of state shall have the power and authority reasonably necessary for the efficient and effective administration of this chapter, including the adoption of rules under chapter 34.05 RCW. [1982 c 35 § 114; 1967 c 235 § 89.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

Power and authority of secretary of state: RCW 23B.01.210 and 23B.01.300.

24.03.445 Appeal from disapproval of secretary of state. If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by this chapter to be approved by the secretary of state before the same shall be filed in his or her office, the secretary of state shall give written notice of disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. Within thirty days from such disapproval such person or corporation may appeal to the superior court pursuant to the provisions of the administrative procedure act, chapter 34.05 RCW. [1986 c 240 § 56; 1982 c 35 § 115; 1967 c 235 § 90.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.450 Certificates and certified copies to be received in evidence. All certificates issued by the secretary of state in accordance with the provisions of this chapter, and all copies of documents filed in the office of the secretary of state in accordance with the provisions of this

chapter when certified by the secretary of state under the seal of the state, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated. [1982 c 35 § 116; 1967 c 235 § 91.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.455 Greater voting requirements. Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. [1967 c 235 § 92.]

24.03.460 Waiver of notice. Whenever any notice is required to be given to any member or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. [1967 c 235 § 93.]

24.03.465 Action by members or directors without a meeting. Any action required by this chapter to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be.

Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the secretary of state under this chapter. [1967 c 235 § 94.]

24.03.470 Unauthorized assumption of corporate powers. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. [1967 c 235 § 95.]

24.03.480 Postsecondary education loans—Interest rates. A nonprofit corporation may charge interest upon any loan made under a program to finance postsecondary education at any rate or rates of interest which are permitted by state or federal law to be charged by any state or federally chartered bank, savings and loan association, or credit union. [1989 c 166 § 1.]

24.03.490 Public benefit nonprofit corporation designation established. There is hereby established the special designation "public benefit not for profit corporation" or "public benefit nonprofit corporation." A corporation may be designated as a public benefit nonprofit corporation if it meets the following requirements:

(1) The corporation complies with the provisions of this chapter; and

(2) The corporation holds a current tax exempt status as provided under 26 U.S.C. Sec. 501(c)(3) or is not required to apply for its tax exempt status under 26 U.S.C. Sec. 501(c)(3). [1989 c 291 § 4.]

Finding—1989 c 291: "The legislature finds that it is in the public interest to increase the level of accountability to the public of nonprofit corporations through improved reporting, increased consistency between state and federal statutes, and a clear definition of those nonprofit corporations that may hold themselves out as operating to benefit the public." [1989 c 291 § 1.]

Severability—1989 c 291: "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 291 § 12.]

24.03.500 Public benefit nonprofit corporations—Temporary designation. A temporary designation as a public benefit nonprofit corporation may be provided to a corporation that has applied for tax exempt status under 26 U.S.C. Sec. 501(c)(3). The temporary designation is valid for up to one year and may be renewed at the discretion of the secretary. [1989 c 291 § 5.]

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

24.03.510 Public benefit nonprofit corporations—Application. The secretary shall develop an application process for new and existing corporations to apply for public benefit nonprofit corporation status. [1989 c 291 § 6.]

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

24.03.520 Public benefit nonprofit corporations—Renewal. The designation "public benefit nonprofit corporation" shall be renewed annually. The secretary may schedule renewals in conjunction with existing corporate renewals. [1989 c 291 § 7.]

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

24.03.530 Public benefit nonprofit corporations—Fees. The secretary may establish fees to cover the cost of renewals. [1989 c 291 § 8.]

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

24.03.540 Public benefit nonprofit corporations—Removal of status. The secretary may remove a corporation's public benefit nonprofit corporation designation if it does not comply with the provisions of this chapter or does not maintain its exempt status under 26 U.S.C. Sec. 501(c)(3). The secretary in removing a corporation's public benefit nonprofit corporation status shall comply with

administrative procedures provided by this chapter. [1989 c 291 § 9.]

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

24.03.900 Short title. This chapter shall be known and may be cited as the "Washington nonprofit corporation act." [1967 c 235 § 1.]

24.03.905 Savings—1967 c 235. Any corporation existing on the date when this chapter takes effect shall continue to exist as a corporation despite any provision of this chapter changing the requirements for forming a corporation or repealing or amending the law under which it was formed. The provisions of this chapter shall, however, apply prospectively to the fullest extent permitted by the Constitutions of the United States and the state of Washington to all existing corporations organized under any general act of the territory or the state of Washington providing for the organization of corporations for a purpose or purposes for which a corporation might be organized under this chapter. The repeal of any prior act or part thereof by this chapter shall not affect any right accrued or any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof. The repeal of a prior act or acts by this chapter shall not affect any existing corporation organized for a purpose or purposes other than those for which a corporation might be organized under this chapter. [1967 c 235 § 96.]

24.03.910 Severability—1967 c 235. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this chapter, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this chapter so adjudged to be invalid or unconstitutional. [1967 c 235 § 97.]

24.03.915 Notice to existing corporations. (1) The secretary of state shall notify all existing nonprofit corporations thirty days prior to the effective date of this chapter, that in the event they fail to appoint a registered agent as provided in *this 1969 amendatory act within ninety days following the effective date of *this 1969 amendatory act, they shall thereupon cease to exist.

(2) If the notification provided under subsection (1) of this section, from the secretary of state to any corporation was or has been returned unclaimed or undeliverable, the secretary of state shall proceed to dissolve the corporation by striking the name of such corporation from the records of active corporations.

(3) Corporations dissolved under subsection (2) of this section may be reinstated at any time within three years of the dissolution action by the secretary of state. The corporation shall be reinstated by filing a request for reinstatement, by appointment of a registered agent and designation of a registered office as required by this chapter, and by filing an annual report for the reinstatement year. No fees may be charged for reinstatements under this section. If, during the period of dissolution, another person or corporation has

reserved or adopted a corporate name which is identical to or deceptively similar to the dissolved corporation's name, the corporation seeking reinstatement shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles of incorporation accordingly. [1982 c 35 § 117; 1969 ex.s. c 163 § 8; 1967 c 235 § 98.]

***Reviser's note:** "this 1969 amendatory act" consists of RCW 24.03.302 and the 1969 amendments to RCW 24.03.050, 24.03.250, 24.03.255, 24.03.330, 24.03.405, 24.03.410, 24.03.420, 24.03.915.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Effective date—1969 ex.s. c 163: August 11, 1969, see preface to 1969 session laws.

Effective date—1967 c 235: See RCW 24.03.925.

24.03.920 Repealer—Exception. The following acts or parts of acts, except insofar as may be applicable to the rights, powers and duties of persons and corporations not subject to the provisions of this chapter, are hereby repealed:

- (1) Chapter 110, Laws of 1961;
- (2) Section 6, chapter 12, Laws of 1959;
- (3) Section 3, chapter 263, Laws of 1959;
- (4) Chapter 32, Laws of 1955;
- (5) Chapter 121, Laws of 1953;
- (6) Chapter 249, Laws of 1947;
- (7) Chapter 122, Laws of 1943;
- (8) Chapter 89, Laws of 1933;
- (9) Section 2, chapter 63, Laws of 1925 extraordinary session;
- (10) Chapter 8, Laws of 1923;
- (11) Chapter 75, Laws of 1907;
- (12) Chapter 134, Laws of 1907;
- (13) Chapter 125, Laws of 1905;
- (14) Page 24, chapter XIX (19), Laws of 1895;
- (15) Page 348, chapter CXXXV (135), Laws of 1895;
- (16) Chapter CLVIII (158), Laws of 1895;
- (17) Section 1, page 86, Laws of 1886;
- (18) Sections 2450 through 2454, Code of 1881;
- (19) Pages 409 through 411, Laws of 1873;
- (20) Pages 341 and 342, Laws of 1869;
- (21) Pages 67 and 68, Laws of 1866; and
- (22) RCW sections 24.01.010, 24.04.010 through 24.04.170, 24.08.010 through 24.08.900, and 24.16.010 through 24.16.140. [1967 c 235 § 100.]

24.03.925 Effective date—1967 c 235. This chapter shall become effective July 1, 1969. [1967 c 235 § 99.]

Chapter 24.06

NONPROFIT MISCELLANEOUS AND MUTUAL CORPORATIONS ACT

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Organization of condominium unit owners' association: RCW 64.34.300.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

24.06.005 Definitions. As used in this chapter, unless the context otherwise requires, the term:

(1) "Corporation" or "domestic corporation" means a mutual corporation or miscellaneous corporation subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a mutual or miscellaneous corporation or other corporation organized under laws other than the laws of this state which would be subject to the provisions of this chapter if organized under the laws of this state.

(3) "Mutual corporation" means a corporation organized to accomplish one or more of its purposes on a mutual basis for members and other persons.

(4) "Miscellaneous corporation" means any corporation which is organized for a purpose or in a manner not provided for by the Washington business corporation act or by the Washington nonprofit corporation act, and which is not required to be organized under other laws of this state.

(5) "Articles of incorporation" includes the original articles of incorporation and all amendments thereto, and includes articles of merger.

(6) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(7) "Member" means one having membership rights in a corporation in accordance with provisions of its articles of incorporation or bylaws.

(8) "Stock" or "share" means the units into which the proprietary interests of a corporation are divided in a corporation organized with stock.

(9) "Stockholder" or "shareholder" means one who is a holder of record of one or more shares in a corporation organized with stock.

(10) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.

(11) "Insolvent" means inability of a corporation to pay debts as they become due in the usual course of its affairs.

(12) "Duplicate originals" means two copies, original or otherwise, each with original signatures, or one original with original signatures and one copy thereof.

(13) "Conforms to law" as used in connection with duties of the secretary of state in reviewing documents for filing under this chapter, means the secretary of state has determined the document complies as to form with the applicable requirements of this chapter.

(14) "Effective date" means, in connection with a document filing made by the secretary of state, the date which is shown by affixing a "filed" stamp on the documents. When a document is received for filing by the secretary of state in a form which complies with the requirements of this chapter and which would entitle the document to be filed immediately upon receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of state's filing date shall relate back to the date on which the secretary of state first received the document in acceptable form. An applicant may request a specific effective date no more than thirty days later than the receipt date which might otherwise be applied as the effective date.

(15) "Executed by an officer of the corporation," or words of similar import, means that any document signed by such person shall be and is signed by that person under penalties of perjury and in an official and authorized capacity on behalf of the corporation or person making the document submission with the secretary of state.

(16) "An officer of the corporation" means, in connection with the execution of documents submitted for filing with the secretary of state, the president, a vice president, the secretary, or the treasurer of the corporation. [1982 c 35 § 118; 1969 ex.s. c 120 § 1.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.010 Application of chapter. The provisions of this chapter relating to domestic corporations shall apply to:

- (1) All corporations organized hereunder; and
- (2) All corporations which were heretofore organized under any act repealed by the Washington nonprofit corpora-

tion act and which are not organized for a purpose or in a manner provided for by said act.

The provisions of this chapter relating to foreign corporations shall apply to all foreign corporations conducting affairs in this state for a purpose or purposes for which a corporation might be organized under this chapter. [1969 ex.s. c 120 § 2.]

24.06.015 Purposes. Corporations may be organized under this chapter for any lawful purpose including but not limited to mutual, social, cooperative, fraternal, beneficial, service, labor organization, and other purposes; but excluding purposes which by law are restricted to corporations organized under other statutes. [1969 ex.s. c 120 § 3.]

Labor unions: Chapter 49.36 RCW.

24.06.020 Incorporators. One or more individuals, partnerships, corporations or governmental bodies or agencies may incorporate a corporation by signing and delivering articles of incorporation in duplicate to the secretary of state. [1982 c 35 § 119; 1969 ex.s. c 120 § 4.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.025 Articles of incorporation. The articles of incorporation shall set forth:

- (1) The name of the corporation.
- (2) The period of duration, which may be perpetual or for a stated number of years.
- (3) The purpose or purposes for which the corporation is organized.
- (4) The qualifications and the rights and responsibilities of the members and the manner of their election, appointment or admission to membership and termination of membership; and, if there is more than one class of members or if the members of any one class are not equal, the relative rights and responsibilities of each class or each member.
- (5) If the corporation is to have capital stock:
 - (a) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value;
 - (b) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;
 - (c) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;
 - (d) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.

(6) If the corporation is to distribute surplus funds to its members, stockholders or other persons, provisions for determining the amount and time of the distribution.

(7) Provisions for distribution of assets on dissolution or final liquidation.

(8) Whether a dissenting shareholder or member shall be limited to a return of less than the fair value of his shares or membership.

(9) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation.

(10) The address of its initial registered office, including street and number, and the name of its initial registered agent at such address.

(11) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors.

(12) The name and address of each incorporator.

(13) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the association, including provisions regarding:

(a) Eliminating or limiting the personal liability of a director to the association or its members for monetary damages for conduct as a director: PROVIDED, That such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision may eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective; and

(b) Any provision which under this title is required or permitted to be set forth in the bylaws.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling. [1987 c 212 § 708; 1982 c 35 § 120; 1969 ex.s. c 120 § 5.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.030 General powers. Each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(4) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, be trustee of, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) To lend money to its employees.

(7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter, in any state, territory, district, or possession of the United States, or in any foreign country.

(11) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(13) To establish and maintain reserve, equity, surplus or other funds, and to provide for the time, form and manner of distribution of such funds among members, shareholders or other persons with interests therein in accordance with the articles of incorporation.

(14) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war to make donations in aid of the United States and its war activities.

(15) To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty: **PROVIDED**, That such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise.

(16) To cease its corporate activities and surrender its corporate franchise.

(17) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized and not inconsistent with the articles of incorporation or the provisions of this chapter. [1969 ex.s. c 120 § 6.]

Indemnification of agents, insurance: RCW 23B.08.320, 23B.08.500 through 23B.08.580, 23B.08.600, and 23B.17.030.

24.06.035 Nonprofit status—Members', officers' immunity from liability. A corporation subject to the provisions of this chapter shall not engage in any business, trade, a vocation or profession for profit: **PROVIDED**, That nothing contained herein shall be construed to forbid such a corporation from accumulating reserve, equity, surplus or other funds through subscriptions, fees, dues or assessments, or from charges made its members or other persons for services rendered or supplies or benefits furnished, or from distributing its surplus funds to its members, stockholders or other persons in accordance with the provisions of the articles of incorporation. A member of the board of directors or an officer of such a corporation shall have the same immunity from liability as is granted in RCW 4.24.264. [1987 c 212 § 709; 1969 ex.s. c 120 § 7.]

24.06.040 Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a member, shareholder or a director against the corporation to enjoin the doing or continuation of unauthorized acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract: **PROVIDED**, That anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members or shareholder in a representative suit, against the officers or directors of the corporation for exceeding their authority.

(3) In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from performing unauthorized acts, or in any other proceeding by the attorney general. [1969 ex.s. c 120 § 8.]

24.06.043 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

24.06.045 Corporate name. The corporate name:

(1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(2) Shall not be the same as, or deceptively similar to, the name of any corporation existing under any act of this state, or any foreign corporation authorized to transact business or conduct affairs in this state under any act of this state, the name of a domestic or foreign limited partnership on file with the secretary, or a corporate name reserved or registered as permitted by the laws of this state. This subsection shall not apply if the applicant files with the secretary of state either of the following: (a) The written consent of the other corporation, limited partnership, or holder of a reserved name to use the same or deceptively similar name and one or more words are added or deleted to make the name distinguishable from the other name as determined by the secretary of state, or (b) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this state.

(3) Shall be transliterated into letters of the English alphabet if it is not in English.

(4) The name of any corporation formed under this section shall not include nor end with "incorporated", "company", or "corporation" or any abbreviation thereof, but may use "club", "league", "association", "services", "committee", "fund", "society", "foundation", " , a nonprofit mutual corporation", or any name of like import. [1987 c 55 § 41; 1982 c 35 § 121; 1973 c 113 § 1; 1969 ex.s. c 120 § 9.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Corporate name of foreign corporation: RCW 24.06.350.

24.06.046 Reservation of exclusive right to use corporate name. The exclusive right to the use of a corporate name may be reserved by:

(1) Any person intending to organize a corporation under this title.

(2) Any domestic corporation intending to change its name.

(3) Any foreign corporation intending to make application for a certificate of authority to transact business in this state.

(4) Any foreign corporation authorized to transact business in this state and intending to change its name.

(5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by or on behalf of the applicant. If the secretary of state finds that the name is available for corporate use, the secretary of state shall reserve the same for the exclusive use of the applicant for a period of one

hundred and eighty days. Such reservation shall be limited to one filing and one renewal for a like period.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state, a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee. [1982 c 35 § 122.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.047 Registration of corporate name. Any corporation, organized and existing under the laws of any state or territory of the United States may register its corporate name under this title, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, the name of any domestic or foreign limited partnership on file with the secretary, or any corporate name reserved or registered under this title.

Such registration shall be made by:

(1) Filing with the secretary of state: (a) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged, and (b) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations, and

(2) Paying to the secretary of state a registration fee in the amount of one dollar for each month, or fraction thereof, between the date of filing the application and December thirty-first of the calendar year in which the application is filed.

The registration shall be effective until the close of the calendar year in which the application for registration is filed. [1987 c 55 § 42; 1982 c 35 § 123.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.048 Renewal of registration of corporate name. A corporation which has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of ten dollars. A renewal application may be filed between the first day of October and the thirty-first day of December in each year, and shall extend the registration for the following calendar year. [1982 c 35 § 124.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.050 Registered office and registered agent. Each domestic corporation and foreign corporation autho-

rized to do business in this state shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its principal office. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation existing under any act of this state or a foreign corporation authorized to transact business or conduct affairs in this state under any act of this state having an office identical with such registered office. The resident agent and registered office shall be designated by duly adopted resolution of the board of directors; and a statement of such designation, executed by an officer of the corporation, together with a copy of the board of directors' designating resolution, shall be filed with the secretary of state. A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

No Washington corporation or foreign corporation authorized to transact business in this state may be permitted to maintain any action in any court in this state until the corporation complies with the requirements of this section. [1982 c 35 § 125; 1969 ex.s. c 120 § 10.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.055 Change of registered office or registered agent. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement in the form prescribed by the secretary of state setting forth:

- (1) The name of the corporation.
- (2) If the address of its registered office is to be changed, the address to which the registered office is to be changed, including street and number.
- (3) If its registered agent is to be changed, the name of its successor registered agent.
- (4) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.
- (5) That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by an officer of the corporation, and delivered to the secretary of state, together with a written consent of the registered office to his or its appointment, if applicable. If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary of state shall file such statement, and upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation in care of an officer, who is not the resigning registered agent, at the address of such officer as shown by the most recent annual report of the corporation. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state. [1982 c 35 § 126; 1969 ex.s. c 120 § 11.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.060 Service of process on corporation. The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of his or her office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, the secretary of state shall immediately cause one of the copies thereof to be forwarded by certified mail, addressed to the corporation at its registered office. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon the secretary of state under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [1982 c 35 § 127; 1969 ex.s. c 120 § 12.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.065 Members. A corporation may have one or more classes of members. The designation of such class or classes, the manner of election, appointment or admission to membership, and the qualifications, responsibilities and rights of the members of each class shall be set forth in the

articles of incorporation. A corporation may issue certificates evidencing membership therein. Certificates may be assigned by a member and reacquired by the corporation under such provisions, rules and regulations as may be prescribed in the articles of incorporation. Membership may be terminated under such provisions, rules and regulations as may be prescribed in the articles of incorporation or bylaws. [1969 ex.s. c 120 § 13.]

24.06.070 Shares—Issuance—Payment—Subscription agreements. (1) Each corporation which is organized with capital stock shall have the power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this chapter.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(a) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

(b) Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends.

(c) Having preference over any other members or class or classes of shares as to the payment of dividends.

(d) Having preference in the assets of the corporation over any other members or class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

(3) The consideration for the issuance of shares may be paid in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and nonassessable.

Neither promissory notes nor future services shall constitute payment or part payment, for shares of a corporation.

In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

(4) A subscription for shares of a corporation to be organized shall be in writing and be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares

of the same series, as the case may be. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post office address known to the corporation, with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative. [1969 ex.s. c 120 § 14.]

24.06.075 Shares—Consideration, fixing. (1) Shares having a par value may be issued for such consideration expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

(2) Shares without par value shall be issued for such consideration expressed in dollars as may be fixed from time to time by the board of directors. [1969 ex.s. c 120 § 15.]

24.06.080 Shares—Certificates. The shares of a corporation shall be represented by certificates signed by the president or vice president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

Each certificate representing shares shall state upon the face thereof:

(1) That the corporation is organized under the laws of this state.

(2) The name of the person to whom issued.

(3) The number and class of shares, and the designation of the series, if any, which such certificate represents.

(4) The par value of each share represented by such certificate, or a statement that the shares are without par value.

No certificate shall be issued for any share until such share is fully paid. [1969 ex.s. c 120 § 16.]

24.06.085 Liability of shareholders, subscribers, assignees, executors, trustees, etc. A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable.

No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder. [1969 ex.s. c 120 § 17.]

24.06.090 Preemptive share acquisition rights. The preemptive right of a shareholder to acquire unissued shares of a corporation may be limited or denied to the extent provided in the articles of incorporation. [1969 ex.s. c 120 § 18.]

24.06.095 Bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation: PROVIDED, That where the bylaws of an existing corporation prohibit voting by mail or by proxy or attorney-in-fact, and the quorum required by its bylaws for election of directors or transaction of other business has not been obtained at a shareholders' or members' meeting, for a period which includes at least two consecutive annual meeting dates, the board of directors shall have power to amend such bylaws to thereafter authorize voting by mail or by proxy or attorney-in-fact. [1970 ex.s. c 78 § 1; 1969 ex.s. c 120 § 19.]

24.06.100 Meetings of members and shareholders. Meetings of members and/or shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this state.

An annual meeting of the members and shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the members or shareholders may be called by the president or by the board of directors. Special meetings of the members or shareholders may also be called by such other officers or persons or number or proportion of members or shareholders as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members or shareholders entitled to call a meeting, a special meeting of members or shareholders may be called by persons having one-twentieth of the votes entitled to be cast at such meeting. [1969 ex.s. c 120 § 20.]

24.06.105 Notice of meetings. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member or shareholder entitled to vote at such meeting. If provided in the articles of incorporation, notice of regular meetings other than annual may be made by providing each member with the adopted schedule of regular meetings for the ensuing year at any time after the annual meeting and ten days prior to a regular meeting and at any time when requested by a member or by such other notice as may be prescribed by the bylaws. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member or shareholder at his address as it appears on the records of the corporation, with postage thereon prepaid. [1969 ex.s. c 120 § 21.]

24.06.110 Voting. The right of a class or classes of members or shareholders to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation. Unless so limited, enlarged or denied, each member and each outstanding share of each class shall be entitled to one vote on each matter submitted to a vote of members or shareholders. No member of a class may acquire any interest which will entitle him to a greater vote than any other member of the same class.

A member or shareholder may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by mail or by proxy executed in writing by the member or shareholder or by his duly authorized attorney-in-fact: PROVIDED, That no proxy shall be valid for more than eleven months from the date of its execution unless otherwise specified in the proxy.

The articles of incorporation may provide that whenever proposals or directors or officers are to be voted upon, such vote may be taken by mail if the name of each candidate and the text of each proposal to be so voted upon are set forth in a writing accompanying or contained in the notice of meeting. Persons voting by mail shall be deemed present for all purposes of quorum, count of votes and percentages of total voting power voting.

The articles of incorporation or the bylaws may provide that in all elections for directors every person entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates. [1969 ex.s. c 120 § 22.]

24.06.115 Quorum. The articles of incorporation or the bylaws may provide the number or percentage of votes which members or shareholders are entitled to cast in person, by mail, or by proxy, which shall constitute a quorum at meetings of shareholders or members. However, in no event shall a quorum be less than one-fourth of the votes which members or shareholders are entitled to cast in person, by mail, or by proxy, at a meeting considering the adoption of a proposal which is required by the provisions of this chapter to be adopted by at least two-thirds of the votes which members or shareholders present at the meeting in person or by mail or represented by proxy are entitled to cast. In all other matters and in the absence of any provision in the articles of incorporation or bylaws, a quorum shall consist of one-fourth of the votes which members or shareholders are entitled to cast in person, by mail, or by proxy at the meeting. On any proposal on which a class of shareholders or members is entitled to vote as a class, a quorum of the class entitled to vote as such class must also be present in person, by mail, or represented by proxy. [1969 ex.s. c 120 § 23.]

24.06.120 Class voting. A class of members or shareholders shall be entitled to vote as a class upon any proposition, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the proposition would increase or decrease the rights, qualifications, limitations, responsibilities or preferences of the class as related to any other class. [1969 ex.s. c 120 § 24.]

24.06.125 Board of directors. The affairs of the corporation shall be managed by a board of directors. Directors need not be residents of this state or members or shareholders of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors. [1969 ex.s. c 120 § 25.]

24.06.130 Number and election of directors. The number of directors of a corporation shall be not less than three and shall be fixed by the bylaws: PROVIDED, That the number of the first board of directors shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold

office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation. [1969 ex.s. c 120 § 26.]

24.06.135 Vacancies. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner. A director elected or appointed, as the case may be, to fill a vacancy, shall be elected or appointed for the unexpired term of his predecessor in office. [1969 ex.s. c 120 § 27.]

24.06.140 Quorum of directors. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws: PROVIDED, That a quorum shall never consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter, the articles of incorporation, or the bylaws. [1969 ex.s. c 120 § 28.]

24.06.145 Committees. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation, or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation: PROVIDED, That no such committee shall have the authority of the board of directors in reference to:

- (1) Amending, altering or repealing the bylaws;
- (2) Electing, appointing, or removing any member of any such committee or any director or officer of the corporation;
- (3) Amending the articles of incorporation;
- (4) Adopting a plan of merger or a plan of consolidation with another corporation;
- (5) Authorizing the sale, lease, exchange, or mortgage, of all or substantially all of the property and assets of the corporation;

(6) Authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; or

(7) Amending, altering or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered or repealed by such committee.

The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director of any responsibility imposed upon it or him by law. [1969 ex.s. c 120 § 29.]

24.06.150 Directors' meetings. Meetings of the board of directors, regular or special, may be held either within or without this state, and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting. [1969 ex.s. c 120 § 30.]

24.06.155 Officers. The officers of a corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws. [1969 ex.s. c 120 § 31.]

24.06.160 Books and records. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, shareholders, board of directors, and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in this state a record of the names and addresses of its members and shareholders entitled to vote. All books and records of a corporation may be inspected by any member or shareholder, or his agent or attorney, for any proper purpose at any reasonable time. [1969 ex.s. c 120 § 32.]

24.06.165 Loans to directors or officers. No loans exceeding or more favorable than those which are customarily made to members or shareholders shall be made by a corporation to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan in violation of this section to a director or officer of the corporation, and any officer or officers participating in the

making of such loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof. [1969 ex.s. c 120 § 33.]

24.06.170 Filing of articles of incorporation.

Duplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he or she shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such originals the word "filed" and the effective date of the filing thereof.

(2) File one of such originals in his or her office.

(3) Issue a certificate of incorporation to which he or she shall affix one of such originals.

The certificate of incorporation together with the original of the articles of incorporation affixed thereto by the secretary of state shall be returned to the incorporators or their representatives and shall be retained by the corporation. [1982 c 35 § 128; 1981 c 302 § 5; 1969 ex.s. c 120 § 34.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 302: See note following RCW 19.76.100.

24.06.175 Effect of filing of articles of incorporation. Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall, except as against the state in a proceeding to cancel or revoke the certificate of incorporation, be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter. [1982 c 35 § 129; 1969 ex.s. c 120 § 35.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.180 Organization meeting. After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

A first meeting of the members and shareholders may be held at the call of the directors, or a majority of them, upon at least three days' notice, for such purposes as shall be stated in the notice of the meeting. [1969 ex.s. c 120 § 36.]

24.06.185 Right to amend articles of incorporation.

A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this chapter. [1969 ex.s. c 120 § 37.]

24.06.190 Procedure to amend articles of incorporation. Amendments to the articles of incorporation shall be made in the following manner:

The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members and shareholders, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member and shareholder entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members and shareholders. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members or shareholders present in person or by mail at such meeting or represented by proxy are entitled to cast: PROVIDED, That when any class of shares or members is entitled to vote thereon by class, the proposed amendment must receive at least two-thirds of the votes of the members or shareholders of each class entitled to vote thereon as a class, who are present in person, by mail, or represented by proxy at such meeting.

Any number of amendments may be submitted and voted upon at any one meeting. [1969 ex.s. c 120 § 38.]

24.06.195 Articles of amendment. The articles of amendment shall be executed in duplicate originals by the corporation by an officer of the corporation, and shall set forth:

- (1) The name of the corporation.
- (2) Any amendment so adopted.

(3) A statement setting forth the date of the meeting of members and shareholders at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members or shareholders of the corporation, and of each class entitled to vote thereon as a class, present at such meeting in person, by mail, or represented by proxy were entitled to cast, or a statement that such amendment was adopted by a consent in writing signed by all members and shareholders entitled to vote with respect thereto. [1982 c 35 § 130; 1981 c 302 § 6; 1969 ex.s. c 120 § 39.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 302: See note following RCW 19.76.100.

24.06.200 Filing of articles of amendment—Procedure. Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he or she shall, when all fees have been paid as prescribed in this chapter:

- (1) Endorse on each of such originals the word "filed", and the effective date of the filing thereof.
- (2) File one of such originals in his or her office.
- (3) Issue a certificate of amendment to which he or she shall affix one of such originals.

The certificate of amendment, together with the other duplicate original of the articles of amendment affixed thereto by the secretary of state shall be returned to the corporation or its representative and shall be retained by the

corporation. [1982 c 35 § 131; 1981 c 302 § 7; 1969 ex.s. c 120 § 40.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 302: See note following RCW 19.76.100.

24.06.205 When amendment becomes effective—Existing actions and rights not affected. Upon the filing of the articles of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, nor any pending action to which such corporation shall be a party, nor the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason. [1982 c 35 § 132; 1969 ex.s. c 120 § 41.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.207 Restated articles of incorporation. A domestic corporation may at any time restate its articles of incorporation as theretofore amended, by a resolution adopted by the board of directors.

Upon the adoption of the resolution, restated articles of incorporation shall be executed in duplicate by the corporation by one of its officers and shall set forth all of the operative provisions of the articles of incorporation as theretofore amended together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

Duplicate originals of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to law, the secretary of state shall, when all fees required by this title have been paid:

- (1) Endorse on each duplicate original the word "Filed" and the effective date of the filing thereof;
- (2) File one duplicate original; and
- (3) Issue a restated certificate of incorporation, to which the other duplicate original shall be affixed.

The restated certificate of incorporation, together with the duplicate original of the restated articles of incorporation affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Upon the filing of the restated articles of incorporation by the secretary of state, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto. [1982 c 35 § 133.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.210 Procedure for merger. Any two or more domestic corporations may merge into one of such corpora-

tions pursuant to a plan of merger approved in the manner provided in this chapter.

Each corporation shall adopt a plan of merger setting forth:

(1) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(2) The terms and conditions of the proposed merger.

(3) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(4) Such other provisions with respect to the proposed merger as are deemed necessary or desirable. [1969 ex.s. c 120 § 42.]

24.06.215 Procedure for consolidation. Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

Each corporation shall adopt a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(2) The terms and conditions of the proposed consolidation.

(3) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

(4) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. [1969 ex.s. c 120 § 43.]

24.06.220 Approval of merger or consolidation. A plan of merger or consolidation shall be adopted in the following manner:

The board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members or shareholders which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member and shareholder within the time and in the manner provided in this chapter for the giving of notice of meetings of members and shareholders. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members and shareholders present in person or by mail at each such meeting or represented by proxy are entitled to cast: PROVIDED, That when any class of shares or members is entitled to vote thereon as a class, the proposed amendment must receive at least two-thirds of the votes of the members or shareholders of each class entitled to vote thereon as a class, who are present in person, by mail, or represented by proxy at such meeting.

After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. [1969 ex.s. c 120 § 44.]

24.06.225 Articles of merger or consolidation. (1) Upon approval, articles of merger or articles of consolidation shall be executed in duplicate originals by each corporation, by an officer of each corporation, and shall set forth:

(a) The plan of merger or the plan of consolidation;

(b) A statement setting forth the date of the meeting of members or shareholders at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members and shareholders of the corporation and of each class entitled to vote thereon as a class, present at such meeting in person or by mail or represented by proxy were entitled to cast, or a statement that such amendment was adopted by a consent in writing signed by all members;

(2) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he or she shall, when all fees have been paid as prescribed in this chapter:

(a) Endorse on each of such originals the word "filed", and the effective date of the filing thereof;

(b) File one of such originals in his or her office;

(c) Issue a certificate of merger or a certificate of consolidation to which he or she shall affix one of such originals.

The certificate of merger or certificate of consolidation, together with the original of the articles of merger or articles of consolidation affixed thereto by the secretary of state shall be returned to the surviving or new corporation, as the case may be, or its representative, and shall be retained by the corporation. [1982 c 35 § 134; 1981 c 302 § 8; 1969 ex.s. c 120 § 45.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 302: See note following RCW 19.76.100.

24.06.230 Merger or consolidation—When effected. Upon the filing of articles of merger, or the articles of consolidation by the secretary of state, the merger or consolidation shall be effected. [1982 c 35 § 135; 1969 ex.s. c 120 § 46.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.233 Merger or consolidation of domestic and foreign corporation—Participation in an exchange. One or more foreign corporations and one or more domestic corporations may be merged or consolidated or participate in an exchange in the following manner, if such merger, consolidation, or exchange is permitted by the laws of the state under which each such foreign corporation is organized:

(1) Each domestic corporation shall comply with the provisions of this title with respect to the merger, consolidation, or exchange, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(2) If the surviving or new corporation in a merger or consolidation is to be governed by the laws of any state other than this state, it shall comply with the provisions of this title with respect to foreign corporations if it is to

transact business in this state, and in every case it shall file with the secretary of state of this state:

(a) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights, if any, of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(b) An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and

(c) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this title with respect to the rights of dissenting shareholders.

The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.

(3) At any time prior to the effective date of the articles of merger, consolidation, or exchange, the merger, consolidation, or exchange, may be abandoned pursuant to provision therefor, if any, set forth in the plan of merger, consolidation or exchange. In the event the merger, consolidation, or exchange is abandoned, the parties thereto shall execute a notice of abandonment in triplicate signed by an officer for each corporation signing the notice. If the secretary of state finds the notice conforms to law, the secretary of state shall:

(a) Endorse on each of the originals the word "Filed" and the effective date of the filing thereof;

(b) File one of the triplicate originals in the secretary of state's office; and

(c) Issue the other triplicate originals to the respective parties or their representatives. [1982 c 35 § 136.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.235 Effect of merger or consolidation. When such merger or consolidation has been effected:

(1) The several corporations party to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations party to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) The surviving or new corporation shall have all the rights, privileges, immunities and powers, and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(4) The surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, whether of a public or a private nature, of

each of the merging or consolidating corporations; all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and no title to any real estate, or any interest therein, vested in any of such corporations shall not revert nor be in any way impaired by reason of such merger or consolidation.

(5) The surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. No rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation. [1969 ex.s. c 120 § 47.]

24.06.240 Sale, lease, exchange, etc., of property and assets. A sale, lease, exchange, or other disposition of all or substantially all of the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending a sale, lease, exchange, or other disposition and directing that it be submitted to a vote at a meeting of members or shareholders which may be either an annual or a special meeting.

(2) Written or printed notice stating that the purpose or one of the purposes of such meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property and assets of the corporation shall be given to each member and shareholder within the time and in the manner provided by this chapter for the giving of notice of meetings of members and shareholders.

(3) At such meeting the members may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor.

(4) Such authorization shall require at least two-thirds of the votes which members and shareholders present at such meetings in person, by mail, or represented by proxy are entitled to cast: PROVIDED, That even after such authorization by a vote of members or shareholders, the board of

directors may, in its discretion, without further action or approval by members, abandon such sale, lease, exchange, or other disposition of assets, subject only to the rights of third parties under any contracts relating thereto. [1969 ex.s. c 120 § 48.]

24.06.245 Right of member or shareholder to dissent. Any member or shareholder of a corporation shall have the right to dissent from any of the following corporate actions:

(1) Any plan of merger or consolidation to which the corporation is a party; or

(2) Any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale; or

(3) Any amendment to the articles of incorporation which changes voting or property rights of members or shareholders other than by changing the number of memberships or shares or classes of either thereof; or

(4) Any amendment to the articles of incorporation which reorganizes a corporation under the provisions of this chapter.

The provisions of this section shall not apply to the members or shareholders of the surviving corporation in a merger if such corporation is on the date of the filing of the articles of merger the owner of all the outstanding shares of the other corporations, domestic or foreign, which are parties to the merger, or if a vote of the members and shareholders of such corporation is not necessary to authorize such merger. [1969 ex.s. c 120 § 49.]

24.06.250 Exercise of right of dissent—Rights and liabilities. Any member or shareholder electing to exercise such right of dissent shall file with the corporation, prior to or at the meeting of members and shareholders at which such proposed corporate action is submitted to a vote, a written objection to such proposed corporate action. If such proposed corporate action be approved by the required vote and such member or shareholder shall not have voted in favor thereof, such member or shareholder may, within ten days after the date on which the vote was taken, or if a corporation is to be merged without a vote of its members and shareholders into another corporation, any other members or shareholders may, within fifteen days after the plan of such merger shall have been mailed to such members and shareholders, make written demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such member's membership or of such shareholder's shares, and, if such proposed corporate action is effected, such corporation shall pay to such member, upon surrender of his membership certificate, if any, or to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the

proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. Any member or shareholder failing to make demand within the ten day period shall be bound by the terms of the proposed corporate action. Any member or shareholder making such demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a member or shareholder.

No such demand shall be withdrawn unless the corporation shall consent thereto. The right of such member or shareholder to be paid the fair value of his shares shall cease and his status as a member or shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim, if:

(1) Such demand shall be withdrawn upon consent; or

(2) The proposed corporate action shall be abandoned or rescinded or the members or shareholders shall revoke the authority to effect such action; or

(3) In the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger; or

(4) No demand or petition for the determination of fair value by a court shall have been made or filed within the time provided by this section; or

(5) A court of competent jurisdiction shall determine that such member or shareholder is not entitled to the relief provided by this section.

Within ten days after such corporate action is effected, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting member or shareholder who has made demand as herein provided, and shall make a written offer to each such member or shareholder to pay for such shares or membership at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the corporation in which the member has his membership or the shares of which the dissenting shareholder holds, as of the latest available date and not more than twelve months prior to the making of such offer, and a profit and loss statement of such corporation for the twelve months' period ended on the date of such balance sheet.

If within thirty days after the date on which such corporate action was effected the fair value of such shares or membership is agreed upon between any such dissenting member or shareholder and the corporation, payment therefor shall be made within ninety days after the date on which such corporate action was effected, upon surrender of the membership certificate, if any, or upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value the dissenting member or shareholder shall cease to have any interest in such membership or shares.

If within such period of thirty days a dissenting member or shareholder and the corporation do not so agree, then the corporation, within thirty days after receipt of written demand from any dissenting member or shareholder given within sixty days after the date on which such corporate action was effected, shall, or at its election at any time within such period of sixty days may, file a petition in any

court of competent jurisdiction in the county in this state where the registered office of the corporation is located praying that the fair value of such membership or shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, such petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation shall fail to institute the proceeding as herein provided, any dissenting member or shareholder may do so in the name of the corporation. All dissenting members and shareholders, wherever residing, shall be made parties to the proceeding as an action against their memberships or shares quasi in rem. A copy of the petition shall be served on each dissenting member and shareholder who is a resident of this state and shall be served by registered or certified mail on each dissenting member or shareholder who is a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. All members and shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the membership certificate, if any, or of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder or member shall cease to have any interest in such shares or membership.

The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting members and shareholders who are parties to the proceeding to whom the corporation shall have made an offer to pay for membership or shares if the court shall find that the action of such members or shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the memberships or shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to any member or shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the member or shareholder in the proceeding.

Within twenty days after demanding payment for his shares or membership, each member and shareholder demanding payment shall submit the certificate or certificates

representing his membership or shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. If membership or shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear a similar notation, together with the name of the original dissenting holder of such membership or shares, and a transferee of such membership or shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting member or shareholder had after making demand for payment of the fair value thereof. [1969 ex.s. c 120 § 50.]

24.06.255 Limitation upon payment of fair value to dissenting member or shareholder. Notwithstanding any provision in this chapter for the payment of fair value to a dissenting member or shareholder, the articles of incorporation may provide that a dissenting member or shareholder shall be limited to a return of a lesser amount, but in no event shall a dissenting shareholder be limited to a return of less than the consideration paid to the corporation for the membership or shares which he holds unless the fair value of the membership or shares is less than the consideration paid to the corporation. [1969 ex.s. c 120 § 51.]

24.06.260 Voluntary dissolution. A corporation may dissolve and wind up its affairs in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members and shareholders which may be either an annual or a special meeting.

(2) Written or printed notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation shall be given to each member and shareholder within the time and in the manner provided in this chapter for the giving of notice of meetings of members and shareholders.

(3) A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members and shareholders present in person or by mail at such meeting or represented by proxy are entitled to cast.

Upon the adoption of such resolution by the members and shareholders, the corporation shall cease to conduct its affairs and, except insofar as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation and to the department of revenue, and shall proceed to collect its assets and to apply and distribute them as provided in RCW 24.06.265. [1982 c 35 § 137; 1969 ex.s. c 120 § 52.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.265 Distribution of assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements;

(3) Remaining assets, if any shall be distributed to the members, shareholders or others in accordance with the provisions of the articles of incorporation. [1969 ex.s. c 120 § 53.]

24.06.270 Revocation of voluntary dissolution proceedings. A corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members or shareholders which may be either an annual or a special meeting.

(2) Written or printed notice stating that the purpose or one of the purposes of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each member and shareholder within the time and in the manner provided in this chapter for the giving of notice of meetings of members or shareholders.

(3) A resolution to revoke voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members and shareholders present in person or by mail at such meeting or represented by proxy are entitled to cast. [1969 ex.s. c 120 § 54.]

24.06.275 Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then after all debts, liabilities and obligations of the corporation shall have been paid and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed in duplicate by the corporation, by an officer of the corporation; and such statement shall set forth:

(1) The name of the corporation.

(2) The date of the meeting of members or shareholders at which the resolution to dissolve was adopted, certifying that:

(a) A quorum was present at such meeting;

(b) Such resolution received at least two-thirds of the votes which members and shareholders present in person or by mail at such meeting or represented by proxy were entitled to cast or was adopted by a consent in writing signed by all members and shareholders;

(c) All debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(d) All the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter;

(e) There are no suits pending against the corporation in any court or, if any suits are pending against it, that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered; and

(f) If a copy of any revenue clearance form under chapter 82.32 RCW is issued, it shall be attached to the articles of dissolution. [1982 c 35 § 138; 1969 ex.s. c 120 § 55.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.280 Filing of articles of dissolution. Duplicate originals of articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he or she shall, when all requirements have been met as prescribed in this chapter:

(1) Endorse on each of such originals the word "filed", and the effective date of the filing thereof.

(2) File one of the originals in his or her office.

(3) Issue a certificate of dissolution which he or she shall affix to one of such originals.

The certificate of dissolution, together with the original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation and shall be retained with the corporation minutes.

Upon the filing of the articles of dissolution, the corporate existence shall cease, except for the purpose of determining such suits, other proceedings and appropriate corporate action by members, directors and officers as are authorized in this chapter. [1982 c 35 § 139; 1981 c 302 § 9; 1969 ex.s. c 120 § 56.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 302: See note following RCW 19.76.100.

24.06.285 Involuntary dissolution. A corporation may be dissolved by decree of the superior court in an action filed on petition of the attorney general upon a showing that:

(1) The corporation procured its articles of incorporation through fraud; or

(2) The corporation has continued to exceed or abuse the authority conferred upon it by law. [1982 c 35 § 140; 1969 ex.s. c 120 § 57.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.290 Proceedings for involuntary dissolution—Rights, duties, and remedies. Failure of the corporation to file its annual report within the time required shall not derogate from the rights of its creditors, or prevent the corporation from being sued and from defending lawsuits, nor shall it release the corporation from any of the duties or liabilities of a corporation under law.

A corporation shall be dissolved by the secretary of state upon the conditions prescribed in this section when the corporation:

(1) Has failed to file or complete its annual report within the time required by law;

(2) Has failed for thirty days to appoint or maintain a registered agent in this state; or

(3) Has failed for thirty days, after change of its registered agent or registered office, to file in the office of the secretary of state a statement of such change.

A corporation shall not be dissolved under this section unless the secretary of state has given the corporation not less than forty-five days' notice of its delinquency or omission, by first class mail, postage prepaid, addressed to the registered office, or, if there is no registered office, to the last known address of any officer or director as shown by the records of the secretary of state, and unless the corporation has failed to correct the omission or delinquency before expiration of the forty-five day period.

When a corporation has given cause for dissolution under this section, and has failed to correct the delinquency or omission as provided in this section, the secretary of state shall dissolve the corporation by issuing a certificate of involuntary dissolution containing a statement that the corporation has been dissolved and the date and reason for which it was dissolved. The original certificate of involuntary dissolution shall be filed in the records of the secretary of state, and a copy of the certificate shall forthwith be mailed to the corporation at its registered office or, if there is no registered office, to the last known address of the corporation or any officer, director, or incorporator of the corporation, as shown by the records of the secretary of state. Upon the filing of the certificate of involuntary dissolution, the existence of the corporation shall cease, except as otherwise provided in this chapter, and its name shall be available to and may be adopted by another corporation after the dissolution.

A corporation which has been dissolved by operation of this section may be reinstated within a period of three years following its dissolution if it shall file or complete its annual report, appoint and maintain a registered agent, or file a required statement of change of registered agent or registered office and in addition pay a reinstatement fee of twenty-five dollars plus any other fees that may be due or owing the secretary of state. If during the period of dissolution another person or corporation has reserved or adopted a corporate name which is identical or deceptively similar to the dissolved corporation's name, the dissolved corporation seeking reinstatement shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles accordingly. When a corporation has been dissolved by operation of this section, remedies available to or against it shall survive in the manner provided by RCW 24.06.335 and thereafter the directors of the corporation shall hold title to the property of the corporation as trustees for the benefit of its creditors and shareholders. [1982 c 35 § 141; 1973 c 70 § 1; 1969 ex.s. c 120 § 58.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.295 Venue and process. Every action for the involuntary dissolution of a corporation shall be commenced by the attorney general either in the superior court of the county in which the registered office of the corporation is situated, or in the superior court of Thurston county. Summons shall issue and be served as in other civil actions. If process is returned not found, the attorney general shall cause publication to be made as in other civil cases in a newspaper published in the county where the registered

office of the corporation is situated, notifying the corporation of the pendency of such action, the title of the court, the title of the action, the date on or after which default may be entered, giving the corporation thirty days within which to appear, answer, and defend. The attorney general may include in one notice the names of any number of corporations against which actions are then pending in the same court. The attorney general shall cause a copy of such notice to be mailed by certified mail to the corporation at its registered office within ten days after the first publication thereof. The certificate of the attorney general of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned not found. Unless a corporation shall have been personally served with summons, no default shall be taken against it less than thirty days from the first publication of such notice. [1969 ex.s. c 120 § 59.]

24.06.300 Jurisdiction of court to liquidate assets and dissolve corporation. The superior court shall have full power to liquidate the assets and to provide for the dissolution of a corporation when:

(1) In any action by a member, shareholder or director it is made to appear that:

(a) The directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and that the members or shareholders are unable to break the deadlock; or

(b) The acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent; or

(c) The corporate assets are being misapplied or wasted; or

(d) The corporation is unable to carry out its purposes; or

(e) The shareholders have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors.

(2) In an action by a creditor:

(a) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied, and it is established that the corporation is insolvent; or

(b) The corporation has admitted in writing that the claim of the creditor is due and owing, and it is established that the corporation is insolvent.

(3) A corporation applies to have its dissolution continued under the supervision of the court.

(4) An action has been filed by the attorney general to dissolve the corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

Proceedings under subsections (1), (2) or (3) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors, members or shareholders party to any such action or proceedings unless

relief is sought against them personally. [1969 ex.s. c 120 § 60.]

24.06.305 Procedure in liquidation of corporation in court. (1) In proceedings to liquidate the assets and affairs of a corporation the court shall have the power to:

(a) Issue injunctions;

(b) Appoint a receiver or receivers pendente lite, with such powers and duties as the court may, from time to time, direct;

(c) Take such other proceedings as may be requisite to preserve the corporate assets wherever situated; and

(d) Carry on the affairs of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings, and to any other parties in interest designated by the court, the court may appoint a receiver with authority to collect the assets of the corporation. Such receiver shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such receiver shall state his powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(2) The assets of the corporation or the proceeds resulting from the sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(a) All costs and expenses of the court proceedings, and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision made therefor;

(b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

(c) Remaining assets, if any, shall be distributed to the members, shareholders or others in accordance with the provisions of the articles of incorporation.

(3) The court shall have power to make periodic allowances, as expenses of the liquidation and compensation to the receivers and attorneys in the proceeding accrue, and to direct the payment thereof from the assets of the corporation or from the proceeds of any sale or disposition of such assets.

A receiver appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name, as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated. [1969 ex.s. c 120 § 61.]

24.06.310 Qualifications of receivers—Bond. A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require. [1969 ex.s. c 120 § 62.]

24.06.315 Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and affairs of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. [1969 ex.s. c 120 § 63.]

24.06.320 Discontinuance of liquidation proceedings. The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. [1969 ex.s. c 120 § 64.]

24.06.325 Decree of involuntary dissolution. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the corporate existence shall cease. [1969 ex.s. c 120 § 65.]

24.06.330 Filing of decree of dissolution. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the court clerk to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the secretary of state for the filing thereof. [1969 ex.s. c 120 § 66.]

24.06.335 Survival of remedies after dissolution. The dissolution of a corporation whether (1) by the filing and issuance of a certificate of dissolution, voluntary or involuntary, by the secretary of state, or (2) by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in this chapter, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, members, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years from the date of dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate

name and capacity. The members, shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect any remedy, right, or claim. If the corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during the two years following dissolution, in order to extend its period of duration. If, during the period of dissolution, another person or corporation has reserved or adopted a corporate name which is identical to or deceptively similar to the dissolved corporation's name, the corporation extending its period of duration shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles of incorporation accordingly. The corporation shall also pay to the state all fees and penalties which would otherwise have been due if the corporate charter had not expired, plus a reinstatement fee of twenty-five dollars. [1982 c 35 § 142; 1969 ex.s. c 120 § 67.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.340 Admission of foreign corporation. (1) No foreign corporation shall have the right to conduct affairs in this state until it shall have procured a certificate of authority from the secretary of state to do so. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in this state any affairs which a corporation organized under this chapter is not permitted to conduct: PROVIDED, That no foreign corporation shall be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state: PROVIDED FURTHER, That nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

(2) Without excluding other activities not constituting the conduct of affairs in this state, a foreign corporation shall, for purposes of this chapter, not be considered to be conducting affairs in this state by reason of carrying on in this state any one or more of the following activities:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof, or the settlement of claims or disputes.

(b) Holding meetings of its directors, members, or shareholders, or carrying on other activities concerning its internal affairs.

(c) Maintaining bank accounts.

(d) Creating evidences of debt, mortgages or liens on real or personal property.

(e) Securing or collecting debts due to it or enforcing any rights in property securing the same. [1969 ex.s. c 120 § 68.]

24.06.345 Powers and duties, etc., of foreign corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same but no greater rights and privileges as a domestic corporation organized for the purposes set forth in the application

pursuant to which such certificate of authorization is issued, and shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character. [1969 ex.s. c 120 § 69.]

24.06.350 Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation complies with the provisions of RCW 24.06.045. However, a foreign corporation applying for a certificate of authority may file with the secretary of state a resolution of its board of directors adopting a fictitious name for use in transacting business in this state, if the fictitious name complies with RCW 24.06.045. [1982 c 35 § 143; 1969 ex.s. c 120 § 70.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Registration of corporate name: RCW 24.06.047.

Reservation of exclusive right to use corporate name: RCW 24.06.046.

24.06.355 Change of name by foreign corporation. Whenever a foreign corporation which is authorized to conduct affairs in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in this state until it has changed its name to a name which is available to it under the laws of this state. [1969 ex.s. c 120 § 71.]

24.06.360 Certificate of authority—Application for, contents. A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, shall make application therefor to the secretary of state, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) The date of incorporation and the period of duration of the corporation.

(3) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(4) The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at such address.

(5) For the purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state.

(6) The names and respective addresses of the directors and officers of the corporation.

(7) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this state. [1989 c 307 § 38; 1982 c 45 § 2; 1969 ex.s. c 120 § 72.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Application—1989 c 307: See RCW 23.86.900.

24.06.365 Filing of application for certificate of authority—Issuance. Duplicate originals of the application of the corporation for a certificate of authority shall be

delivered to the secretary of state together with a certificate of good standing which has been issued within the previous sixty days and certified to by the proper officer of the state or county under the laws of which it is incorporated.

If the secretary of state finds that such application conforms to law, he or she shall, when all fees have been paid as prescribed in this chapter:

(1) Endorse on each of such documents the word "filed", and the effective date thereof.

(2) File in his or her office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto.

(3) Issue a certificate of authority to conduct affairs in this state to which the other duplicate original application shall be affixed.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative. [1982 c 35 § 144; 1969 ex.s. c 120 § 73.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.370 Effect of filing application for certificate of authority. Upon the filing of the application for certificate of authority by the secretary of state, the corporation shall be authorized to conduct affairs in this state for those purposes set forth in its application: PROVIDED, That the state may suspend or revoke such authority as provided in this chapter for revocation and suspension of domestic corporation franchises. [1982 c 35 § 145; 1969 ex.s. c 120 § 74.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.375 Registered office and registered agent of foreign corporation. Every foreign corporation authorized to conduct affairs in this state shall have and continuously maintain in this state:

(1) A registered office which may but need not be the same as its principal office.

(2) A registered agent, who may be:

(a) An individual resident of this state whose business office is identical with the registered office; or

(b) A domestic corporation organized under any law of this state; or

(c) A foreign corporation authorized under any law of this state to transact business or conduct affairs in this state, having an office identical with the registered office. [1969 ex.s. c 120 § 75.]

24.06.380 Change of registered office or registered agent of foreign corporation. A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state in a form approved by the secretary of state a statement setting forth:

(1) The name of the corporation.

(2) If the address of its registered office is to be changed, such new address.

(3) If its registered agent is to be changed, the name of its successor registered agent.

(4) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

(5) That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation, by an officer of the corporation, and delivered to the secretary of state, together with a written consent of the registered agent to his or its appointment, if applicable. If the secretary of state finds that such statement conforms to the provisions of this chapter, he or she shall file such statement in his or her office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective. [1982 c 35 § 146; 1969 ex.s. c 120 § 76.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.385 Resignation of registered agent. Any registered agent in this state appointed by a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the foreign corporation at its principal office in the state or country under the laws of which it is incorporated as shown by its most recent annual report. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state. [1969 ex.s. c 120 § 77.]

24.06.390 Service of process upon registered agent. The registered agent so appointed by a foreign corporation authorized to conduct affairs in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. [1969 ex.s. c 120 § 78.]

24.06.395 Service of process upon secretary of state. Whenever a foreign corporation authorized to conduct affairs in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of the secretary of state's office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, the secretary of state shall immediately cause one of such copies thereof to be forwarded by certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon the secretary of state under this action, and shall record therein the time of such

service and his or her action with reference thereto: PROVIDED, That nothing contained in this section shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [1982 c 35 § 147; 1969 ex.s. c 120 § 79.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.400 Amendment to articles of incorporation of foreign corporation. Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this state are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly authenticated by the proper officer designated under the laws of the state or country in which it is incorporated: PROVIDED, That the filing thereof shall not of itself enlarge or alter the purpose or purposes for which such corporation is authorized to pursue in conducting its affairs in this state, nor authorize such corporation to conduct affairs in this state under any other name than the name set forth in its certificate of authority. [1969 ex.s. c 120 § 80.]

24.06.405 Merger of foreign corporation authorized to conduct affairs in this state. Whenever a foreign corporation authorized to conduct affairs in this state shall be a party to a statutory merger permitted by the laws of the state or country under which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly authenticated by the proper officer designated under the laws of the state or country in which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state. [1969 ex.s. c 120 § 81.]

24.06.410 Amended certificate of authority. A foreign corporation authorized to conduct affairs in this state shall apply for an amended certificate of authority in the event that it wishes to change its corporate name, or desires to pursue in this state purposes other or additional to those set forth in its initial application for a certificate of authority.

The requirements with respect to the form and content of such application, the manner of its execution, the filing, the issuance of an amended certificate of authority, and the effect thereof shall be the same as in the case of an original application for a certificate of authority. [1969 ex.s. c 120 § 82.]

24.06.415 Withdrawal of foreign corporation. A foreign corporation authorized to conduct affairs in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, the foreign corpora-

tion shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under whose laws it is incorporated.

(2) A declaration that the corporation is not conducting affairs in this state.

(3) A surrender of its authority to conduct affairs in this state.

(4) A notice that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding, based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state, may thereafter be made upon such corporation by service thereof on the secretary of state.

(5) If a copy of any revenue clearance form under chapter 82.32 RCW is issued, it shall be attached to the application for withdrawal.

(6) A post office address to which the secretary of state may mail a copy of any process that may be served on the secretary of state as agent for the corporation.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation, by one of the officers of the corporation, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee. [1982 c 35 § 148; 1969 ex.s. c 120 § 83.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.420 Filing of application for withdrawal—Issuance of certificate of withdrawal. Duplicate originals of an application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, the secretary of state shall, when all requirements have been met as prescribed in this chapter:

(1) Endorse on each of such duplicate originals the word "filed", and the effective date of the filing thereof.

(2) File one of such duplicate originals.

(3) Issue a certificate of withdrawal to which the other duplicate original shall be fixed.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the filing of such application of withdrawal, the authority of the corporation to conduct affairs in this state shall cease. [1982 c 35 § 149; 1969 ex.s. c 120 § 84.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.425 Revocation of certificate of authority. (1) The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

(a) The corporation has failed to file its annual report within the time required by this chapter or has failed to pay any fees or penalties prescribed by this chapter as they become due and payable; or

(b) The corporation has failed for thirty days to appoint and maintain a registered agent in this state as required by this chapter; or

(c) The corporation has failed, for thirty days after change of its registered agent or registered office, to file in the office of the secretary of state a statement of such change as required by this chapter; or

(d) The corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this chapter; or

(e) The certificate of authority of the corporation was procured through fraud practiced upon the state; or

(f) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(g) A misrepresentation has been made as to any material matter in any application, report, affidavit, or other document, submitted by such corporation pursuant to this chapter.

(2) No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless the secretary of state shall have given the corporation not less than sixty days' notice thereof by first class mail addressed to its registered office in this state, or, if there is no registered office, to the last known address of any officer or director of the corporation as shown by the records of the secretary of state, and the corporation shall have failed prior to revocation to (a) file such annual report, (b) pay such fees or penalties, (c) file the required statement of change of registered agent or registered office, (d) file such articles of amendment or articles of merger, or (e) correct any delinquency, omission, or material misrepresentation in its application, report, affidavit, or other document. [1982 c 35 § 150; 1969 ex.s. c 120 § 85.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.430 Issuance and filing of certificate of revocation—Effect. Upon revoking any certificate of authority under RCW 24.06.425, the secretary of state shall:

- (1) Issue a certificate of revocation in duplicate.
- (2) File one of such certificates.

(3) Mail to such corporation at its registered office in this state a notice of such revocation accompanied by one of the two certificates of revocation.

Upon filing of the certificate of revocation, the corporate authority to conduct affairs in this state shall cease. [1982 c 35 § 151; 1969 ex.s. c 120 § 86.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.435 Conducting affairs without certificate of authority. No foreign corporation conducting affairs in this state without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim, or demand arising out of the conduct of affairs by such corporation in this state until a certificate of authority shall have been

obtained by the corporation or by a valid corporation which has (1) acquired all or substantially all of its assets and (2) assumed all of its liabilities: PROVIDED, That the failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this state shall not impair the substantive validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state under such terms and conditions as a court may find just. [1969 ex.s. c 120 § 87.]

24.06.440 Annual report of domestic and foreign corporations. Each domestic corporation, and each foreign corporation authorized to conduct affairs in this state, shall file, within the time prescribed by this chapter, an annual report in the form prescribed by the secretary of state setting forth:

(1) The name of the corporation and the state or country under whose laws it is incorporated.

(2) The address of the registered office of the corporation in this state, including street and number, the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under whose laws it is incorporated.

(3) A brief statement of the character of the affairs in which the corporation is engaged, or, in the case of a foreign corporation, engaged in this state.

(4) The names and respective addresses of the directors and officers of the corporation.

The information shall be given as of the date of the execution of the report. It shall be executed by the corporation by an officer of the corporation, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

The secretary of state may by rule adopted under chapter 34.05 RCW provide that correction or updating of information appearing on previous annual filings is sufficient to constitute the current annual filing. [1982 c 35 § 152; 1969 ex.s. c 120 § 88.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.445 Filing of annual report of domestic and foreign corporations. An annual report of each domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the first day of March of each year or on such annual renewal date as the secretary of state may establish. Proof to the satisfaction of the secretary of state that the report was deposited in the United States mails, in a sealed envelope, properly addressed to the secretary of state, with postage prepaid thereon, prior to the corporation's annual renewal date, shall be deemed compliance with this requirement.

If the secretary of state finds that a report substantially conforms to the requirements of this chapter, the secretary of state shall file the same. [1982 c 35 § 153; 1973 c 146 § 1; 1969 ex.s. c 120 § 89.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.450 Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

- (1) Filing articles of incorporation, thirty dollars.
- (2) Filing articles of amendment or restatement, twenty dollars.
- (3) Filing articles of merger or consolidation, twenty dollars.
- (4) Filing a statement of change of address of registered office or change of registered agent, or revocation, resignation, or any combination of these, ten dollars. A separate fee for filing such statement shall not be charged if the statement appears in an amendment to the articles of incorporation or in conjunction with the annual report.
- (5) Filing articles of dissolution, no fee.
- (6) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state, thirty dollars.
- (7) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state, twenty dollars.
- (8) Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state, twenty dollars.
- (9) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state, twenty dollars.
- (10) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, no fee.
- (11) Filing a certificate by a foreign corporation of the appointment of a registered agent, ten dollars. A separate fee for filing such certificate shall not be charged if the statement appears in an amendment to the articles of incorporation or in conjunction with the annual report.
- (12) Filing a certificate by a foreign corporation of the revocation of the appointment of a registered agent, ten dollars. A separate fee for filing such certificate shall not be charged if the statement appears in an amendment to the articles of incorporation or in conjunction with the annual report.
- (13) Filing an application to reserve a corporate name, twenty dollars.
- (14) Filing a notice of transfer of a reserved corporate name, twenty dollars.
- (15) Filing any other statement or report, including an annual report, of a domestic or foreign corporation, ten dollars. [1991 c 223 § 2; 1982 c 35 § 154; 1981 c 230 § 6; 1973 c 70 § 2; 1969 ex.s. c 120 § 90.]

Effective date—1991 c 223: See note following RCW 24.03.405.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.455 Miscellaneous charges. The secretary of state shall charge and collect in advance:

- (1) For furnishing a certified copy of any charter document or any other document, instrument or paper relating to a corporation, five dollars for the certificate, plus twenty cents for each page copied.
- (2) For furnishing a certificate, under seal, attesting to the status of a corporation; or any other certificate, five dollars.

(3) For furnishing copies of any document, instrument or paper relating to a corporation, one dollar for the first page and twenty cents for each page copied thereafter.

(4) At the time of any service of process on him as resident agent of any corporation, twenty-five dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action. [1982 c 35 § 155; 1979 ex.s. c 133 § 3; 1973 c 70 § 3; 1969 ex.s. c 120 § 91.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Deposit of certain fees recovered under this section in secretary of state's revolving fund: RCW 43.07.130.

24.06.460 Disposition of fees. Any money received by the secretary of state under the provisions of this chapter shall be deposited forthwith into the state treasury as provided by law. [1982 c 35 § 156; 1969 ex.s. c 120 § 92.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.462 Fees for services by secretary of state. See RCW 43.07.120.

24.06.465 Penalties imposed upon corporation. Each corporation, domestic or foreign, which fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a penalty of five dollars to be assessed by the secretary of state.

Each corporation, domestic or foreign, which fails or refuses to answer truthfully and fully within the time prescribed by this chapter any interrogatories propounded by the secretary of state in accordance with the provisions of this chapter, shall be deemed to be guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not to exceed five hundred dollars on each count. [1969 ex.s. c 120 § 93.]

24.06.470 Penalties imposed upon directors and officers. Each director and officer of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter, to answer truthfully and fully any interrogatories propounded to him by the secretary of state in accordance with the provisions of this chapter, or who signs any articles, statement, report, application, or other document filed with the secretary of state, which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof shall be fined in an amount not to exceed five hundred dollars on each count. [1969 ex.s. c 120 § 94.]

24.06.475 Interrogatories by secretary of state. The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of this chapter, and to any officer or director thereof such interrogatories as may be reasonably necessary and proper to enable the secretary of state to ascertain whether such corporation has complied with all of the provisions of this chapter applicable to such corporation. All such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the secretary of state,

and the answers thereto shall be full and complete, made in writing, and under oath. If such interrogatories are directed to an individual, they shall be answered personally by him, and if directed to the corporation they shall be answered by the president, a vice president, a secretary or any assistant secretary thereof. The secretary of state need not file any document to which such interrogatories relate until such interrogatories are answered as required by this section, and even not then if the answers thereto disclose that the document is not in conformity with the provisions of this chapter.

The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter. [1982 c 35 § 157; 1969 ex.s. c 120 § 95.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.480 Confidential nature of information disclosed by interrogatories. Interrogatories propounded by the secretary of state and the answers thereto shall not be open to public inspection, nor shall the secretary of state disclose any facts or information obtained therefrom unless (1) his or her official duty may require that the same be made public, or (2) such interrogatories or the answers thereto are required for use in evidence in any criminal proceedings or other action by the state. [1982 c 35 § 158; 1969 ex.s. c 120 § 96.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.485 Power and authority of secretary of state. The secretary of state shall have all power and authority reasonably necessary for the efficient and effective administration of this chapter, including the adoption of rules under chapter 34.05 RCW. [1982 c 35 § 159; 1969 ex.s. c 120 § 97.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Power and authority of secretary of state: RCW 23B.01.210 and 23B.01.300.

24.06.490 Appeal from secretary of state's actions. (1) If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the secretary of state before the same shall be filed in his or her office, the secretary of state shall, within ten days after the delivery of such document to him or her, give written notice of disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. The person or corporation may apply to the superior court of the county in which the registered office of such corporation is situated, or is proposed, in the document, by filing a petition with the clerk of such court setting forth a copy of the articles or other document tendered to the secretary of state, together with a copy of the written disapproval thereof by the secretary of state; whereupon the matter shall be tried to the court on all questions of fact and law; and the court shall either sustain or overrule the action of the secretary of state.

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(2) If the secretary of state shall revoke the certificate of authority to conduct affairs in this state of any foreign corporation, such foreign corporation may likewise apply to the superior court of the county where the registered office of such corporation in this state is situated, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to conduct affairs in this state and a copy of the notice of revocation given by the secretary of state; whereupon the matter shall be tried to the court on all questions of fact and law; and the court shall either sustain or overrule the action of the secretary of state.

(3) Appeals from all final orders and judgments entered by the superior court under this section, in the review of any ruling or decision of the secretary of state may be taken as in other civil actions. [1982 c 35 § 160; 1969 ex.s. c 120 § 98.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.495 Certificates and certified copies to be received in evidence. All certificates issued by the secretary of state in accordance with the provisions of this chapter, and all copies of documents filed in the office of the secretary of state in accordance with the provisions of this chapter when certified by the secretary of state under the seal of the state, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated. [1982 c 35 § 161; 1969 ex.s. c 120 § 99.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.500 Greater voting requirements. Whenever, with respect to any action to be taken by the members, shareholders or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members, shareholders or directors, as the case may be, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. [1969 ex.s. c 120 § 100.]

24.06.505 Waiver of notice. Whenever any notice is required to be given to any member, shareholder or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether made before or given after the time stated therein, shall be equivalent to the giving of such notice. [1969 ex.s. c 120 § 101.]

24.06.510 Action by members or directors without a meeting. Any action required by this chapter to be taken at a meeting of the members, shareholders or directors of a

corporation, or any action which may be taken at a meeting of the members, shareholders or directors, may be taken without a meeting, if a consent in writing, setting forth the action so taken, is signed by all of the members and shareholders entitled to vote thereon, or by all of the directors, as the case may be, unless the articles or bylaws provide to the contrary.

Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the secretary of state. [1969 ex.s. c 120 § 102.]

24.06.515 Unauthorized assumption of corporate powers. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. [1969 ex.s. c 120 § 103.]

24.06.520 Reinstatement and renewal of corporate existence—Fee. If the term of existence of a corporation which was organized under this chapter, or which has availed itself of the privileges thereby provided expires, such corporation shall have the right to renew within two years of the expiration of its term of existence. The corporation may renew the term of its existence for a definite period or perpetually and be reinstated under any name not then in use by or reserved for a domestic corporation organized under any act of this state or a foreign corporation authorized under any act of this state to transact business or conduct affairs in this state. To do so the directors, members and officers shall adopt amended articles of incorporation containing a certification that the purpose thereof is a reinstatement and renewal of the corporate existence. They shall proceed in accordance with the provisions of this chapter for the adoption and filing of amendments to articles of incorporation. Thereupon such corporation shall be reinstated and its corporate existence renewed as of the date on which its previous term of existence expired and all things done or omitted by it or by its officers, directors, agents and members before such reinstatement shall be as valid and have the same legal effect as if its previous term of existence had not expired.

A corporation reinstating under this section shall pay to the state all fees and penalties which would have been due if the corporate charter had not expired, plus a reinstatement fee of twenty-five dollars. [1982 c 35 § 162; 1969 ex.s. c 120 § 106.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.525 Reorganization of corporations or associations in accordance with this chapter. Any corporation or association organized under any other statute may be reorganized under the provisions of this chapter by adopting and filing amendments to its articles of incorporation in accordance with the provisions of this chapter for amending articles of incorporation. The articles of incorporation as amended must conform to the requirements of this chapter, and shall state that the corporation accepts the benefits and will be bound by the provisions of this chapter. [1969 ex.s. c 120 § 107.]

24.06.900 Short title. This chapter shall be known and may be cited as the "Nonprofit Miscellaneous and Mutual Corporation Act". [1982 c 35 § 163; 1969 ex.s. c 120 § 104.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.905 Existing liabilities not terminated—Continuation of corporate existence—Application of chapter. 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 at the date this chapter becomes effective; and any corporation existing under any prior law which expires on or before the date when this chapter takes effect shall continue its corporate existence: PROVIDED, That this chapter shall apply prospectively to all existing corporations which do not otherwise qualify under the provisions of Titles 23B and 24 RCW, to the extent permitted by the Constitution of this state and of the United States. [1991 c 72 § 44; 1969 ex.s. c 120 § 105.]

24.06.910 Severability—1969 ex.s. c 120. 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, and the effect of such invalidity shall be confined to the clause, sentence, paragraph, section or part of this chapter so held to be invalid. [1969 ex.s. c 120 § 108.]

24.06.915 Notice to existing corporations. (1) The secretary of state shall notify all existing miscellaneous and mutual corporations thirty days prior to the date this chapter becomes effective as to their requirements for filing an annual report.

(2) If the notification provided under subsection (1) of this section, from the secretary of state to any corporation was or has been returned unclaimed or undeliverable, the secretary of state shall proceed to dissolve the corporation by striking the name of such corporation from the records of active corporations.

(3) Corporations dissolved under subsection (2) of this section may be reinstated at any time within three years of the dissolution action by the secretary of state. The corporation shall be reinstated by filing a request for reinstatement, by appointment of a registered agent and designation of a registered office as required by this chapter, and by filing an annual report for the reinstatement year. No fees may be charged for reinstatements under this section. If, during the period of dissolution, another person or corporation has reserved or adopted a corporate name which is identical to or deceptively similar to the dissolved corporation's name, the corporation seeking reinstatement shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles of incorporation accordingly. [1982 c 35 § 164; 1969 ex.s. c 120 § 109.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Effective date—1969 ex.s. c 120: See RCW 24.06.920.

24.06.920 Effective date—1969 ex.s. c 120. 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 July 1, 1969: PROVIDED, That no corporation existing on the effective date of this chapter shall be required to conform to the provisions of this chapter until July 1, 1971. [1969 ex.s. c 120 § 110.]

Chapter 24.12 CORPORATIONS SOLE

Sections

- 24.12.010 Corporations sole—Church and religious societies.
- 24.12.020 Corporate powers.
- 24.12.025 Indemnification of agents of any corporation authorized.
- 24.12.030 Filing articles—Property held in trust.
- 24.12.040 Existing corporations sole.
- 24.12.050 Fees for services by secretary of state.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

24.12.010 Corporations sole—Church and religious societies. Any person, being the bishop, overseer or presiding elder of any church or religious denomination in this state, may, in conformity with the constitution, canons, rules, regulations or discipline of such church or denomination, become a corporation sole, in the manner prescribed in this chapter, as nearly as may be; and, thereupon, said bishop, overseer or presiding elder, as the case may be, together with his successors in office or position, by his official designation, shall be held and deemed to be a body corporate, with all the rights and powers prescribed in the case of corporations aggregate; and with all the privileges provided by law for religious corporations. [1915 c 79 § 1; RRS § 3884.]

24.12.020 Corporate powers. Every corporation sole shall, for the purpose of the trust, have power to contract in the same manner and to the same extent as a natural person, and may sue and be sued, and may defend in all courts and places, in all matters and proceedings whatever, and shall have authority to borrow money and give promissory notes therefor, and to secure the payment of the same by mortgage or other lien upon property, real and personal; to buy, sell, lease, mortgage and in every way deal in real and personal property in the same manner as a natural person may, and without the order of any court; to receive bequests and devises for its own use or upon trusts, to the same extent as natural persons may; and to appoint attorneys in fact. [1915 c 79 § 2; RRS § 3885.]

24.12.025 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

24.12.030 Filing articles—Property held in trust. Articles of incorporation shall be filed in like manner as provided by law for corporations aggregate, and therein shall be set forth the facts authorizing such incorporation, and declare the manner in which any vacancy occurring in the incumbency of such bishop, overseer or presiding elder, as

the case may be, is required by the constitution, canons, rules, regulations or discipline of such church or denomination to be filled, which statement shall be verified by affidavit, and for proof of the appointment or election of such bishop, overseer or presiding elder, as the case may be, or any succeeding incumbent of such corporation, it shall be sufficient to file with the secretary of state the original or a copy of his commission, or certificate, or letters of election or appointment, duly attested: PROVIDED, All property held in such official capacity by such bishop, overseer or presiding elder, as the case may be, shall be in trust for the use, purpose, benefit and behoof of his religious denomination, society or church. [1981 c 302 § 10; 1915 c 79 § 3; RRS § 3886.]

Severability—1981 c 302: See note following RCW 19.76.100.

24.12.040 Existing corporations sole. Any corporation sole heretofore organized and existing under the laws of this state may elect to continue its existence under *this title [chapter] by filing a certificate to that effect, under its corporate seal and the hand of its incumbent, or by filing amended articles of incorporation, in the form, as near as may be, as provided for corporations aggregate, and from and after the filing of such certificate of amended articles, such corporation shall be entitled to the privileges and subject to the duties, liabilities and provisions in *this title [chapter] expressed. [1915 c 79 § 4; RRS § 3887.]

***Reviser's note:** The language "this title" appeared in chapter 79, Laws of 1915, an independent act, codified herein as chapter 24.12 RCW.

24.12.050 Fees for services by secretary of state. See RCW 43.07.120.

Chapter 24.20 FRATERNAL SOCIETIES

Sections

- 24.20.010 Incorporation—Articles.
- 24.20.020 Filing fee.
- 24.20.025 Fees for services by secretary of state.
- 24.20.030 Powers—Not subject to license fees.
- 24.20.035 Indemnification of agents of any corporation authorized.
- 24.20.040 Reincorporation.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

24.20.010 Incorporation—Articles. Any grand lodge, encampment, chapter or any subordinate lodge or body of Free and Accepted Masons, Independent Order of Odd Fellows, Knights of Pythias, or other fraternal society, desiring to incorporate, shall make articles of incorporation in duplicate, and file one of such articles in the office of the secretary of state; such articles shall be signed by the presiding officer and the secretary of such lodge, chapter or encampment, and attested by the seal thereof, and shall specify:

- (1) The name of such lodge or other society, and the place of holding its meetings;
- (2) the name of the grand body from which it derives its rights and powers as such lodge or society; or if it be a

grand lodge, the manner in which its powers as such grand lodge are derived;

(3) the names of the presiding officer and the secretary having the custody of the seal of such lodge or society;

(4) what officers shall join in the execution of any contract by such lodge or society to give it force and effect in accordance with the usages of such lodges or society. [1981 c 302 § 11; 1925 ex.s. c 63 § 1; 1903 c 80 § 1; RRS § 3865. Cf. Code 1881 § 2452; 1873 p 410 § 3.]

Severability—1981 c 302: See note following RCW 19.76.100.

24.20.020 Filing fee. The secretary of state shall file such articles of incorporation in his office and issue a certificate of incorporation to any such lodge or other society upon the payment of the sum of twenty dollars. [1982 c 35 § 165; 1903 c 80 § 2; RRS § 3866.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.20.025 Fees for services by secretary of state. See RCW 43.07.120.

24.20.030 Powers—Not subject to license fees. Such lodge or other society shall be a body politic and corporate with all the powers and incidents of a corporation upon its compliance with RCW 24.20.010 and 24.20.020: PROVIDED, HOWEVER, That such fraternal corporation shall not be subject to any license fee or other corporate tax of commercial corporations. [1903 c 80 § 3; RRS § 3867.]

24.20.035 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

24.20.040 Reincorporation. Any lodge or society, or the members thereof, having heretofore attempted to incorporate as a body under the provisions of an act entitled "An act to provide for the incorporation of associations for social, charitable and educational purposes," approved March 21st, 1895 [*chapter 24.16 RCW], such lodge or society may incorporate under its original corporate name by complying with the provisions of RCW 24.20.010 and 24.20.020: PROVIDED, That such lodge or society shall attach to and file with the articles of incorporation provided for in this chapter a certificate duly signed, executed and attested by the officers of the said corporation consenting to such reincorporation and waiving all rights of the original corporation to such corporate name. [1903 c 80 § 4; RRS § 3868.]

***Reviser's note:** "chapter 24.16 RCW" was repealed by the Washington Nonprofit Corporation Act, 1967 c 235, (chapter 24.03 RCW).

Chapter 24.24

BUILDING CORPORATIONS COMPOSED OF FRATERNAL SOCIETY MEMBERS

Sections

24.24.010	Who may incorporate—Filing fee.
24.24.015	Fees for services by secretary of state.
24.24.020	Articles—Contents.
24.24.030	Powers.
24.24.040	Membership certificates.

24.24.050	Bylaws.
24.24.060	Membership—Trustees—Elections.
24.24.070	Control of business—Officers.
24.24.080	Right of corporations under the statutes.
24.24.090	Certificates of capital stock.
24.24.100	Fees.
24.24.110	Exemption from ordinary corporate taxes.
24.24.120	Indemnification of agents of any corporation authorized.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

24.24.010 Who may incorporate—Filing fee. Any ten or more residents of this state who are members of any chartered body or of different chartered bodies of any fraternal order or society who shall desire to incorporate for the purpose of owning real or personal property or both real and personal property for the purpose and for the benefit of such bodies, may make and execute articles of incorporation, which shall be executed in duplicate, and shall be subscribed by each of the persons so associating themselves together: PROVIDED, That no lodge shall be incorporated contrary to the provisions of the laws and regulations of the order or society of which it is a constituent part. Such articles, at the election of the incorporators, may either provide for the issuing of capital stock or for incorporation as a society of corporation without shares of stock. One of such articles shall be filed in the office of the secretary of state, accompanied by a filing fee of twenty dollars, and the other of such articles shall be preserved in the records of the corporation. [1982 c 35 § 166; 1981 c 302 § 12; 1927 c 190 § 1; RRS § 3887-1.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 302: See note following RCW 19.76.100.

24.24.015 Fees for services by secretary of state. See RCW 43.07.120.

24.24.020 Articles—Contents. The articles of incorporation shall set forth;

(1) The names of the persons so associating themselves together, their places of residence and the name and location of the lodge, chapter, or society to which they severally belong;

(2) The corporate name assumed by the corporation and the duration of the same if limited;

(3) The purpose of the association, which shall be to provide, maintain and operate a building or buildings to be used for fraternal and social purposes, and for the benefit of the several bodies represented in such association;

(4) The place where the corporation proposes to have its principal place of business;

(5) The amount of capital stock and the par value thereof per share, if it shall be organized as a joint stock company. [1927 c 190 § 2; RRS § 3887-2.]

24.24.030 Powers. Upon making and filing such articles of incorporation the persons subscribing the same and their successors in office and associates, by the name assumed in such articles, shall thereafter be deemed a body corporate, and may acquire and possess real and personal property and may erect and own suitable building or build-

ings to be used, in whole or in part, for meetings of fraternal bodies, and for all social and fraternal purposes of the several bodies represented in the membership of the corporation, and may exercise all other powers that may lawfully be exercised by other corporations organized under the general incorporation laws of Washington, including the power to borrow money, and for that purpose may issue its bonds and mortgage its property to secure the payment of such bonds. [1927 c 190 § 3; RRS § 3887-3.]

24.24.040 Membership certificates. If the corporation shall not be a joint stock company, then it may provide by its bylaws for issuing to the several bodies represented in its membership certificates of participation, which shall evidence the respective equitable interests of such bodies in the properties held by such corporation. [1927 c 190 § 4; RRS § 3887-4.]

24.24.050 Bylaws. Every such corporation shall have full power and authority to provide by its bylaws for the manner in which such certificates of participation of its certificates or shares of stock shall be held and represented, and may also in like manner provide, that its shares of stock shall not be transferred to, or be held or owned by any person, or by any corporation other than a chartered body of the order or society represented in its membership. [1927 c 190 § 5; RRS § 3887-5.]

24.24.060 Membership—Trustees—Elections. Every such corporation shall have power to provide by its bylaws for succession to its original membership and for new membership, and also for the election from its members of a board of trustees, or a board of directors, and to fix the number and term of office of such trustees or directors; PROVIDED, That there shall always be upon such board of trustees or board of directors at least one representative from each of the several bodies represented in the membership of the association, and the term of office of a trustee shall not exceed three years. [1927 c 190 § 6; RRS § 3887-6.]

24.24.070 Control of business—Officers. The management and control of the business and property of such corporation shall be fixed in said board of trustees or board of directors, as the case may be. Said trustees or directors shall elect from their own number at each annual meeting of the corporation a president, vice president, secretary and treasurer, who shall perform the duties of their respective office in accordance with the bylaws of the corporation and the rules and regulations prescribed by the board of trustees or board of directors. [1927 c 190 § 7; RRS § 3887-7.]

24.24.080 Right of corporations under the statutes. Any corporation composed of fraternal organizations and/or members of fraternal organizations, heretofore incorporated under the laws of the state of Washington, may elect to subject [the] corporation and its capital stock and the rights of its stockholders therein to the provisions of this chapter by a majority vote of its trustees or directors and the

unanimous assent or vote of the capital stock of such corporation.

If the unanimous written assent of the capital stock has not been obtained then the unanimous vote of all of the stockholders may be taken at any regular meeting of the stockholders or at any special meeting of the stockholders called for that purpose in the manner provided by the bylaws of such corporation for special meetings of the stockholders.

The president and secretary of such corporation shall certify said amendment in triplicate under the seal of such corporation as having been adopted by a majority vote of its trustees or directors and by the unanimous written assent or vote as the case may be of all of its stockholders, and file and keep the same as in the case of original articles; and from the time of filing said certificate such corporation and its capital stock and the rights of its stockholders therein shall be subject to all of the provisions of this chapter; PROVIDED, That nothing in this chapter shall affect the rights of the third person, pledgees of any shares of such capital stock, in such pledged stock, under pledges subsisting at the date of the filing of said amendment. [1927 c 190 § 8; RRS § 3887-8.]

24.24.090 Certificates of capital stock. All certificates of capital stock of corporations incorporated under or becoming subject to the provisions of this chapter shall have expressly stated on the face thereof that such corporation and its capital stock and the rights of stockholders therein are subject to the provisions of this chapter and that its capital stock is not assignable or transferable except as in this chapter provided. [1927 c 190 § 9; RRS § 3887-9.]

24.24.100 Fees. The secretary of state shall file such articles of incorporation or amendment thereto in his office and issue a certificate of incorporation or amendment, as the case may be, to such fraternal association upon the payment of a fee in the sum of twenty dollars. [1982 c 35 § 167; 1927 c 190 § 10; RRS § 3887-10.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.24.110 Exemption from ordinary corporate taxes. Such fraternal association shall be a body politic and corporate with all powers and incidents of a corporation upon its compliance with the provisions of this chapter; PROVIDED, HOWEVER, That such fraternal corporation shall not be subject to any license fee or other corporate tax of commercial corporations. [1927 c 190 § 11; RRS § 3887-11.]

24.24.120 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

Chapter 24.28 GRANGES

Sections

24.28.010	Manner of incorporating a grange.
24.28.020	In what pursuits such corporation may engage.
24.28.030	General rights and liabilities.
24.28.035	Indemnification of agents of any corporation authorized.
24.28.040	Use of term "grange"—"Person" defined.

24.28.050 Fees for services by secretary of state.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

24.28.010 Manner of incorporating a grange. Any grange of the patrons of husbandry, desiring hereafter to incorporate, may incorporate and become bodies politic in this state, by filing in the office of the secretary of state of Washington, a certificate or article subscribed and acknowledged by not less than five members of such grange and by the master of the Washington state grange embodying:

(1) The name of such grange and the place of holding its meetings.

(2) What elective officers the said grange will have, when such officers shall be elected; how, and by whom, the business of the grange shall be conducted or managed, and what officers shall join in the execution of any contract by such grange to give force and effect in accordance with the usages of the order of the patrons of husbandry; such articles shall be subscribed by the master of such grange attested by the secretary, with the seal of the grange.

(3) A copy of the bylaws of such grange shall also be filed in the said office of the secretary of state.

(4) The names of all such officers at the time of filing the application, and the time for which they may be respectively elected. When such articles shall be filed, such grange shall be a body politic and corporate, with all the incidents of a corporation, subject nevertheless to the laws and parts of laws now in force or hereafter to be passed regulating corporations. [1981 c 302 § 13; 1959 c 207 § 1; 1875 p 97 § 1; RRS § 3901. FORMER PART OF SECTION: 1875 c 97 § 2, part, now codified in RCW 24.28.020.]

Severability—1981 c 302: See note following RCW 19.76.100.

24.28.020 In what pursuits such corporation may engage. Said grange may engage in any industrial pursuit, manufacturing, mining, milling, wharfing, docking, commercial, mechanical, mercantile, building, farming, building, equipping or running railroads, or generally engage in any species of trade or industry; loan money on security, purchase and sell on real estate, but when desiring to engage in either or any of the above pursuits or industries, said grange shall be subject to all the conditions and liabilities imposed by the provisions of the general corporation laws, and in addition to the conditions to be performed as recited in RCW 24.28.010, shall file additional articles with said secretary of state stating the object, business or industry proposed to be pursued or engaged in; the amount of capital stock, the time of its existence, not to exceed fifty years; the number of shares of which the capital stock shall consist, and price per share, and the names of officers necessary to manage said business, and the places where said officers shall pursue the same. [1981 c 302 § 14; 1875 p 97 § 2; RRS § 3902. Formerly RCW 24.28.010, part and 24.28.020.]

Severability—1981 c 302: See note following RCW 19.76.100.

24.28.030 General rights and liabilities. As a business corporation said grange, after having complied with RCW 24.28.020, shall be to all intents and purposes a domestic corporation, with all the rights, privileges and

immunities allowed, and all the liabilities imposed by chapter one of the act entitled "an act to provide for the formation of corporations," approved November 13, 1873. [1875 p 98 § 3; RRS § 3903.]

Reviser's note: The reference to chapter one of the 1873 act relates to the general corporation act in effect at the time the above section was enacted. Such general corporation laws were also compiled as Code 1881 §§ 2421-2449. See also table of prior laws following the Title 23 RCW digest.

24.28.035 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

24.28.040 Use of term "grange"—"Person" defined. No person, doing business in this state shall be entitled to use or to register the term "grange" as part or all of his business name or other name or in connection with his products or services, or otherwise, unless either (1) he has complied with the provisions of this chapter or (2) he has obtained written consent of the Washington state grange certified thereto by its master. Any person violating the provisions of this section may be enjoined from using or displaying such name and doing business under such name at the instance of the Washington state grange or any grange organized under this chapter, or any member thereof: PROVIDED, That nothing herein shall prevent the continued use of the term "grange" by any person using said name prior to the adoption of *this act.

For the purposes of this section "person" shall include any person, partnership, corporation, or association of individuals. [1959 c 207 § 2.]

***Reviser's note:** "this act" first appeared in chapter 207, Laws of 1959, section 1 of which amended RCW 24.28.010.

24.28.050 Fees for services by secretary of state. See RCW 43.07.120.

Chapter 24.34

AGRICULTURAL PROCESSING AND MARKETING ASSOCIATIONS

Sections

24.34.010 Who may organize—Purposes—Limitations.

24.34.020 Monopoly or restraint of trade—Complaint—Procedure.

Agricultural marketing: Chapters 15.65, 15.66 RCW.

24.34.010 Who may organize—Purposes—Limitations. Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut growers or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in intrastate commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: PROVIDED, That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of eight percent per annum.

And in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members. [1967 c 187 § 1.]

24.34.020 Monopoly or restraint of trade—Complaint—Procedure. If the attorney general has reason to believe that any such association as provided for in RCW 24.34.010 monopolizes or restrains trade to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade.

Such hearing, and any appeal which may be made from such hearing, shall be conducted and held subject to and in conformance with the provisions for adjudicative proceedings and judicial review in chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 75; 1967 c 187 § 2.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Chapter 24.36

FISH MARKETING ACT

Sections

24.36.010	Short title.
24.36.020	Declaration of purpose.
24.36.030	Definitions.
24.36.040	Associations deemed nonprofit.
24.36.050	General laws relating to corporations for profit applicable.
24.36.055	Fees for services by secretary of state.
24.36.060	Securities act inapplicable.
24.36.070	Associations deemed not a conspiracy, in restraint of trade, etc.—Contracts not illegal.
24.36.080	Conflicting laws not applicable—Exemptions apply.
24.36.090	Merger, consolidation of associations authorized—Procedure.
24.36.100	Stock associations—Statement in articles.
24.36.110	Stock associations—Classified shares—Statement in articles.
24.36.120	Nonstock associations—Statement in articles.
24.36.130	Bylaws of association.
24.36.140	Bylaws of association—Transfer of stock, membership certificates limited.
24.36.150	Bylaws of association—Quorum, voting, directors, penalties.
24.36.160	Bylaws of association—Fees, charges, marketing contract, dividends.
24.36.170	Bylaws of association—Membership.
24.36.180	Bylaws of association—Meetings.
24.36.190	Bylaws of association—Direct election of directors from districts of territory.
24.36.200	Bylaws of association—Election of directors by representatives or advisers from districts of territory.
24.36.210	Bylaws of association—Primary elections to nominate directors.
24.36.220	Bylaws of association—Nomination of directors by public officials or other directors—Limitation.
24.36.230	Bylaws of association—Terms of directors—Staggering.
24.36.240	Bylaws of association—Executive committee.

24.36.250	Qualifications of members, stockholders.
24.36.260	Certificate of membership in nonstock associations.
24.36.270	Liability of member for association's debts.
24.36.280	Place of membership meetings.
24.36.290	Appraisal of expelled member's property—Payment.
24.36.300	Powers of association—General scope of activities.
24.36.310	Powers of association—Incurring indebtedness—Advances to members.
24.36.315	Indemnification of agents of any corporation authorized—Application of RCW 23A.08.025.
24.36.320	Association as agent for member.
24.36.330	Reserves—Investments.
24.36.340	Powers relating to capital stock or bonds of other corporations or associations.
24.36.350	Powers relating to real or personal property.
24.36.360	Levy of assessments.
24.36.370	General powers, rights, privileges of association.
24.36.380	Use of association's facilities—Disposition of proceeds.
24.36.390	Power of association to form, control, own stock in or be member of another corporation or association—Warehouse receipts.
24.36.400	Contracts and agreements with other corporations or associations—Joint operations.
24.36.410	Marketing contracts with members.
24.36.420	When title passes on sale by member to association.
24.36.430	Association may sell products without taking title—Powers and duties.
24.36.440	Liability of member for breach of marketing contract.
24.36.450	Injunctions, specific performance if breach or threatened breach by member.
24.36.460	Presumption that landlord or lessor can control delivery—Remedies for nondelivery or breach.
24.36.470	Enforcement by association to secure delivery by member.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

24.36.010 Short title. This chapter may be cited as "The Fish Marketing Act". [1959 c 312 § 1.]

24.36.020 Declaration of purpose. The purpose of this chapter is to promote, foster, and encourage the intelligent and orderly marketing of fish and fishery products through cooperation; to eliminate speculation and waste; to make the distribution of fish and fishery products between producer and consumer as direct as can be efficiently done; and to stabilize the marketing of fish and fishery products. [1959 c 312 § 2.]

24.36.030 Definitions. As used in this chapter:

- (1) "Fishery products" includes fish, crustaceans, mollusks, and marine products for human consumption.
- (2) "Member" includes members of associations without capital stock and holders of common stock in associations organized with shares of stock.
- (3) "Association" means any corporation organized under this chapter. [1959 c 312 § 3.]

24.36.040 Associations deemed nonprofit. Associations shall be deemed "nonprofit", inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers of fishery products. [1959 c 312 § 4.]

24.36.050 General laws relating to corporations for profit applicable. The provisions of Title 23B RCW and all powers and rights thereunder, apply to associations, except where such provisions are in conflict with or inconsistent

with the express provisions of this chapter. [1991 c 72 § 45; 1959 c 312 § 5.]

24.36.055 Fees for services by secretary of state. See RCW 43.07.120.

24.36.060 Securities act inapplicable. No association is subject in any manner to the terms of chapter 21.20 RCW and all associations may issue their membership certificates or stock or other securities as provided in this division without the necessity of any permit from the director of licenses. [1983 c 3 § 27; 1959 c 312 § 6.]

24.36.070 Associations deemed not a conspiracy, in restraint of trade, etc.—Contracts not illegal. An association shall be deemed not to be a conspiracy, nor a combination in restraint of trade nor an illegal monopoly; nor an attempt to lessen competition or to fix prices arbitrarily or to create a combination or pool in violation of any law of the state; and the marketing contracts and agreements between the association and its members and any agreements authorized in this chapter shall be considered not to be illegal nor in restraint of trade nor contrary to the provisions of any statute enacted against pooling or combinations. [1959 c 312 § 7.]

24.36.080 Conflicting laws not applicable—Exemptions apply. Any provisions of law which are in conflict with this chapter shall not be construed as applying to associations. Any exemptions under any laws applying to fishery products in the possession or under the control of the individual producer shall apply similarly and completely to such fishery products delivered by its members, in the possession or under the control of the association. [1959 c 312 § 8.]

24.36.090 Merger, consolidation of associations authorized—Procedure. Any two or more associations may be merged into one such constituent association or consolidated into a new association. Such merger or consolidation shall be made in the manner prescribed by RCW 23B.07.050 and chapter 23B.11 RCW for domestic corporations. [1991 c 72 § 46; 1983 c 3 § 28; 1959 c 312 § 9.]

24.36.100 Stock associations—Statement in articles. If the association is organized with shares of stock, the articles shall state the number of shares which may be issued and if the shares are to have a par value, the par value of each share, and the aggregate par value of all shares; and if the shares are to be without par value it shall be so stated. [1959 c 312 § 10.]

24.36.110 Stock associations—Classified shares—Statement in articles. If the shares are to be classified, the articles shall contain a description of the classes of shares and a statement of the number of shares of each kind or class and the nature and extent of the preferences, rights, privileges and restrictions granted to or imposed upon the

holders of the respective classes of stock. [1959 c 312 § 11.]

24.36.120 Nonstock associations—Statement in articles. If the association is organized without shares of stock, the articles shall state whether the voting power and the property rights and interest of each member are equal or unequal; and if unequal the general rule or rules applicable to all members by which the voting power and the property rights and interests, respectively, of each member may be and are determined and fixed; and shall also provide for the admission of new members who shall be entitled to vote and to share in the property of the association with the old members, in accordance with such general rule or rules. [1959 c 312 § 12.]

24.36.130 Bylaws of association. Each association shall within thirty days after its incorporation, adopt for its government and management, a code of bylaws, not inconsistent with this chapter. A majority vote of the members or shares of stock issued and outstanding and entitled to vote, or the written assent of a majority of the members or of stockholders representing a majority of all the shares of stock issued and outstanding and entitled to vote, is necessary to adopt such bylaws and is effectual to repeal or amend any bylaws or to adopt additional bylaws. The power to repeal and amend the bylaws, and adopt new bylaws, may, by a similar vote, or similar written assent, be delegated to the board of directors, which authority may, by a similar vote, or similar written assent, be revoked. [1959 c 312 § 13.]

24.36.140 Bylaws of association—Transfer of stock, membership certificates limited. The bylaws shall prohibit the transfer of the common stock or membership certificates of the associations to persons not engaged in the production of the products handled by the association. [1959 c 312 § 14.]

24.36.150 Bylaws of association—Quorum, voting, directors, penalties. The bylaws may provide:

- (1) The number of members constituting a quorum.
- (2) The right of members to vote by proxy or by mail or both, and the conditions, manner, form and effects of such votes; the right of members to cumulate their votes and the prohibition, if desired, of cumulative voting.
- (3) The number of directors constituting a quorum.
- (4) The qualifications, compensation and duties and term of office of directors and officers and the time of their election.
- (5) Penalties for violations of the bylaws. [1959 c 312 § 15.]

24.36.160 Bylaws of association—Fees, charges, marketing contract, dividends. The bylaws may provide:

- (1) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same; and the purposes for which they may be used.
- (2) The amount which each member shall be required to pay annually, or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by

each member for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members which every member may be required to sign.

(3) The amount of any dividends which may be declared on the stock or membership capital, which dividends shall not exceed eight percent per annum and which dividends shall be in the nature of interest and shall not affect the nonprofit character of any association organized hereunder. [1959 c 312 § 16.]

24.36.170 Bylaws of association—Membership. The bylaws may provide:

(1) The number and qualification of members of the association and the conditions precedent to membership or ownership of common stock.

(2) The method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock.

(3) The manner of assignment and transfer of the interest of members and of the shares of common stock.

(4) The conditions upon which and time when membership of any member shall cease.

(5) For the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association; and the mode, manner and effect of the expulsion of a member.

(6) The manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or upon the expulsion of a member or forfeiture of his membership, or at the option of the association, the purchase at a price fixed by conclusive appraisal by the board of directors; and the conditions and terms for the repurchase by the corporation from its stockholders of their stock upon their disqualification as stockholders. [1959 c 312 § 17.]

24.36.180 Bylaws of association—Meetings. The bylaws may provide for the time, place, and manner of calling and conducting meetings of the association. [1959 c 312 § 18.]

24.36.190 Bylaws of association—Direct election of directors from districts of territory. The bylaws may provide that the territory in which the association has members shall be divided into districts and that directors shall be elected from the several districts. In such case, the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. [1959 c 312 § 19.]

24.36.200 Bylaws of association—Election of directors by representatives or advisers from districts of territory. The bylaws may provide that the territory in which the association has members shall be divided into districts, and that the directors shall be elected by representatives or advisers, who themselves have been elected by the members from the several territorial districts. In such case, the bylaws shall specify the number of representatives or advisers to be elected by each district, the manner and

method of reapportioning the representatives or advisers and of redistricting the territory covered by the association. [1959 c 312 § 20.]

24.36.210 Bylaws of association—Primary elections to nominate directors. The bylaws may provide that primary elections shall be held to nominate directors. Where the bylaws provide that the territory in which the association has members shall be divided into districts, the bylaws may also provide that the results of the primary elections in the various districts shall be final and shall be ratified at the annual meeting of the association. [1959 c 312 § 21.]

24.36.220 Bylaws of association—Nomination of directors by public officials or other directors—Limitation. The bylaws may provide that one or more directors may be nominated by any public official or commission or by the other directors selected by the members. Such directors shall represent primarily the interest of the general public in such associations. The directors so nominated need not be members of the association, but shall have the same powers and rights as other directors. Such directors shall not number more than one-fifth of the entire number of directors. [1959 c 312 § 22.]

24.36.230 Bylaws of association—Terms of directors—Staggering. The bylaws may provide that directors shall be elected for terms of from one to five years: PROVIDED, That at each annual election the same fraction of the total number of directors shall be elected as one year bears to the number of years of the term of office. [1959 c 312 § 23.]

24.36.240 Bylaws of association—Executive committee. The bylaws may provide for an executive committee and may allot to such committee all the functions and powers of the board of directors, subject to the general direction and control of the board. [1959 c 312 § 24.]

24.36.250 Qualifications of members, stockholders. (1) Under the terms and conditions prescribed in the bylaws, an association may admit as members, or issue common stock to, only such persons as are engaged in the production of fishery products to be handled by or through the association, including the lessees and tenants of boats and equipment used for the production of such fishery products and any lessors and landlords who receive as rent all or part of the fish produced by such leased equipment.

(2) If a member of a nonstock association is other than a natural person, such member may be represented by any individual duly authorized in writing.

(3) One association may become a member or stockholder of any other association. [1959 c 312 § 25.]

24.36.260 Certificate of membership in nonstock associations. When a member of an association established without shares of stock has paid his membership fee in full, he shall receive a certificate of membership. [1959 c 312 § 26.]

24.36.270 Liability of member for association's debts. No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory note given in payment thereof. [1959 c 312 § 27.]

24.36.280 Place of membership meetings. Meetings of members shall be held at the place as provided in the bylaws; and if no provision is made, in the city where the principal place of business is located at a place designated by the board of directors. [1959 c 312 § 28.]

24.36.290 Appraisal of expelled member's property—Payment. In case of the expulsion of a member, and where the bylaws do not provide any procedure or penalty, the board of directors shall equitably and conclusively appraise his property interest in the association and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion. [1959 c 312 § 29.]

24.36.300 Powers of association—General scope of activities. An association may:

Engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, or utilization of any fishery products produced or delivered to it by its members; or the manufacturing or marketing of the byproducts thereof; or any activity in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment, or in the financing of any such activities. [1959 c 312 § 30.]

24.36.310 Powers of association—Incurring indebtedness—Advances to members. An association may borrow without limitation as to amount of corporate indebtedness or liability and may make advances to members. [1959 c 312 § 31.]

24.36.315 Indemnification of agents of any corporation authorized—Application of RCW 23A.08.025. See RCW 23B.17.030.

24.36.320 Association as agent for member. An association may act as the agent or representative of any member or members in any of the two next preceding sections. [1959 c 312 § 32.]

24.36.330 Reserves—Investments. An association may establish reserves and invest the funds thereof in bonds or in such other property as may be provided in the bylaws. [1959 c 312 § 33.]

24.36.340 Powers relating to capital stock or bonds of other corporations or associations. An association may purchase or otherwise acquire, hold, own, and exercise all rights of ownership in, sell, transfer, pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of the capital stock or bonds of any corporation or association engaged in any related activity or

in the warehousing or handling or marketing or packing or manufacturing or processing or preparing for market of any of the fishery products handled by the association. [1959 c 312 § 34.]

24.36.350 Powers relating to real or personal property. An association may buy, hold and exercise all privileges or ownership, over such real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto. [1959 c 312 § 35.]

24.36.360 Levy of assessments. An association may levy assessments in the manner and in the amount provided in its bylaws. [1959 c 312 § 36.]

24.36.370 General powers, rights, privileges of association. An association may do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects enumerated in this chapter; or conducive to or expedient for the interest or benefit of the association; and contract accordingly; and in addition exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and, in addition, any other rights, powers and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this chapter; and do any such thing anywhere. [1959 c 312 § 37.]

24.36.380 Use of association's facilities—Disposition of proceeds. An association may use or employ any of its facilities for any purpose: PROVIDED, That the proceeds arising from such use and employment go to reduce the cost of operation for its members; but the fishery products of nonmembers shall not be dealt in to an amount greater in value than such as are handled by it for its members. [1959 c 312 § 38.]

24.36.390 Power of association to form, control, own stock in or be member of another corporation or association—Warehouse receipts. An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock and engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling of the fishery products handled by the association, or the byproducts thereof.

If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association against the commodities delivered by it, or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the usual and current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this state or the United States, its warehouse receipt delivered to the association on commodities of the association or its members, or delivered by the association or its members, shall not be challenged or discriminated against because of

ownership or control, wholly or in part, by the association. [1959 c 312 § 39.]

24.36.400 Contracts and agreements with other corporations or associations—Joint operations. Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other cooperative or other corporation, association, or associations, formed in this or in any other state, for the cooperative and more economical carrying on of its business or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same personnel, methods, means, and agencies for carrying on and conducting their respective business. [1959 c 312 § 40.]

24.36.410 Marketing contracts with members. An association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over fifteen years, all or any specified part of their fishery products or specified commodities exclusively to or through the association or any facilities to be created by the association. [1959 c 312 § 41.]

24.36.420 When title passes on sale by member to association. If the members contract a sale to the association, it shall be conclusively held that title to the products passes absolutely and unreservedly, except for recorded liens, to the association upon delivery or at any other time expressly and definitely specified in the contract. [1959 c 312 § 42.]

24.36.430 Association may sell products without taking title—Powers and duties. The contract may provide that the association may sell or resell the fishery products delivered by its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead, and other costs and expenses, including interest on preferred stock, not exceeding eight percent per annum, and reserves for retiring the stock, if any; and other proper reserves; and interest not exceeding eight percent per annum upon common stock. [1959 c 312 § 43.]

24.36.440 Liability of member for breach of marketing contract. The marketing contract may fix, as liquidated damages, specific sums to be paid by the member to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of fishery products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees, in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this state; and such clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties. [1959 c 312 § 44.]

24.36.450 Injunctions, specific performance if breach or threatened breach by member. In the event of any such breach or threatened breach of such marketing contract by a member the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member. [1959 c 312 § 45.]

24.36.460 Presumption that landlord or lessor can control delivery—Remedies for nondelivery or breach. In any action upon such marketing agreements, it shall be conclusively presumed that a landlord or lessor is able to control the delivery of fishery products produced by his equipment by tenants, or others, whose tenancy or possession or work on such equipment or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landlord or lessor, of such a marketing agreement; and in such actions, the foregoing remedies for nondelivery or breach shall lie and be enforceable against such landlord or lessor. [1959 c 312 § 46.]

24.36.470 Enforcement by association to secure delivery by member. A contract entered into by a member of an association, providing for the delivery to such association of products produced or acquired by the member, may be specifically enforced by the association to secure the delivery to it of such fishery products, any provisions of law to the contrary notwithstanding. [1959 c 312 § 47.]

Chapter 24.40

TAX REFORM ACT OF 1969, STATE IMPLEMENTATION— NOT FOR PROFIT CORPORATIONS

Sections	
24.40.010	Application.
24.40.020	Articles of incorporation deemed to contain prohibiting provisions.
24.40.030	Articles of incorporation deemed to contain provisions for distribution.
24.40.040	Rights, powers, of courts, attorney general, not impaired.
24.40.050	Construction of references to federal code.
24.40.060	Present articles of incorporation may be amended— Application to new corporation.
24.40.070	Severability—1971 c 59.
24.40.080	Tax reform act of 1969, state implementation—Charitable trusts.

24.40.010 Application. This chapter shall apply to every not for profit corporation to which Title 24 RCW applies, and which is a "private foundation" as defined in section 509 of the Internal Revenue Code of 1954, and which has been or shall be incorporated under the laws of the state of Washington after December 31, 1969. As to any such corporation so incorporated before January 1, 1970, this chapter shall apply only for its federal taxable years beginning after December 31, 1971. [1971 c 59 § 2.]

24.40.020 Articles of incorporation deemed to contain prohibiting provisions. The articles of incorporation of every corporation to which this chapter applies shall be deemed to contain provisions prohibiting the corporation 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 investment which would jeopardize the carrying out of any of its exempt purposes, 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. [1971 c 59 § 3.]

24.40.030 Articles of incorporation deemed to contain provisions for distribution. The articles of incorporation of every corporation to which this chapter applies shall be deemed to contain a provision requiring such corporation to distribute, for the purposes specified in its articles of incorporation, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954. [1971 c 59 § 4.]

24.40.040 Rights, powers, of courts, attorney general, not impaired. Nothing in this chapter shall impair the rights and powers of the courts or the attorney general of this state with respect to any corporation. [1971 c 59 § 5.]

24.40.050 Construction of references to federal code. All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future internal revenue laws. [1971 c 59 § 6.]

24.40.060 Present articles of incorporation may be amended—Application to new corporation. Nothing in this chapter shall limit the power of any corporation not for profit now or hereafter incorporated under the laws of the state of Washington

(1) to at any time amend its articles of incorporation or other instrument governing such corporation by any amendment process open to such corporation under the laws of the state of Washington to provide that some or all provisions of RCW 24.40.010 and 24.40.020 shall have no application to such corporation; or

(2) in the case of any such corporation formed after June 10, 1971, to provide in its articles of incorporation that some or all provisions of RCW 24.40.010 and 24.40.020

shall have no application to such corporation. [1971 c 59 § 7.]

24.40.070 Severability—1971 c 59. If any provision of RCW 24.40.010 through 24.40.070 or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of RCW 24.40.010 through 24.40.070 which can be given effect without the invalid provision or application, and to this end the provisions of RCW 24.40.010 through 24.40.070 are declared to be severable. [1971 c 59 § 8.]

24.40.080 Tax reform act of 1969, state implementation—Charitable trusts. See RCW 11.110.200 through 11.110.260.

Chapter 24.44

UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

Sections	
24.44.010	Definitions.
24.44.020	Appropriation of appreciation.
24.44.030	Investment authority.
24.44.040	Delegation of investment management.
24.44.050	Standard of conduct.
24.44.060	Release of restrictions on use or investments.
24.44.070	Uniformity of application and construction.
24.44.080	Short title.
24.44.090	Section headings.
24.44.900	Severability—1973 c 17.

24.44.010 Definitions. As used in this chapter:

(1) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes or a governmental organization to the extent that it holds funds exclusively for any of these purposes;

(2) "Institutional fund" means a fund held by an institution for its exclusive use, benefit or purposes, but does not include (a) a fund held for an institution by a trustee which is not an institution, or (b) a fund in which a beneficiary which is not an institution has an interest other than possible rights which could arise upon violation or failure of the purposes of the fund;

(3) "Endowment fund" means an institutional fund, or any part thereof, which is not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument;

(4) "Governing board" means the body responsible for the management of an institution or of an institutional fund;

(5) "Historic dollar value" means the fair value in dollars of an endowment fund at the time it first became an endowment fund, plus the fair value in dollars of each subsequent donation to the fund at the time it is made, plus the fair value in dollars of each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive;

(6) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing

document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund. [1973 c 17 § 1.]

24.44.020 Appropriation of appreciation. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by RCW 24.44.050. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the character [charter] of an institution. [1973 c 17 § 2.]

24.44.030 Investment authority. In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary is authorized to make, the governing board (subject to any specific limitations set forth in the applicable gift instrument or in applicable law other than law relating to investments a fiduciary is authorized to make) may:

(1) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks and bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government or subdivision or instrumentality thereof;

(2) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and

(4) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board. [1973 c 17 § 3.]

24.44.040 Delegation of investment management. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may:

(1) Delegate to its committees, to officers or employees of the institution or the fund, or to agents (including investment counsel) the authority to act in place of the board in investment and reinvestment of institutional funds;

(2) Contract with independent investment advisors, investment counsel or managers, banks, or trust companies, so to act; and

(3) Authorize the payment of compensation for investment advisory or management services. [1973 c 17 § 4.]

24.44.050 Standard of conduct. In the administration of the powers to appropriate appreciation, to make and retain

investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision, and in so doing they shall consider long and short term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions. [1973 c 17 § 5.]

24.44.060 Release of restrictions on use or investments. (1) A restriction on the use or investment of an institutional fund imposed by the applicable gift instrument may be released, entirely or in part, by the governing board with the written consent of the donor.

(2) If consent of the donor cannot be obtained by reason of the death, disability or unavailability, or impossibility of identification of the donor, upon application of the governing board, a restriction on the use or investment of an institutional fund imposed by the applicable gift instrument may be released, entirely or in part, by order of the superior court after reasonable notice to the attorney general and an opportunity for him to be heard, and upon a finding that the restriction on the use or investment of the fund is obsolete, inappropriate or impracticable. A release under this subsection may not change an endowment fund to a fund which is not an endowment fund.

(3) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(4) The provisions of this section do not limit the application of the doctrine of cy pres. [1973 c 17 § 6.]

24.44.070 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 those states which enact it. [1973 c 17 § 8.]

24.44.080 Short title. This chapter may be cited as the "Uniform Management of Institutional Funds Act". [1973 c 17 § 9.]

24.44.090 Section headings. Section headings as used in this chapter do not constitute any part of the law. [1973 c 17 § 10.]

24.44.900 Severability—1973 c 17. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall 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 declared to be severable. [1973 c 17 § 7.]

Chapter 24.46
FOREIGN TRADE ZONES

Sections

24.46.010 Legislative finding—Intent.

24.46.020 Application for permission to establish, operate and maintain foreign trade zones authorized.

Operation of foreign trade zones by port districts: RCW 53.08.030.

24.46.010 Legislative finding—Intent. It is the finding of the legislature that foreign trade zones serve an important public purpose by the creation of employment opportunities within the state and that the establishment of zones designed to accomplish this purpose is to be encouraged. It is the further intent of the legislature that the department of trade and economic development provide assistance to entities planning to apply to the United States for permission to establish such zones. [1985 c 466 § 39; 1977 ex.s. c 196 § 1.]

Effective date—Severability—1985 c 466: See notes following RCW 43.31.005.

Effective date—1977 ex.s. c 196: "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 on July 1, 1977." [1977 ex.s. c 196 § 8.]

24.46.020 Application for permission to establish, operate and maintain foreign trade zones authorized. A nonprofit corporation or organization, as zone sponsor, may apply to the United States for permission to establish, operate, and maintain foreign trade zones: PROVIDED, That nothing herein shall be construed to prevent these zones from being operated and financed by a private corporation(s) on behalf of said nonprofit corporation acting as zone sponsor. [1977 ex.s. c 196 § 2.]

Effective date—1977 ex.s. c 196: See note following RCW 24.46.010.

