

43.332.005 Findings. (1) The legislature finds that:

(a) The expansion of international trade is vital to the overall growth of Washington's economy;

(b) On a per capita basis, Washington state is the most international trade dependent state in the nation;

(c) The North American free trade agreement (NAFTA) and the general agreement on tariffs and trade (GATT) highlight the increased importance of international trade opportunities to the United States and the state of Washington;

(d) The passage of NAFTA and GATT will have a major impact on the state's agriculture, aerospace, computer software, and textiles and apparel sectors;

(e) There is a need to strengthen and coordinate the state's activities in promoting and developing its agricultural, manufacturing, and service industries overseas, especially for small and medium-sized businesses, and minority and women-owned business enterprises; and

(f) The importance of having a coherent vision for advancing Washington state's interest in the global economy has rarely been so consequential as it is now.

(2) The legislature declares that the purpose of the office of the Washington state trade representative is to strengthen and expand the state's activities in marketing its goods and services overseas. [1995 c 350 § 1.]

43.332.010 Office created—Finances. The office of the Washington state trade representative is created under the office of the governor. The office shall serve as the state's official liaison with foreign governments on trade matters.

The office of the Washington state trade representative may accept or request grants or gifts from citizens and other private sources to be used to defray the costs of appropriate hosting of foreign dignitaries, including appropriate gift-giving and reciprocal gift-giving, or other activities of the office. The office shall open and maintain a bank account into which it shall deposit all money received under this section. Such money and the interest accruing thereon shall not constitute public funds, shall be kept segregated and apart from funds of the state, and shall not be subject to appropriation or allotment by the state or subject to chapter 43.88 RCW. [1995 c 350 § 2.]

Title 44**STATE GOVERNMENT—LEGISLATIVE****Chapters**

44.05 Washington State Redistricting Act.

Chapter 44.05**WASHINGTON STATE REDISTRICTING ACT****Sections**

44.05.100 Submission of redistricting plan to legislature—Amendment—Effect—Adoption of plan by supreme court upon failure of commission.

44.05.100 Submission of redistricting plan to legislature—Amendment—Effect—Adoption of plan by supreme court upon failure of commission. (1) Upon approval of a redistricting plan by three of the voting members of the commission, but not later than December 15th of the year ending in one, the commission shall submit the plan to the legislature.

(2) After submission of the plan by the commission, the legislature shall have the next thirty days during any regular or special session to amend the commission's plan. If the legislature amends the commission's plan the legislature's amendment must be approved by an affirmative vote in each house of two-thirds of the members elected or appointed thereto, and may not include more than two percent of the population of any legislative or congressional district.

(3) The plan approved by the commission, with any amendment approved by the legislature, shall be final upon approval of such amendment or after expiration of the time provided for legislative amendment by subsection (2) of this section whichever occurs first, and shall constitute the districting law applicable to this state for legislative and congressional elections, beginning with the next elections held in the year ending in two. This plan shall be in force until the effective date of the plan based upon the next succeeding federal decennial census or until a modified plan takes effect as provided in RCW 44.05.120(6).

(4) If three of the voting members of the commission fail to approve and submit a plan within the time limitations provided in subsection (1) of this section, the supreme court shall adopt a plan by March 1st of the year ending in two. Any such plan approved by the court is final and constitutes the districting law applicable to this state for legislative and congressional elections, beginning with the next election held in the year ending in two. This plan shall be in force until the effective date of the plan based on the next succeeding federal decennial census or until a modified plan takes effect as provided in RCW 44.05.120(6). [1995 c 88 § 1; 1983 c 16 § 10.]

Title 46**MOTOR VEHICLES****Chapters**

46.01 Department of licensing.
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Chapter 46.01

DEPARTMENT OF LICENSING

Sections

- 46.01.110 Rule-making authority.

46.01.110 Rule-making authority. The director of licensing is hereby authorized to adopt and enforce such reasonable rules as may be consistent with and necessary to carry out the provisions relating to vehicle licenses, certificates of ownership and license registration and drivers' licenses not in conflict with the provisions of Title 46 RCW: PROVIDED, That the director of licensing may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule. [1995 c 403 § 108; 1979 c 158 § 120; 1965 c 156 § 11; 1961 c 12 § 46.08.140. Prior: 1937 c 188 § 79; RRS § 6312-79. Formerly RCW 46.08.140.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Chapter 46.04

DEFINITIONS

Sections

- 46.04.015 Alcohol concentration.
 46.04.455 Reasonable grounds.
 46.04.480 Revoke.
 46.04.521 School bus.

46.04.015 Alcohol concentration. "Alcohol concentration" means (1) grams of alcohol per two hundred ten liters of a person's breath, or (2) grams of alcohol per one hundred milliliters of a person's blood. [1995 c 332 § 17; 1994 c 275 § 1.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—1994 c 275: "This act shall be known as the "1994 Omnibus Drunk Driving Act."" [1994 c 275 § 43.]

Effective date—1994 c 275: "This act shall take effect July 1, 1994." [1994 c 275 § 46.]

46.04.455 Reasonable grounds. "Reasonable grounds," when used in the context of a law enforcement officer's decision to make an arrest, means probable cause. [1995 c 332 § 19.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

46.04.480 Revoke. "Revoke," in all its forms, means the invalidation for a period of one calendar year and thereafter until reissue: PROVIDED, That under the provisions of RCW 46.20.285, 46.20.311, 46.20.265, or 46.61.5055, and chapter 46.65 RCW the invalidation may

last for a period other than one calendar year. [1995 c 332 § 10; 1994 c 275 § 38; 1988 c 148 § 8; 1985 c 407 § 1; 1983 c 165 § 14; 1983 c 165 § 13; 1979 c 62 § 7; 1961 c 12 § 46.04.480. Prior: 1959 c 49 § 52; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

Effective dates—1985 c 407: "Sections 2 and 4 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985. The remainder of the act shall take effect January 1, 1986." [1985 c 407 § 8.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Severability—1979 c 62: See note following RCW 46.65.020.

46.04.521 School bus. School bus means every motor vehicle used regularly to transport children to and from school or in connection with school activities, which is subject to the requirements set forth in the most recent edition of "Specifications for School Buses" published by the state superintendent of public instruction, but does not include buses operated by common carriers in urban transportation of school children or private carrier buses operated as school buses in the transportation of children to and from private schools or school activities. [1995 c 141 § 1; 1965 ex.s. c 155 § 90.]

Chapter 46.08

GENERAL PROVISIONS

Sections

- 46.08.150 Control of traffic on capitol grounds.
 46.08.172 Parking rental fees—Establishment.
 46.08.190 Jurisdiction of judges of district, municipal, and superior court.

46.08.150 Control of traffic on capitol grounds. The director of general administration shall have power to devise and promulgate rules and regulations for the control of vehicular and pedestrian traffic and the parking of motor vehicles on the state capitol grounds. However, the monetary penalty for parking a motor vehicle without a valid special license plate or placard in a parking place reserved for physically disabled persons shall be the same as provided in RCW 46.16.381. Such rules and regulations shall be promulgated by publication in one issue of a newspaper published at the state capitol and shall be given such further publicity as the director may deem proper. [1995 c 384 § 2; 1961 c 12 § 46.08.150. Prior: 1955 c 285 § 21; 1947 c 11 § 1; Rem. Supp. 1947 § 7921-20.]

46.08.172 Parking rental fees—Establishment. The director of the department of general administration shall establish equitable and consistent parking rental fees for the capitol campus and may, if requested by agencies, establish equitable and consistent parking rental fees for agencies off

the capitol campus, to be charged to employees, visitors, clients, service providers, and others, that reflect the legislature's intent to reduce state subsidization of parking or to meet the commute trip reduction goals established in RCW 70.94.527. All fees shall take into account the market rate of comparable privately owned rental parking, as determined by the director. However, parking rental fees are not to exceed the local market rate of comparable privately owned rental parking.

The director may delegate the responsibility for the collection of parking fees to other agencies of state government when cost-effective. [1995 c 215 § 4; 1993 c 394 § 4. Prior: 1991 sp.s. c 31 § 12; 1991 sp.s. c 13 § 41; 1988 ex.s. c 2 § 901; 1985 c 57 § 59; 1984 c 258 § 323; 1963 c 158 § 1.]

Finding—Purpose—1993 c 394: See note following RCW 43.01.220.

Severability—1991 sp.s. c 31: See RCW 43.991.900.

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.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Fee deposition: RCW 43.01.225.

46.08.190 Jurisdiction of judges of district, municipal, and superior court. Every district and municipal court judge shall have concurrent jurisdiction with superior court judges of the state for all violations of the provisions of this title, except the trial of felony charges on the merits, and may impose any punishment provided therefor. [1995 c 136 § 1; 1984 c 258 § 136; 1961 c 12 § 46.08.190. Prior: 1955 c 393 § 4.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

Chapter 46.09

OFF-ROAD AND NONHIGHWAY VEHICLES

Sections

- 46.09.165 Nonhighway and off-road vehicle activities program account.
46.09.170 Refunds from motor vehicle fund—Distribution—Use.

46.09.165 Nonhighway and off-road vehicle activities program account. The nonhighway and off-road vehicle activities program account is created in the state treasury. Moneys in this account are subject to legislative appropriation. The interagency committee for outdoor recreation shall administer the account for purposes specified in this chapter and shall hold it separate and apart from all other money, funds, and accounts of the interagency committee for outdoor recreation. Grants, gifts, or other financial assistance, proceeds received from public bodies as administrative cost contributions, and any moneys made available to the state of Washington by the federal government for outdoor recreation may be deposited into the account. [1995 c 166 § 11.]

46.09.170 Refunds from motor vehicle fund—Distribution—Use. (1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on the tax rate in effect January 1, 1990, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090. The treasurer shall place these funds in the general fund as follows:

(a) Forty percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for planning, maintenance, and management of ORV recreation facilities, nonhighway roads, and nonhighway road recreation facilities. The funds under this subsection shall be expended in accordance with the following limitations:

(i) Not more than five percent may be expended for information programs under this chapter;

(ii) Not less than ten percent and not more than fifty percent may be expended for ORV recreation facilities;

(iii) Not more than twenty-five percent may be expended for maintenance of nonhighway roads;

(iv) Not more than fifty percent may be expended for nonhighway road recreation facilities;

(v) Ten percent shall be transferred to the interagency committee for outdoor recreation for grants to law enforcement agencies in those counties where the department of natural resources maintains ORV facilities. This amount is in addition to those distributions made by the interagency committee for outdoor recreation under (d)(i) of this subsection;

(b) Three and one-half percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of fish and wildlife solely for the acquisition, planning, development, maintenance, and management of nonhighway roads and recreation facilities;

(c) Two percent shall be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the maintenance and management of ORV use areas and facilities; and

(d) Fifty-four and one-half percent, together with the funds received by the interagency committee for outdoor recreation under RCW 46.09.110, shall be credited to the nonhighway and off-road vehicle activities program account to be administered by the committee for planning, acquisition, development, maintenance, and management of ORV recreation facilities and nonhighway road recreation facilities; ORV user education and information; and ORV law enforcement programs. The funds under this subsection shall be expended in accordance with the following limitations:

(i) Not more than twenty percent may be expended for ORV education, information, and law enforcement programs under this chapter;

(ii) Not less than an amount equal to the funds received by the interagency committee for outdoor recreation under RCW 46.09.110 and not more than sixty percent may be expended for ORV recreation facilities;

(iii) Not more than twenty percent may be expended for nonhighway road recreation facilities.

(2) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter. [1995 c 166 § 9; 1994 c 264 § 36; 1990 c 42 § 115; 1988 c 36 § 25; 1986 c 206 § 8; 1979 c 158 § 130; 1977 ex.s. c 220 § 14; 1975 1st ex.s. c 34 § 1; 1974 ex.s. c 144 § 3; 1972 ex.s. c 153 § 15; 1971 ex.s. c 47 § 22.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1986 c 206: See note following RCW 46.09.020.

Effective date—1975 1st ex.s. c 34: "This 1975 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, 1975." [1975 1st ex.s. c 34 § 4.]

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

Chapter 46.12

CERTIFICATES OF OWNERSHIP AND REGISTRATION

Sections

- 46.12.030 Certificate of ownership—Application—Contents—Inspection of vehicle.
- 46.12.075 Rebuilt vehicles.
- 46.12.215 Unlawful sale of certificate of ownership.
- 46.12.295 Mobile homes—Titling functions transferred to department of community, trade, and economic development.
- 46.12.310 Serial numbers—Seizure and impoundment of vehicles, etc.—Notice to interested persons—Release to owner, etc.
- 46.12.360 Repealed.
- 46.12.380 Disclosure of names and addresses of individual vehicle owners.

46.12.030 Certificate of ownership—Application—Contents—Inspection of vehicle. The application for [a] certificate of ownership shall be upon a form furnished or approved by the department and shall contain:

(1) A full description of the vehicle, which shall contain the proper vehicle identification number, the number of miles indicated on the odometer at the time of delivery of the vehicle, and any distinguishing marks of identification;

(2) The name and address of the person who is to be the registered owner of the vehicle and, if the vehicle is subject to a security interest, the name and address of the secured party;

(3) Such other information as the department may require. The department may in any instance, in addition to the information required on the application, require additional information and a physical examination of the vehicle or of any class of vehicles, or either. A physical examination of the vehicle is mandatory if it previously was registered in any other state or country or if it has been rebuilt after surrender of the certificate of ownership to the department under RCW 46.12.070 due to the vehicle's destruction or declaration as a total loss. The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the foreign title and registration certificate. If the vehicle is from a jurisdiction that does not issue titles, the inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the registration certificate. The inspection must

also confirm that the license plates on the vehicle are those assigned to the vehicle by the jurisdiction in which the vehicle was previously licensed. The inspection must be made by a member of the Washington state patrol or other person authorized by the department to make such inspections.

The application shall be subscribed by the registered owner and be sworn to by that applicant in the manner described by RCW 9A.72.085. The department shall retain the application in either the original, computer, or photostatic form. [1995 c 274 § 1; 1995 c 256 § 23; 1990 c 238 § 1; 1975 c 25 § 8; 1974 ex.s. c 128 § 1; 1972 ex.s. c 99 § 2; 1967 c 32 § 8; 1961 c 12 § 46.12.030. Prior: 1947 c 164 § 1, part; 1937 c 188 § 3, part; Rem. Supp. 1947 § 6312-2, part.]

Reviser's note: This section was amended by 1995 c 256 § 23 and by 1995 c 274 § 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).

Effective date, implementation—1990 c 238: "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 May 1, 1990. The director of licensing shall immediately take such steps as are necessary to ensure that this act is implemented on its effective date." [1990 c 238 § 9.]

Effective date—1974 ex.s. c 128: "This 1974 amendatory act shall take effect July 1, 1974." [1974 ex.s. c 128 § 3.]

Notice of liability insurance requirement: RCW 46.16.212.

46.12.075 Rebuilt vehicles. (1) Effective January 1, 1997, the department shall issue a unique certificate of ownership and certificate of license registration, as required by chapter 46.16 RCW, for vehicles less than four years old that are rebuilt after surrender of the certificate of ownership to the department under RCW 46.12.070 due to the vehicle's destruction or declaration as a total loss. Each certificate shall conspicuously display across its front, a word indicating that the vehicle was rebuilt.

(2) Beginning January 1, 1997, upon inspection of a vehicle that has been rebuilt under RCW 46.12.030, the state patrol shall securely affix or inscribe a marking at the driver's door latch pillar indicating that the vehicle has previously been destroyed or declared a total loss.

(3) It is a class C felony for a person to remove the marking prescribed in subsection (2) of this section.

(4) The department may adopt rules as necessary to implement this section. [1995 c 256 § 24.]

46.12.215 Unlawful sale of certificate of ownership. It is a class C felony for a person to sell or convey a vehicle certificate of ownership except in conjunction with the sale or transfer of the vehicle for which the certificate was originally issued. [1995 c 256 § 1.]

46.12.295 Mobile homes—Titling functions transferred to department of community, trade, and economic development. The department of licensing shall transfer all titling functions pertaining to mobile homes to the housing division of the department of community, trade, and economic development by July 1, 1991. The department of licensing shall transfer all books, records, files, and documents pertaining to mobile home titling to the department of

community, trade, and economic development. The directors of the departments may immediately take such steps as are necessary to ensure that chapter 176, Laws of 1990 is implemented on June 7, 1990. [1995 c 399 § 117; 1990 c 176 § 3.]

Department of community, trade, and economic development duties: RCW 43.63A.460.

46.12.310 Serial numbers—Seizure and impoundment of vehicles, etc.—Notice to interested persons—Release to owner, etc. (1) Any vehicle, watercraft, camper, or any component part thereof, from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered, obliterated, or destroyed, may be impounded and held by the seizing law enforcement agency for the purpose of conducting an investigation to determine the identity of the article or articles, and to determine whether it had been reported stolen.

(2) Within five days of the impounding of any vehicle, watercraft, camper, or component part thereof, the law enforcement agency seizing the article or articles shall send written notice of such impoundment by certified mail to all persons known to the agency as claiming an interest in the article or articles. The seizing agency shall exercise reasonable diligence in ascertaining the names and addresses of those persons claiming an interest in the article or articles. Such notice shall advise the person of the fact of seizure, the possible disposition of the article or articles, the requirement of filing a written claim requesting notification of potential disposition, and the right of the person to request a hearing to establish a claim of ownership. Within five days of receiving notice of other persons claiming an interest in the article or articles, the seizing agency shall send a like notice to each such person.

(3) If reported as stolen, the seizing law enforcement agency shall promptly release such vehicle, watercraft, camper, or parts thereof as have been stolen, to the person who is the lawful owner or the lawful successor in interest, upon receiving proof that such person presently owns or has a lawful right to the possession of the article or articles. [1995 c 256 § 2; 1975-'76 2nd ex.s. c 91 § 2.]

Severability—Effective date—1975-'76 2nd ex.s. c 91: See notes following RCW 46.12.300.

46.12.360 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.12.380 Disclosure of names and addresses of individual vehicle owners. (1) Notwithstanding the provisions of chapter 42.17 RCW, the name or address of an individual vehicle owner shall not be released by the department, county auditor, or agency or firm authorized by the department except under the following circumstances:

(a) The requesting party is a business entity that requests the information for use in the course of business;

(b) The request is a written request that is signed by the person requesting disclosure that contains the full legal name and address of the requesting party, that specifies the purpose for which the information will be used; and

(c) The requesting party enters into a disclosure agreement with the department in which the party promises that the party will use the information only for the purpose stated in the request for the information; and that the party does not intend to use, or facilitate the use of, the information for the purpose of making any unsolicited business contact with a person named in the disclosed information. The term "unsolicited business contact" means a contact that is intended to result in, or promote, the sale of any goods or services to a person named in the disclosed information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction.

(2) The disclosing entity shall retain the request for disclosure for three years.

(3) Whenever the disclosing entity grants a request for information under this section by an attorney or private investigator, the disclosing entity shall provide notice to the vehicle owner, to whom the information applies, that the request has been granted. The notice also shall contain the name and address of the requesting party.

(4) Any person who is furnished vehicle owner information under this section shall be responsible for assuring that the information furnished is not used for a purpose contrary to the agreement between the person and the department.

(5) This section shall not apply to requests for information by governmental entities or requests that may be granted under any other provision of this title expressly authorizing the disclosure of the names or addresses of vehicle owners.

(6) This section shall not apply to title history information under RCW 19.118.170. [1995 c 254 § 10; 1990 c 232 § 2; 1987 c 299 § 1; 1984 c 241 § 2.]

Effective date—Severability—1995 c 254: See notes following RCW 19.118.021.

Legislative finding and purpose—1990 c 232: "The legislature recognizes the extraordinary value of the vehicle title and registration records for law enforcement and commerce within the state. The legislature also recognizes that indiscriminate release of the vehicle owner information to be an infringement upon the rights of the owner and can subject owners to intrusions on their privacy. The purpose of this act is to limit the release of vehicle owners' names and addresses while maintaining the availability of the vehicle records for the purposes of law enforcement and commerce." [1990 c 232 § 1.]

Chapter 46.16

VEHICLE LICENSES

Sections

- 46.16.340 Amateur radio operator plates—Information furnished to various agencies.
- 46.16.381 Special parking privileges for disabled persons—Penalties for unauthorized use or parking.

46.16.340 Amateur radio operator plates—Information furnished to various agencies. The director, from time to time, shall furnish the state military department, the department of community, trade, and economic development, the Washington state patrol, and all county sheriffs a list of the names, addresses, and license plate or radio station call letters of each person possessing the special amateur radio station license plates so that the facilities of such radio stations may be utilized to the fullest extent in the work of

these governmental agencies. [1995 c 391 § 8; 1986 c 266 § 49; 1985 c 7 § 112; 1974 ex.s. c 171 § 43; 1967 c 32 § 23; 1961 c 12 § 46.16.340. Prior: 1957 c 145 § 3.]

Effective date—1995 c 391: See note following RCW 38.52.005.

Severability—1986 c 266: See note following RCW 38.52.005.

46.16.381 Special parking privileges for disabled persons—Penalties for unauthorized use or parking. (1) The director shall grant special parking privileges to any person who has a disability that limits or impairs the ability to walk and meets one of the following criteria, as determined by a licensed physician:

(a) Cannot walk two hundred feet without stopping to rest;

(b) Is severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;

(c) Is so severely disabled, that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) Uses portable oxygen;

(e) Is restricted by lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(f) Impairment by cardiovascular disease or cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American Heart Association; or

(g) Has a disability resulting from an acute sensitivity to automobile emissions which limits or impairs the ability to walk. The personal physician of the applicant shall document that the disability is comparable in severity to the others listed in this subsection.

(2) Persons who qualify for special parking privileges are entitled to receive from the department of licensing a removable windshield placard bearing the international symbol of access. The department shall design the placard to be displayed when the vehicle is parked by suspending it from the rearview mirror, or in the absence of a rearview mirror the card may be displayed on the dashboard of any vehicle used to transport the disabled person. Instead of regular motor vehicle license plates, disabled persons are entitled to receive special license plates bearing the international symbol of access for one vehicle registered in the disabled person's name. Disabled persons who are not issued the special license plates are entitled to receive a second special placard. Persons who have been issued the parking privileges and who are using a vehicle or are riding in a vehicle displaying the special license plates or placard may park in places reserved for mobility disabled persons. The director shall adopt rules providing for the issuance of special placards and license plates to public transportation authorities, nursing homes licensed under chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW, senior citizen centers, private nonprofit agencies as defined in chapter 24.03 RCW, and vehicles registered with the department as cabulances that regularly transport disabled persons who have been determined eligible for special parking privileges provided under this section. The director may issue special license plates for a vehicle registered in

the name of the public transportation authority, nursing home, boarding homes, senior citizen center, private nonprofit agency, or cabulance service if the vehicle is primarily used to transport persons with disabilities described in this section. Public transportation authorities, nursing homes, boarding homes, senior citizen centers, private nonprofit agencies, and cabulance services are responsible for insuring that the special placards and license plates are not used improperly and are responsible for all fines and penalties for improper use.

(3) Whenever the disabled person transfers or assigns his or her interest in the vehicle, the special license plates shall be removed from the motor vehicle. If another vehicle is acquired by the disabled person and the vehicle owner qualifies for a special plate, the plate shall be attached to the vehicle, and the director shall be immediately notified of the transfer of the plate. If another vehicle is not acquired by the disabled person, the removed plate shall be immediately surrendered to the director.

(4) The special license plate shall be renewed in the same manner and at the time required for the renewal of regular motor vehicle license plates under this chapter. No special license plate may be issued to a person who is temporarily disabled. A person who has a condition expected to improve within six months may be issued a temporary placard for a period not to exceed six months. The director may issue a second temporary placard during that period if requested by the person who is temporarily disabled. If the condition exists after six months a new temporary placard shall be issued upon receipt of a new certification from the disabled person's physician. The parking placard of a disabled person shall be renewed, when required by the director, by satisfactory proof of the right to continued use of the privileges.

(5) Additional fees shall not be charged for the issuance of the special placards. No additional fee may be charged for the issuance of the special license plates except the regular motor vehicle registration fee and any other fees and taxes required to be paid upon registration of a motor vehicle.

(6) Any unauthorized use of the special placard or the special license plate is a misdemeanor.

(7) It is a parking infraction, with a monetary penalty of one hundred seventy-five dollars for any person to park a vehicle in a parking place provided on private property without charge or on public property reserved for physically disabled persons without a special license plate or placard. If a person is charged with a violation, the person shall not be determined to have committed an infraction if the person produces in court or before the court appearance the special license plate or placard required under this section. A local jurisdiction providing on-street parking places reserved for physically disabled persons may impose by ordinance time restrictions on the use of these parking places.

(8) The penalty imposed under subsection (7) of this section shall be used by that local jurisdiction exclusively for law enforcement. The court may also impose an additional penalty sufficient to reimburse the local jurisdiction for any costs it may have incurred in removal and storage of the improperly parked vehicle.

(9) It is a misdemeanor for any person to willfully obtain a special license plate or placard in a manner other

than that established under this section. [1995 c 384 § 1; 1994 c 194 § 6; 1993 c 106 § 1; 1992 c 148 § 1; 1991 c 339 § 21; 1990 c 24 § 1; 1986 c 96 § 1; 1984 c 154 § 2.]

Intent—1984 c 154: "The legislature intends to extend special parking privileges to persons with disabilities that substantially impair mobility." [1984 c 154 § 1.]

Application—1984 c 154: "This act applies to special license plates, cards, or decals issued after June 7, 1984. Nothing in this act invalidates special license plates, cards, or decals issued before June 7, 1984." [1984 c 154 § 9.]

Severability—1984 c 154: "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 154 § 10.]

Accessible parking spaces required: RCW 70.92.140.

Chapter 46.20

DRIVERS' LICENSES—IDENTICARDS

Sections

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46.20.031 Persons ineligible to be licensed. The department shall not issue a driver's license hereunder:

(1) To any person who is under the age of sixteen years;

(2) To any person whose license has been suspended during such suspension, nor to any person whose license has been revoked, except as provided in RCW 46.20.311;

(3) To any person who has been evaluated by a program approved by the department of social and health services as being an alcoholic, drug addict, alcohol abuser, and/or drug abuser: PROVIDED, That a license may be issued if the department determines that such person has been granted a deferred prosecution, pursuant to chapter 10.05 RCW, or is satisfactorily participating in or has successfully completed an alcohol or drug abuse treatment program approved by the department of social and health services and has established control of his or her alcohol and/or drug abuse problem;

(4) To any person who has previously been adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease, and who has not at the time of application been restored to competency by the methods provided by law: PROVIDED, HOWEVER, That no person so adjudged shall be denied a license for such cause if the superior court should find him able to operate a motor vehicle with safety upon the highways during such incompetency;

(5) To any person who is required by this chapter to take an examination, unless such person shall have successfully passed such examination;

(6) To any person who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

(7) To any person when the department has good and substantial evidence to reasonably conclude that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways; subject to review by a court of competent jurisdiction;

(8) To a person when the department has been notified by a court that the person has violated his or her written promise to appear, respond, or comply regarding a notice of infraction issued for a violation of RCW 46.55.105, unless the department has received notice from the court showing that the person has been found not to have committed the violation of RCW 46.55.105, or that the person has paid all monetary penalties owing, including completion of community service, and that the court is satisfied that the person has made restitution as provided by RCW 46.55.105(2). [1995 c 219 § 1; 1993 c 501 § 2; 1985 c 101 § 1; 1977 ex.s. c 162 § 1; 1965 ex.s. c 121 § 4.]

Allowing unauthorized person to drive: RCW 46.16.011, 46.20.344.

Juvenile driving privileges, alcohol or drug violations: RCW 66.44.365, 69.50.420.

46.20.289 Suspension for failure to respond, appear, etc. The department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(5) or 46.64.025 that the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, other than for a notice of a violation of RCW 46.55.105 or a standing, stopping, or parking violation. A suspension under this section takes effect thirty days after the date the department mails notice of the suspension, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated, and until the person meets the requirements of RCW 46.20.311. A suspension under this section does not take effect if, prior to the effective date of the suspension, the department receives a certificate from the court showing that the case has been adjudicated. [1995 c 219 § 2; 1993 c 501 § 1.]

✓ **46.20.308 Implied consent—License sanctions for test refusal—Procedures.** (1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or the person

to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration of 0.02 or more in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility in which a breath testing instrument is not present or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(4). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver that:

(a) His or her license, permit, or privilege to drive will be revoked or denied if he or she refuses to submit to the test;

(b) His or her license, permit, or privilege to drive will be suspended, revoked, denied, or placed in probationary status if the test is administered and the test indicates the alcohol concentration of the person's breath or blood is 0.10 or more, in the case of a person age twenty-one or over, or 0.02 or more in the case of a person under age twenty-one; and

(c) His or her refusal to take the test may be used in a criminal trial.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.10 or more if the person is age twenty-one or over, or is 0.02 or more if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the

department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, deny, or place in probationary status the person's license, permit, or privilege to drive as required by subsection (7) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (8) of this section;

(c) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department;

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration of 0.02 or more;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.10 or more if the person is age twenty-one or over, or was 0.02 or more if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(7) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this section, shall suspend, revoke, deny, or place in probationary status the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, denial, or placement in probationary status to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first.

(8) A person receiving notification under subsection (6)(b) of this section may, within thirty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of one hundred dollars as part of the request. If the request is mailed, it

must be postmarked within thirty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required one hundred dollar fee, the department shall afford the person an opportunity for a hearing. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more and was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.10 or more if the person was age twenty-one or over at the time of the arrest, or was 0.02 or more if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying

the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, denial, or placement in probationary status either be rescinded or sustained.

(9) If the suspension, revocation, denial, or placement in probationary status is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, denied, or placed in probationary status has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, denial, or placement in probationary status. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, denial, or placement in probationary status as expeditiously as possible. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, denial, or placement in probationary status it may impose conditions on such stay.

(10) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, denied, or placed in probationary status under subsection (7) of this section, other than as a result of a breath test refusal, and who has not committed an offense within the last five years for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (7) of this section, the court may direct the department to stay any actual or proposed suspension, revocation, denial, or placement in probationary status for at least forty-five days but not more than ninety days. If the court stays the suspension, revocation, denial, or placement in probationary status, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license marked under subsection (6) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

A suspension, revocation, or denial imposed under this section, other than as a result of a breath test refusal, shall be stayed if the person is accepted for deferred prosecution

as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license. [1995 c 332 § 1; 1994 c 275 § 13; 1989 c 337 § 8; 1987 c 22 § 1. Prior: 1986 c 153 § 5; 1986 c 64 § 1; 1985 c 407 § 3; 1983 c 165 § 2; 1983 c 165 § 1; 1981 c 260 § 11; prior: 1979 ex.s. c 176 § 3; 1979 ex.s. c 136 § 59; 1979 c 158 § 151; 1975 1st ex.s. c 287 § 4; 1969 c 1 § 1 (Initiative Measure No. 242, approved November 5, 1968).]

Severability—1995 c 332: "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." [1995 c 332 § 23.]

Effective dates—1995 c 332: "This act shall take effect September 1, 1995, except for sections 13 and 22 of this act which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 332 § 24.]

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Effective dates—1985 c 407: See note following RCW 46.04.480.

Legislative finding, intent—1983 c 165: "The legislature finds that previous attempts to curtail the incidence of driving while intoxicated have been inadequate. The legislature further finds that property loss, injury, and death caused by drinking drivers have reached unacceptable levels. This act is intended to convey the seriousness with which the legislature views this problem. To that end the legislature seeks to insure swift and certain punishment for those who drink and drive. The legislature does not intend to discourage or deter courts and other agencies from directing or providing treatment for problem drinkers. However, it is the intent that such treatment, where appropriate, be in addition to and not in lieu of the sanctions to be applied to all those convicted of driving while intoxicated." [1983 c 165 § 44.]

Effective dates—1983 c 165: "Sections 2, 3 through 12, 14, 16, 18, 22, 24, and 26 of chapter 165, Laws of 1983 shall take effect on January 1, 1986. The remainder of chapter 165, Laws of 1983 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. The director of licensing may immediately take such steps as are necessary to insure that all sections of chapter 165, Laws of 1983 are implemented on their respective effective dates." [1984 c 219 § 1; 1983 c 165 § 47.]

Severability—1983 c 165: "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 165 § 48.]

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability, implied consent law—1969 c 1: See RCW 46.20.911.

Liability of medical personnel withdrawing blood: RCW 46.61.508.

Refusal of alcohol test—Admissibility as evidence: RCW 46.61.517.

46.20.309 Recodified as RCW 46.61.503. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.20.3101 Implied consent—License sanctions, length of. Pursuant to RCW 46.20.308, the department shall suspend, revoke, or deny the arrested person's license, permit, or privilege to drive as follows:

(1) In the case of a person who has refused a test or tests:

(a) For a first refusal within five years, where there has not been a previous incident within five years that resulted in administrative action under this section, revocation or denial for one year;

(b) For a second or subsequent refusal within five years, or for a first refusal where there has been one or more previous incidents within five years that have resulted in administrative action under this section, revocation or denial for two years or until the person reaches age twenty-one, whichever is longer. A revocation imposed under this subsection (1)(b) shall run consecutively to the period of any suspension, revocation, or denial imposed pursuant to a criminal conviction arising out of the same incident.

(2) In the case of an incident where a person has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.10 or more:

(a) For a first incident within five years, where there has not been a previous incident within five years that resulted in administrative action under this section, placement in probationary status as provided in RCW 46.20.355;

(b) For a second or subsequent incident within five years, revocation or denial for two years.

(3) In the case of an incident where a person under age twenty-one has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.02 or more:

(a) For a first incident within five years, suspension or denial for ninety days;

(b) For a second or subsequent incident within five years, revocation or denial for one year or until the person reaches age twenty-one, whichever is longer. [1995 c 332 § 3.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

46.20.311 Duration of license sanctions—Reissuance or renewal. (1) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as specifically permitted under RCW 46.20.342 or other provision of law. Except for a suspension under RCW 46.20.289 and 46.20.291(5), whenever the license or driving privilege of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the suspension shall remain in effect until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reinstatement until enrollment and participation in an approved program has been established and the person is otherwise

qualified. The department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of twenty dollars. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, or is the result of administrative action under RCW 46.20.308, the reissue fee shall be fifty dollars.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the license or privilege renewed or restored until: (a) After the expiration of one year from the date the license or privilege to drive was revoked; (b) after the expiration of the applicable revocation period provided by RCW 46.20.3101 or 46.61.5055; (c) after the expiration of two years for persons convicted of vehicular homicide; or (d) after the expiration of the applicable revocation period provided by RCW 46.20.265. After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reissue fee in the amount of twenty dollars, but if the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be fifty dollars. If the revocation is the result of a violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reissuance of a license, permit, or privilege to drive until enrollment and participation in an approved program has been established and the person is otherwise qualified. Except for a revocation under RCW 46.20.265, the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the department shall not issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways.

(3) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue to the person any new or renewal license until the person pays a reissue fee of twenty dollars. If the suspension is the result of a violation of the laws of this or any other state, province, or other jurisdiction involving (a) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (b) the refusal to submit to a chemical test of the driver's blood alcohol content, the reissue fee shall be fifty dollars. [1995 c 332 § 11; 1994 c 275 § 27; 1993 c 501 § 5; 1990 c 250 § 45; 1988 c 148 § 9. Prior: 1985 c 407 § 4; 1985 c 211 § 1; 1984 c 258 § 325; 1983 c 165 § 18; 1983 c 165 § 17; 1982 c 212 § 5; 1981 c 91 § 1; 1979 ex.s. c 136 § 60; 1973 1st ex.s. c 36 § 1; 1969 c 1 § 2 (Initiative Measure No. 242, approved November 5, 1968); 1967 c 167 § 5; 1965 ex.s. c 121 § 27.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Severability—1990 c 250: See note following RCW 46.16.301.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

Effective dates—1985 c 407: See note following RCW 46.04.480.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability, implied consent law—1969 c 1: See RCW 46.20.911.

46.20.355 Alcohol violator—Probationary license.

(1) Upon placing a license, permit, or privilege to drive in probationary status under RCW 46.20.3101(2)(a), or upon receipt of an abstract indicating a deferred prosecution has been granted under RCW 10.05.060, or upon receipt of a notice of conviction of RCW 46.61.502 or 46.61.504, the department of licensing shall order the person to surrender any Washington state driver's license that may be in his or her possession. The department shall revoke the license, permit, or privilege to drive of any person who fails to surrender it as required by this section for one year, unless the license has been previously surrendered to the department, a law enforcement officer, or a court, or the person has completed an affidavit of lost, stolen, destroyed, or previously surrendered license, such revocation to take effect thirty days after notice is given of the requirement for license surrender.

(2) The department shall place a person's driving privilege in probationary status as required by RCW 10.05.060, 46.20.308, or 46.61.5055 for a period of five years from the date the probationary status is required to go into effect.

(3) Following receipt of an abstract indicating a deferred prosecution has been granted under RCW 10.05.060, or following receipt of a sworn report under RCW 46.20.308 that requires immediate placement in probationary status under RCW 46.20.3101(2)(a), or upon reinstatement or reissuance of a driver's license suspended or revoked as the result of a conviction of RCW 46.61.502 or 46.61.504, the department shall require the person to obtain a probationary license in order to operate a motor vehicle in the state of Washington, except as otherwise exempt under RCW 46.20.025. The department shall not issue the probationary license unless the person is otherwise qualified for licensing, and the person must renew the probationary license on the same cycle as the person's regular license would have been renewed until the expiration of the five-year probationary status period imposed under subsection (2) of this section.

(4) For each original issue or renewal of a probationary license under this section, the department shall charge a fee of fifty dollars in addition to any other licensing fees required. Except for when renewing a probationary license, the department shall waive the fifty-dollar fee if the person has a probationary license in his or her possession at the time a new probationary license is required.

(5) A probationary license shall enable the department and law enforcement personnel to determine that the person is on probationary status. The fact that a person's driving privilege is in probationary status or that the person has been issued a probationary license shall not be a part of the person's record that is available to insurance companies. [1995 1st sp.s. c 17 § 1; 1995 c 332 § 4; 1994 c 275 § 8.]

Effective date—1995 1st sp.s. c 17: "This act shall take effect September 1, 1995." [1995 1st sp.s. c 17 § 3.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.20.365 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.20.391 Occupational driver's license—Application—Eligibility—Restrictions—Cancellation. (1) Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide or vehicular assault, may submit to the department an application for an occupational driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is engaged in an occupation or trade that makes it essential that the petitioner operate a motor vehicle, may issue an occupational driver's license and may set definite restrictions as provided in RCW 46.20.394. No person may petition for, and the department shall not issue, an occupational driver's license that is effective during the first thirty days of any suspension or revocation imposed for a violation of RCW 46.61.502 or 46.61.504. A person aggrieved by the decision of the department on the application for an occupational driver's license may request a hearing as provided by rule of the department.

(2) An applicant for an occupational driver's license is eligible to receive such license only if:

(a) Within one year immediately preceding the date of the offense that gave rise to the present conviction, the applicant has not committed any offense relating to motor vehicles for which suspension or revocation of a driver's license is mandatory; and

(b) Within five years immediately preceding the date of the offense that gave rise to the present conviction, the applicant has not committed any of the following offenses: (i) Driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor; (ii) vehicular homicide under RCW 46.61.520; or (iii) vehicular assault under RCW 46.61.522; and

(c) The applicant is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle; and

(d) The applicant files satisfactory proof of financial responsibility pursuant to chapter 46.29 RCW.

(3) The director shall cancel an occupational driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of an offense that pursuant to chapter 46.20 RCW would warrant suspension or revocation of a regular driver's license. The cancellation is effective as of

the date of the conviction, and continues with the same force and effect as any suspension or revocation under this title. [1995 c 332 § 12; 1994 c 275 § 29; 1985 c 407 § 5; 1983 c 165 § 24; 1983 c 165 § 23; 1983 c 164 § 4; 1979 c 61 § 13; 1973 c 5 § 1.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Effective dates—1985 c 407: See note following RCW 46.04.480.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.20.435 Impoundment for driver's license violations—Release, when—Court hearing. (1) Upon determining that a person is operating a motor vehicle without a valid driver's license in violation of RCW 46.20.021 or with a license that has been expired for ninety days or more, or with a suspended or revoked license in violation of RCW 46.20.342 or 46.20.420, a law enforcement officer may immediately impound the vehicle that the person is operating.

(2) The officer shall not release the vehicle impounded under subsection (1) of this section until the owner of the vehicle:

(a) Establishes that any penalties, fines, or forfeitures owed by the registered owner of the vehicle that was impounded have been satisfied; and

(b) Pays the reasonable costs of such impoundment and storage.

(3) Whenever a vehicle has been impounded by a law enforcement officer, the officer shall immediately serve upon the driver of the impounded vehicle a notice informing the recipient of his or her right to a hearing in the district court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing or the amount of towing and storage charges. A request for a hearing shall be made in writing on the form provided for that purpose and must be received by the district court within ten days of the date of the impound. If the hearing request is not received by the district court within the ten-day period, the right to a hearing is waived and the driver is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the district court shall proceed to hear and determine the validity of the impoundment.

(4)(a) The district court, within five days after the request for a hearing, shall notify the driver in writing of the hearing date and time.

(b) At the hearing, the person requesting the hearing may produce any relevant evidence to show that the impoundment was not proper.

(c) At the conclusion of the hearing, the district court shall determine whether the impoundment was proper, whether the driver was responsible for any penalties, fines, or forfeitures owed or due at the time of the impoundment, and whether they have been satisfied.

(d) A certified transcript or abstract of the driving record of the driver, as maintained by the department, is admissible in evidence in any hearing and is prima facie evidence of the status of the driving privilege of the person

named in it at the time of the impoundment and whether there were penalties, fines, or forfeitures due and owing by the person named in it at the time the impoundment occurred. [1995 c 360 § 9; 1985 c 391 § 1; 1982 c 8 § 1.]

Severability—1982 c 8: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 8 § 2.]

Chapter 46.25

UNIFORM COMMERCIAL DRIVER'S LICENSE ACT

Sections

46.25.050 Commercial driver's license required—Exceptions, restrictions.

46.25.050 Commercial driver's license required—Exceptions, restrictions. (1) Drivers of commercial motor vehicles shall obtain a commercial driver's license as required under this chapter by April 1, 1992. The director shall establish a program to convert all qualified commercial motor vehicle drivers by that date. After April 1, 1992, except when driving under a commercial driver's instruction permit and a valid automobile or classified license and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds and is in immediate possession of a commercial driver's license and applicable endorsements valid for the vehicle they are driving. However, this requirement does not apply to any person:

(a) Who is the operator of a farm vehicle, and the vehicle is:

(i) Controlled and operated by a farmer;

(ii) Used to transport either agricultural products, which in this section include Christmas trees and wood products harvested from private tree farms and transported by vehicles weighing no more than forty thousand pounds licensed gross vehicle weight, farm machinery, farm supplies, or any combination of those materials to or from a farm;

(iii) Not used in the operations of a common or contract motor carrier; and

(iv) Used within one hundred fifty miles of the person's farm; or

(b) Who is a fire fighter or law enforcement officer operating emergency equipment, and:

(i) The fire fighter or law enforcement officer has successfully completed a driver training course approved by the director; and

(ii) The fire fighter or law enforcement officer carries a certificate attesting to the successful completion of the approved training course; or

(c) Who is operating a recreational vehicle for noncommercial purposes. As used in this section, "recreational vehicle" includes a vehicle towing a horse trailer for a noncommercial purpose.

(2) No person may drive a commercial motor vehicle while his or her driving privilege is suspended, revoked, or canceled, while subject to disqualification, or in violation of an out-of-service order. Violations of this subsection shall

be punished in the same way as violations of RCW 46.20.342(1). [1995 c 393 § 1; 1990 c 56 § 1; 1989 c 178 § 7.]

Chapter 46.32

VEHICLE INSPECTION

Sections

46.32.080 Commercial vehicle safety enforcement. (*Effective January 1, 1996.*)

46.32.090 Fees.

46.32.100 Violations—Penalties. (*Effective January 1, 1996.*)

46.32.080 Commercial vehicle safety enforcement. (*Effective January 1, 1996.*) (1) The Washington state patrol is responsible for enforcement of safety requirements for commercial motor vehicles, including but not limited to terminal safety audits. Those carriers that have terminal operations in this state are subject to the patrol's terminal safety audits.

(2) This section does not apply to:

(a) Motor vehicles owned and operated by farmers in the transportation of their own farm, orchard, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal; or supplies or commodities to be used on the farm, orchard, or dairy;

(b) Commercial motor carriers subject to economic regulation under chapters 81.68 (auto transportation companies), 81.70 (passenger charter carriers), 81.77 (solid waste collection companies), 81.80 (motor freight carriers), and 81.90 (limousine charter carriers) RCW; and

(c) Vehicles exempted from registration by RCW 46.16.020. [1995 c 272 § 1.]

Transfer of powers, duties, and functions: "(1) All powers, duties, and functions of the utilities and transportation commission pertaining to safety inspections of commercial vehicles, including but not limited to terminal safety audits, except for those carriers subject to the economic regulation of the commission, are transferred to the Washington state patrol.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the Washington state patrol. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the utilities and transportation commission in carrying out the powers, functions, and duties transferred shall be made available to the Washington state patrol. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the Washington state patrol.

(b) Any appropriations made to the utilities and transportation commission for carrying out the powers, functions, and duties transferred shall, on January 1, 1996, be transferred and credited to the Washington state patrol.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the utilities and transportation commission engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the Washington state patrol. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the Washington state patrol to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service. These employees will only be transferred upon

successful completion of the Washington state patrol background investigation.

(4) All rules and all pending business before the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the Washington state patrol. All existing contracts and obligations remain in full force and shall be performed by the Washington state patrol.

(5) The transfer of the powers, duties, functions, and personnel of the utilities and transportation commission does not affect the validity of any act performed before January 1, 1996.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) Nothing contained in this section alters an existing collective bargaining unit or the provisions of an existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law." [1995 c 272 § 4.]

Effective dates—1995 c 272: See note following RCW 46.32.090.

46.32.090 Fees. The department shall collect a fee of ten dollars, in addition to all other fees and taxes, for each motor vehicle base plated in the state of Washington that is subject to highway inspections and terminal audits under RCW 46.32.080, at the time of registration and renewal of registration under chapter 46.16 or 46.87 RCW. Refunds will not be provided for fees paid under this section when the vehicle is no longer subject to RCW 46.32.080. The department may deduct an amount equal to the cost of administering the program. All remaining fees shall be deposited with the state treasurer and credited to the state patrol highway account of the motor vehicle fund. [1995 c 272 § 2.]

Effective dates—1995 c 272: "Section 2 of this act becomes effective with motor vehicle registration fees due or to become due January 1, 1996. Sections 1 and 3 through 6 of this act take effect January 1, 1996." [1995 c 272 § 7.]

46.32.100 Violations—Penalties. (*Effective January 1, 1996.*) In addition to all other penalties provided by law, a commercial motor vehicle that is subject to terminal safety audits under this chapter and an officer, agent, or employee of a company operating a commercial motor vehicle who violates or who procures, aids, or abets in the violation of this title or any order or rule of the state patrol is liable for a penalty of one hundred dollars for each violation. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

The penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the patrol describing the violation and advising the person that the penalty is due. The patrol may, upon written application for review, received within fifteen days, remit or mitigate a penalty provided for in this section or discontinue a prosecution to recover the penalty upon such terms it deems proper and may ascertain the facts upon all such applications in such manner and under such rules as it deems proper. If the amount of the penalty is not paid to the patrol within fifteen days after receipt of the notice imposing the penalty, or application for remission or mitigation has not been made within fifteen days after the violator has received notice of the disposition of the application, the attorney

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general shall bring an action in the name of the state of Washington in the superior court of Thurston county or of some other county in which the violator does business, to recover the penalty. In all such actions the procedure and rules of evidence are the same as an ordinary civil action except as otherwise provided in this chapter. All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund. [1995 c 272 § 3.]

Effective dates—1995 c 272: See note following RCW 46.32.090.

Chapter 46.37

VEHICLE LIGHTING AND OTHER EQUIPMENT

Sections

- 46.37.193 Signs on buses.
- 46.37.467 Vehicle with alternative fuel source—Placard required.
- 46.37.495 Safety chains for towing.
- 46.37.630 Private school buses.

46.37.193 Signs on buses. Every school bus and private carrier bus, in addition to any other equipment or distinctive markings required by this chapter, shall bear upon the front and rear thereof, above the windows thereof, plainly visible signs containing only the words "school bus" on a school bus and only the words "private carrier bus" on a private carrier bus in letters not less than eight inches in height, and in addition shall be equipped with visual signals meeting the requirements of RCW 46.37.190.

However, a private carrier bus that regularly transports children to and from a private school or in connection with school activities may display the words "school bus" in a manner provided in this section and need not comply with the requirements set forth in the most recent edition of "Specifications for School Buses" published by the superintendent of public instruction. [1995 c 141 § 2; 1990 c 241 § 10.]

46.37.467 Vehicle with alternative fuel source—Placard required. (1) Every automobile, truck, motorcycle, motor home, or off-road vehicle that is fueled by an alternative fuel source shall bear a reflective placard issued by the national fire protection association indicating that the vehicle is so fueled. Violation of this subsection is a traffic infraction.

(2) As used in this section "alternative fuel source" includes propane, compressed natural gas, liquid petroleum gas, or any chemically similar gas but does not include gasoline or diesel fuel.

(3) If a placard for a specific alternative fuel source has not been issued by the national fire protection association, a placard issued by the chief of the Washington state patrol, through the director of fire protection, shall be required. The chief of the Washington state patrol, through the director of fire protection, shall develop rules for the design, size, and placement of the placard which shall remain effective until a specific placard is issued by the national fire protection association. [1995 c 369 § 23; 1986 c 266 § 88; 1984 c 145 § 1; 1983 c 237 § 2.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Legislative finding—1983 c 237: "The legislature finds that vehicles using alternative fuel sources such as propane, compressed natural gas, liquid petroleum gas, or other hydrocarbon gas fuels require fire fighters to use a different technique if the vehicles catch fire. A reflective placard on such vehicles would warn fire fighters of the danger so they could react properly." [1983 c 237 § 1.]

46.37.495 Safety chains for towing. (1) "Safety chains" means flexible tension members connected from the front portion of the towed vehicle to the rear portion of the towing vehicle for the purpose of retaining connection between towed and towing vehicle in the event of failure of the connection provided by the primary connecting system, as prescribed by rule of the Washington state patrol.

(2) The term "safety chains" includes chains, cables, or wire ropes, or an equivalent flexible member meeting the strength requirements prescribed by rule of the Washington state patrol.

(3) A tow truck towing a vehicle and a vehicle towing a trailer must use safety chains. Failure to comply with this section is a class 1 civil infraction punishable under RCW 7.80.120. [1995 c 360 § 1.]

Tow trucks: Chapter 46.55 RCW.

46.37.630 Private school buses. A private school bus is subject to the requirements set forth in the National Standards for School Buses established by the national safety council in effect at the time of the bus manufacture, as adopted by rule by reference by the chief of the Washington state patrol. A private school bus manufactured before 1980 must meet the minimum standards set forth in the 1980 edition of the National Standards for School Buses. [1995 c 141 § 3.]

automobiles or boats may have a front overhang of three feet and a rear overhang of four feet beyond this allowed length. "Stinger-steered," as used in this section, means the coupling device is located behind the tread of the tires of the last axle of the towing vehicle.

These length limitations do not apply to vehicles transporting poles, pipe, machinery, or other objects of a structural nature that cannot be dismembered and operated by a public utility when required for emergency repair of public service facilities or properties, but in respect to night transportation every such vehicle and load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of the load.

The length limitations described in this section are exclusive of safety and energy conservation devices, such as mud flaps and splash and spray suppressant devices, refrigeration units or air compressors, and other devices that the department determines to be necessary for safe and efficient operation of commercial vehicles. No device excluded under this paragraph from the limitations of this section may have, by its design or use, the capability to carry cargo. [1995 c 26 § 1; 1994 c 59 § 2; 1993 c 301 § 1; 1991 c 113 § 1; 1990 c 28 § 1; 1985 c 351 § 1; 1984 c 104 § 1; 1983 c 278 § 2; 1979 ex.s. c 113 § 4; 1977 ex.s. c 64 § 1; 1975-'76 2nd ex.s. c 53 § 1; 1974 ex.s. c 76 § 2; 1971 ex.s. c 248 § 2; 1967 ex.s. c 145 § 61; 1963 ex.s. c 3 § 52; 1961 ex.s. c 21 § 36; 1961 c 12 § 46.44.030. Prior: 1959 c 319 § 25; 1957 c 273 § 14; 1951 c 269 § 22; prior: 1949 c 221 § 1, part; 1947 c 200 § 5, part; 1941 c 116 § 1, part; 1937 c 189 § 49, part; Rem. Supp. 1949 § 6360-49, part.]

Effective date—1995 c 26: "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, 1995." [1995 c 26 § 2.]

Severability—1967 ex.s. c 145: See RCW 47.98.043.

**Chapter 46.44
SIZE, WEIGHT, LOAD**

Sections

- 46.44.030 Maximum lengths.
- 46.44.041 Maximum gross weights—Wheelbase and axle factors.
- 46.44.0941 Special permits—Fees.
- 46.44.175 Penalties—Hearing.

46.44.030 Maximum lengths. It is unlawful for any person to operate upon the public highways of this state any vehicle having an overall length, with or without load, in excess of forty feet. This restriction does not apply to (1) a municipal transit vehicle, (2) auto stage, private carrier bus or school bus with an overall length not to exceed forty-six feet, or (3) an articulated auto stage with an overall length not to exceed sixty-one feet.

It is unlawful for any person to operate upon the public highways of this state any combination consisting of a tractor and semitrailer that has a semitrailer length in excess of fifty-three feet or a combination consisting of a tractor and two trailers in which the combined length of the trailers exceeds sixty-one feet, with or without load.

It is unlawful for any person to operate on the highways of this state any combination consisting of a truck and trailer, or log truck and stinger-steered pole trailer, with an overall length, with or without load, in excess of seventy-five feet. However, a combination of vehicles transporting

46.44.041 Maximum gross weights—Wheelbase and axle factors. No vehicle or combination of vehicles shall operate upon the public highways of this state with a gross load on any single axle in excess of twenty thousand pounds, or upon any group of axles in excess of that set forth in the following table, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each, if the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six feet or more.

Dis- tance in feet between the ex- tremes of any group of 2 or more consecu- tive axles	Maximum load in pounds carried on any group of 2 or more consecutive axles							
	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles	9 axles
4	34,000							
5	34,000							
6	34,000							
7	34,000							
8 & less								

	34,000	34,000						
more than 8	38,000	42,000						
9	39,000	42,500						
10	40,000	43,500						
11		44,000						
12		45,000	50,000					
13		45,500	50,500					
14		46,500	51,500					
15		47,000	52,000					
16		48,000	52,500	58,000				
17		48,500	53,500	58,500				
18		49,500	54,000	59,000				
19		50,000	54,500	60,000				
20		51,000	55,500	60,500	66,000			
21		51,500	56,000	61,000	66,500			
22		52,500	56,500	61,500	67,000			
23		53,000	57,500	62,500	68,000			
24		54,000	58,000	63,000	68,500	74,000		
25		54,500	58,500	63,500	69,000	74,500		
26		55,500	59,500	64,000	69,500	75,000		
27		56,000	60,000	65,000	70,000	75,500		
28		57,000	60,500	65,500	71,000	76,500	82,000	
29		57,500	61,500	66,000	71,500	77,000	82,500	
30		58,500	62,000	66,500	72,000	77,500	83,000	
31		59,000	62,500	67,500	72,500	78,000	83,500	
32		60,000	63,500	68,000	73,000	78,500	84,500	90,000
33		64,000	64,000	68,500	74,000	79,000	85,000	90,500
34		64,500	69,000	74,500	80,000	85,500	91,000	
35		65,500	70,000	75,000	80,500	86,000	91,500	
36		66,000	70,500	75,500	81,000	86,500	92,000	
37		66,500	71,000	76,000	81,500	87,000	93,000	
38		67,500	71,500	77,000	82,000	87,500	93,500	
39		68,000	72,500	77,500	82,500	88,500	94,000	
40		68,500	73,000	78,000	83,500	89,000	94,500	
41		69,500	73,500	78,500	84,000	89,500	95,000	
42		70,000	74,000	79,000	84,500	90,000	95,500	
43		70,500	75,000	80,000	85,000	90,500	96,000	
44		71,500	75,500	80,500	85,500	91,000	96,500	
45		72,000	76,000	81,000	86,000	91,500	97,500	
46		72,500	76,500	81,500	87,000	92,500	98,000	
47		73,500	77,500	82,000	87,500	93,000	98,500	
48		74,000	78,000	83,000	88,000	93,500	99,000	
49		74,500	78,500	83,500	88,500	94,000	99,500	
50		75,500	79,000	84,000	89,000	94,500	100,000	
51		76,000	80,000	84,500	89,500	95,000	100,500	
52		76,500	80,500	85,000	90,500	95,500	101,000	
53		77,500	81,000	86,000	91,000	96,500	102,000	
54		78,000	81,500	86,500	91,500	97,000	102,500	
55		78,500	82,500	87,000	92,000	97,500	103,000	
56		79,500	83,000	87,500	92,500	98,000	103,500	
57		80,000	83,500	88,000	93,000	98,500	104,000	
58			84,000	89,000	94,000	99,000	104,500	
59			85,000	89,500	94,500	99,500	105,500	
60			85,500	90,000	95,000	100,500	105,500	
61			86,000	90,500	95,500	101,000	105,500	
62			91,000	96,000	86,500	101,500	105,500	
63			87,500	92,000	96,500	102,000	105,500	
64			88,000	92,500	97,500	102,500	105,500	
65			88,500	93,000	98,000	103,000	105,500	
66			89,000	93,500	98,500	103,500	105,500	
67			90,000	94,000	99,000	104,500	105,500	
68			90,500	95,000	99,500	105,000	105,500	
69			91,000	95,500	100,000	105,500	105,500	
70			92,000	96,000	101,000	105,500	105,500	

When inches are involved: Under six inches take lower, six inches or over take higher. The maximum load on any axle in any group of axles shall not exceed the single axle or tandem axle allowance as set forth in the table above.

The maximum axle and gross weights specified in this section are subject to the braking requirements set up for the service brakes upon any motor vehicle or combination of vehicles as provided by law.

Loads of not more than eighty thousand pounds which may be legally hauled in the state bordering this state which also has a sales tax, are legal in this state when moving to a port district within four miles of the bordering state except on the interstate system. This provision does not allow the

operation of a vehicle combination consisting of a truck tractor and three trailers.

Notwithstanding anything contained herein, a vehicle or combination of vehicles in operation on January 4, 1975, may operate upon the public highways of this state, including the interstate system within the meaning of section 127 of Title 23, United States Code, with an overall gross weight upon a group of two consecutive sets of dual axles which was lawful in this state under the laws, regulations, and procedures in effect in this state on January 4, 1975. [1995 c 171 § 1. Prior: 1993 c 246 § 1; 1993 c 102 § 3; prior: 1988 c 229 § 1; 1988 c 6 § 2; 1985 c 351 § 3; 1977 c 81 § 2; 1975-'76 2nd ex.s. c 64 § 22.]

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: See note following RCW 46.16.070.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.0941 Special permits—Fees. The following fees, in addition to the regular license and tonnage fees, shall be paid for all movements under special permit made upon state highways. All funds collected, except the amount retained by authorized agents of the department as provided in RCW 46.44.096, shall be forwarded to the state treasury and shall be deposited in the motor vehicle fund:

- All overlegal loads, except overweight, single trip \$ 10.00
- Continuous operation of overlegal loads having either overwidth or overheight features only, for a period not to exceed thirty days \$ 20.00
- Continuous operations of overlegal loads having overlength features only, for a period not to exceed thirty days \$ 10.00
- Continuous operation of a combination of vehicles having one trailing unit that exceeds fifty-three feet and is not more than fifty-six feet in length, for a period of one year \$ 100.00
- Continuous operation of a combination of vehicles having two trailing units which together exceed sixty-one feet and are not more than sixty-eight feet in length, for a period of one year \$ 100.00
- Continuous operation of a three-axle fixed load vehicle having less than 65,000 pounds gross weight, for a period not to exceed thirty days \$ 70.00
- Continuous operation of a four-axle fixed load vehicle meeting the requirements of RCW 46.44.091(1) and weighing less than 86,000 pounds gross weight, not to exceed thirty days \$ 90.00
- Continuous movement of a mobile home or manufactured home having nonreducible features not to exceed eighty-five feet in total length and fourteen feet in width, for a period of one year \$ 150.00
- Continuous operation of a two or three-axle collection truck, actually engaged in the collection of solid waste or recyclables,

or both, under chapter 81.77 or 35.21 RCW or by contract under RCW 36.58.090, for one year with an additional six thousand pounds more than the weight authorized in RCW 46.16.070 on the rear axle of a two-axle truck or eight thousand pounds for the tandem axles of a three-axle truck. RCW 46.44.041 and 46.44.091 notwithstanding, the tire limits specified in RCW 46.44.042 apply, but none of the excess weight is valid or may be permitted on any part of the federal interstate highway system \$ 42.00 per thousand pounds

The department may issue any of the above-listed permits that involve height, length, or width for an expanded period of consecutive months, not to exceed one year.

Continuous operation of farm implements under a permit issued as authorized by RCW 46.44.140 by:

- (1) Farmers in the course of farming activities, for any three-month period \$ 10.00
- (2) Farmers in the course of farming activities, for a period not to exceed one year \$ 25.00
- (3) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for any three-month period \$ 25.00
- (4) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for a period not to exceed one year \$ 100.00

Overweight Fee Schedule

Excess weight over legal capacity, as provided in RCW 46.44.041.	Cost per mile.
0- 9,999 pounds	\$.07
10,000-14,999 pounds	\$.14
15,000-19,999 pounds	\$.21
20,000-24,999 pounds	\$.28
25,000-29,999 pounds	\$.35
30,000-34,999 pounds	\$.49
35,000-39,999 pounds	\$.63
40,000-44,999 pounds	\$.79
45,000-49,999 pounds	\$.93
50,000-54,999 pounds	\$ 1.14
55,000-59,999 pounds	\$ 1.35
60,000-64,999 pounds	\$ 1.56
65,000-69,999 pounds	\$ 1.77
70,000-74,999 pounds	\$ 2.12
75,000-79,999 pounds	\$ 2.47
80,000-84,999 pounds	\$ 2.82
85,000-89,999 pounds	\$ 3.17
90,000-94,999 pounds	\$ 3.52
95,000-99,999 pounds	\$ 3.87
100,000 pounds	\$ 4.25

The fee for weights in excess of 100,000 pounds is \$4.25 plus fifty cents for each 5,000 pound increment or portion thereof exceeding 100,000 pounds.

PROVIDED: (a) The minimum fee for any overweight permit shall be \$14.00, (b) the fee for issuance of a duplicate permit shall be \$14.00, (c) when computing overweight fees

prescribed in this section or in RCW 46.44.095 that result in an amount less than even dollars the fee shall be carried to the next full dollar if fifty cents or over and shall be reduced to the next full dollar if forty-nine cents or under.

The fees levied in this section and RCW 46.44.095 do not apply to vehicles owned and operated by the state of Washington, a county within the state, a city or town or metropolitan municipal corporation within the state, or the federal government. [1995 c 171 § 2. Prior: 1994 c 172 § 2; 1994 c 59 § 1; 1993 c 102 § 4; 1990 c 42 § 107; 1989 c 398 § 1; 1985 c 351 § 5; 1983 c 278 § 3; 1979 ex.s. c 113 § 5; 1975-'76 2nd ex.s. c 64 § 16; 1975 1st ex.s. c 168 § 2; 1973 1st ex.s. c 1 § 3; 1971 ex.s. c 248 § 3; 1967 c 174 § 8; 1965 c 137 § 2.]

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: See note following RCW 46.16.070.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

Effective date—1975 1st ex.s. c 168: See note following RCW 46.44.091.

46.44.175 Penalties—Hearing. Failure of any person or agent acting for a person who causes to be moved or moves a mobile home as defined in RCW 46.04.302 upon public highways of this state and failure to comply with any of the provisions of RCW 46.44.170 and 46.44.173 is a traffic infraction for which a penalty of not less than one hundred dollars or more than five hundred dollars shall be assessed. In addition to the above penalty, the department of transportation or local authority may withhold issuance of a special permit or suspend a continuous special permit as provided by RCW 46.44.090 and 46.44.093 for a period of not less than thirty days.

Any person who shall alter, reuse, transfer, or forge the decal required by RCW 46.44.170, or who shall display a decal knowing it to have been forged, reused, transferred, or altered, shall be guilty of a gross misdemeanor.

Any person or agent who is denied a special permit or whose special permit is suspended may upon request receive a hearing before the department of transportation or the local authority having jurisdiction. The department or the local authority after such hearing may revise its previous action. [1995 c 38 § 11; 1994 c 301 § 15; 1985 c 22 § 2; 1979 ex.s. c 136 § 78; 1977 ex.s. c 22 § 4.]

Acts of municipal officers ratified and confirmed—1995 c 38: See note following RCW 3.02.045.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1977 ex.s. c 22: See note following RCW 46.04.302.

Chapter 46.52 ACCIDENTS—REPORTS—ABANDONED VEHICLES

- Sections
- 46.52.100 Record of traffic charges—Reports of court—District court venue—Driving under influence of liquor or drugs.

46.52.100 Record of traffic charges—Reports of court—District court venue—Driving under influence of liquor or drugs. Every district court, municipal court, and clerk of superior court shall keep or cause to be kept a record of every traffic complaint, traffic citation, notice of infraction, or other legal form of traffic charge deposited with or presented to the court or a traffic violations bureau, and shall keep a record of every official action by the court or its traffic violations bureau in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, finding that a traffic infraction has been committed, dismissal of a notice of infraction, and the amount of fine, forfeiture, or penalty resulting from every traffic complaint, citation, or notice of infraction deposited with or presented to the district court, municipal court, superior court, or traffic violations bureau.

The Monday following the conviction, forfeiture of bail, or finding that a traffic infraction was committed for violation of any provisions of this chapter or other law regulating the operating of vehicles on highways, every magistrate of the court or clerk of the court of record in which such conviction was had, bail was forfeited, or the finding made shall prepare and immediately forward to the director of licensing at Olympia an abstract of the record of the court covering the case, which abstract must be certified by the person so required to prepare the same to be true and correct. Report need not be made of any finding involving the illegal parking or standing of a vehicle.

The abstract must be made upon a form or forms furnished by the director and shall include the name and address of the party charged, the number, if any, of the party's driver's or chauffeur's license, the registration number of the vehicle involved if required by the director, the nature of the offense, the date of hearing, the plea, the judgment, whether the offense was an alcohol-related offense as defined in RCW 46.01.260(2), whether bail forfeited, whether the determination that a traffic infraction was committed was contested, and the amount of the fine, forfeiture, or penalty as the case may be.

Every court of record shall also forward a like report to the director upon the conviction of any person of a felony in the commission of which a vehicle was used.

The failure of any such judicial officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be grounds for removal therefrom.

The director shall keep all abstracts received hereunder at the director's office in Olympia and the same shall be open to public inspection during reasonable business hours.

Venue in all district courts shall be before one of the two nearest district judges in incorporated cities and towns nearest to the point the violation allegedly occurred: PROVIDED, That in counties with populations of one hundred twenty-five thousand or more such cases may be tried in the county seat at the request of the defendant.

It shall be the duty of the officer, prosecuting attorney, or city attorney signing the charge or information in any case involving a charge of driving under the influence of intoxicating liquor or any drug immediately to make request to the director for an abstract of convictions and forfeitures which the director shall furnish. [1995 c 219 § 3; 1994 c 275 § 15; 1991 c 363 § 123; 1987 c 3 § 18; 1985 c 302 § 6; 1983 c 2

§ 12. Prior: 1979 ex.s. c 176 § 4; 1979 ex.s. c 136 § 81; 1979 c 158 § 163; 1967 c 32 § 60; 1961 c 12 § 46.52.100; prior: 1955 c 393 § 2; 1949 c 196 § 15; 1937 c 189 § 142; Rem. Supp. 1949 § 6360-142.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Severability—1987 c 3: See note following RCW 3.46.020.

Severability—1983 c 2: See note following RCW 18.71.030.

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Chapter 46.55

TOWING AND IMPOUNDMENT

(Formerly: Abandoned, unauthorized, and junk vehicles—Tow truck operators)

Sections

- 46.55.025 Registration or insurance required—Penalty.
- 46.55.063 Fees, schedules, contracts, invoices.
- 46.55.090 Storage, return requirements—Personal property—Combination endorsement for tow truck drivers—Viewing impounded vehicle.
- 46.55.100 Impound notice—Abandoned vehicle report—Owner information—Disposition report.
- 46.55.105 Responsibility of registered owner.
- 46.55.110 Notice to legal and registered owners.
- 46.55.120 Redemption of vehicles—Sale of unredeemed vehicles or personal property—Impoundment in violation of chapter.
- 46.55.140 Operator's lien, deficiency claim, liability.

46.55.025 Registration or insurance required—Penalty. A vehicle engaging in the business of recovery of disabled vehicles for monetary compensation, from or on a public road or highway must either be operated by a registered tow truck operator, or someone who at a minimum has insurance in a like manner and amount as prescribed in RCW 46.55.030(3), and have had their tow trucks inspected in a like manner as prescribed by RCW 46.55.040(1). The department shall adopt rules to enforce this section. Failure to comply with this section is a class 1 civil infraction punishable under RCW 7.80.120. [1995 c 360 § 2.]

46.55.063 Fees, schedules, contracts, invoices. (1) An operator shall file a fee schedule with the department. All filed fees must be adequate to cover the costs of service provided. No fees may exceed those filed with the department. At least ten days before the effective date of any change in an operator's fee schedule, the registered tow truck operator shall file the revised fee schedule with the department.

(2) Towing contracts with private property owners shall be in written form and state the hours of authorization to impound, the persons empowered to authorize the impounds, and the present charge of a private impound for the classes of tow trucks to be used in the impound, and must be retained in the files of the registered tow truck operator for three years.

(3) A fee that is charged for tow truck service must be calculated on an hourly basis, and after the first hour must be charged to the nearest quarter hour.

(4) Fees that are charged for the storage of a vehicle, or for other items of personal property registered or titled with the department, must be calculated on a twenty-four hour basis and must be charged to the nearest half day from the time the vehicle arrived at the secure storage area. However, items of personal property registered or titled with the department that are wholly contained within an impounded vehicle are not subject to additional storage fees; they are, however, subject to satisfying the underlying lien for towing and storage of the vehicle in which they are contained.

(5) All billing invoices that are provided to the redeemer of the vehicle, or other items of personal property registered or titled with the department, must be itemized so that the individual fees are clearly discernable. [1995 c 360 § 3; 1989 c 111 § 7.]

46.55.090 Storage, return requirements—Personal property—Combination endorsement for tow truck drivers—Viewing impounded vehicle. (1) All vehicles impounded shall be taken to the nearest storage location that has been inspected and is listed on the application filed with the department.

(2) All vehicles shall be handled and returned in substantially the same condition as they existed before being towed.

(3) All personal belongings and contents in the vehicle, with the exception of those items of personal property that are registered or titled with the department, shall be kept intact, and shall be returned to the vehicle's owner or agent during normal business hours upon request and presentation of a driver's license or other sufficient identification. Personal belongings, with the exception of those items of personal property that are registered or titled with the department, shall not be sold at auction to fulfill a lien against the vehicle.

(4) All personal belongings, with the exception of those items of personal property that are registered or titled with the department, not claimed before the auction shall be turned over to the local law enforcement agency to which the initial notification of impoundment was given. Such personal belongings shall be disposed of pursuant to chapter 63.32 or 63.40 RCW.

(5) Tow truck drivers shall have a Washington state driver's license endorsed for the appropriate classification under chapter 46.25 RCW or the equivalent issued by another state.

(6) Any person who shows proof of ownership or written authorization from the impounded vehicle's registered or legal owner or the vehicle's insurer may view the vehicle without charge during normal business hours. [1995 c 360 § 4; 1989 c 178 § 25; 1987 c 311 § 7; 1985 c 377 § 9.]

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

46.55.100 Impound notice—Abandoned vehicle report—Owner information—Disposition report. (1) At the time of impoundment the registered tow truck operator

providing the towing service shall give immediate notification, by telephone or radio, to a law enforcement agency having jurisdiction who shall maintain a log of such reports. A law enforcement agency, or a private communication center acting on behalf of a law enforcement agency, shall within six to twelve hours of the impoundment, provide to a requesting operator the name and address of the legal and registered owners of the vehicle, and the registered owner of any personal property registered or titled with the department that is attached to or contained in or on the impounded vehicle, the vehicle identification number, and any other necessary, pertinent information. The initial notice of impoundment shall be followed by a written or electronic facsimile notice within twenty-four hours. In the case of a vehicle from another state, time requirements of this subsection do not apply until the requesting law enforcement agency in this state receives the information.

(2) The operator shall immediately send an abandoned vehicle report to the department for any vehicle, and for any items of personal property registered or titled with the department, that are in the operator's possession after the ninety-six hour abandonment period. Such report need not be sent when the impoundment is pursuant to a writ, court order, or police hold. The owner notification and abandonment process shall be initiated by the registered tow truck operator immediately following notification by a court or law enforcement officer that the writ, court order, or police hold is no longer in effect.

(3) Following the submittal of an abandoned vehicle report, the department shall provide the registered tow truck operator with owner information within seventy-two hours.

(4) Within fifteen days of the sale of an abandoned vehicle at public auction, the towing operator shall send a copy of the abandoned vehicle report showing the disposition of the abandoned vehicle and any other items of personal property registered or titled with the department to the crime information center of the Washington state patrol.

(5) If the operator sends an abandoned vehicle report to the department and the department finds no owner information, an operator may proceed with an inspection of the vehicle and any other items of personal property registered or titled with the department to determine whether owner identification is within the vehicle.

(6) If the operator finds no owner identification, the operator shall immediately notify the appropriate law enforcement agency, which shall search the vehicle and any other items of personal property registered or titled with the department for the vehicle identification number or other appropriate identification numbers and check the necessary records to determine the vehicle's or other property's owners. [1995 c 360 § 5; 1991 c 20 § 1; 1989 c 111 § 9; 1987 c 311 § 8; 1985 c 377 § 10.]

46.55.105 Responsibility of registered owner. (1) The abandonment of any vehicle creates a prima facie presumption that the last registered owner of record is responsible for the abandonment and is liable for costs incurred in removing, storing, and disposing of the abandoned vehicle, less amounts realized at auction.

(2) If an unauthorized vehicle is found abandoned under subsection (1) of this section and removed at the direction of

law enforcement, the last registered owner of record is guilty of a traffic infraction, unless the vehicle is redeemed as provided in RCW 46.55.120. In addition to any other monetary penalty payable under chapter 46.63 RCW, the court shall not consider all monetary penalties as having been paid until the court is satisfied that the person found to have committed the infraction has made restitution in the amount of the deficiency remaining after disposal of the vehicle under RCW 46.55.140.

(3) Filing a report of sale or transfer regarding the vehicle involved in accordance with RCW 46.12.101(1) or a vehicle theft report filed with a law enforcement agency relieves the last registered owner of liability under subsections (1) and (2) of this section.

(4) For the purposes of reporting notices of traffic infraction to the department under RCW 46.20.270 and 46.52.100, and for purposes of reporting notices of failure to appear, respond, or comply regarding a notice of traffic infraction to the department under RCW 46.63.070(5), a traffic infraction under subsection (2) of this section is not considered to be a standing, stopping, or parking violation.

(5) A notice of infraction for a violation of this section may be filed with a court of limited jurisdiction organized under Title 3, 35, or 35A RCW, or with a violations bureau subject to the court's jurisdiction. [1995 c 219 § 4; 1993 c 314 § 1.]

46.55.110 Notice to legal and registered owners. (1) When an unauthorized vehicle is impounded, the impounding towing operator shall notify the legal and registered owners of the impoundment of the unauthorized vehicle and the owners of any other items of personal property registered or titled with the department. The notification shall be sent by first-class mail within twenty-four hours after the impoundment to the last known registered and legal owners of the vehicle, and the owners of any other items of personal property registered or titled with the department, as provided by the law enforcement agency, and shall inform the owners of the identity of the person or agency authorizing the impound. The notification shall include the name of the impounding tow firm, its address, and telephone number. The notice shall also include the location, time of the impound, and by whose authority the vehicle was impounded. The notice shall also include the written notice of the right of redemption and opportunity for a hearing to contest the validity of the impoundment pursuant to RCW 46.55.120.

(2) In the case of an abandoned vehicle, or other item of personal property registered or titled with the department, within twenty-four hours after receiving information on the owners from the department through the abandoned vehicle report, the tow truck operator shall send by certified mail, with return receipt requested, a notice of custody and sale to the legal and registered owners.

(3) No notices need be sent to the legal or registered owners of an impounded vehicle or other item of personal property registered or titled with the department, if the vehicle or personal property has been redeemed. [1995 c 360 § 6; 1989 c 111 § 10; 1987 c 311 § 9; 1985 c 377 § 11.]

46.55.120 Redemption of vehicles—Sale of unredeemed vehicles or personal property—Impoundment in violation of chapter. (1) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, or 46.55.113 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department, or one who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle or items of personal property registered or titled with the department.

(b) The vehicle or other item of personal property registered or titled with the department shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards, or personal checks drawn on in-state banks if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm can determine through the customer's bank or a check verification service that the presented check would not be paid by the bank or guaranteed by the service, the towing firm may refuse to accept the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2)(a) The registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle, or item of personal property registered or titled with the department, written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the district court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section. If the

hearing request is not received by the district court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the district court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The district court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, the registered and legal owners of the vehicle or other item of personal property registered or titled with the department, and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper.

(c) At the conclusion of the hearing, the district court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the fees. The court may not adjust fees or charges that are in compliance with the posted or contracted rates.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle or other item of personal property registered or titled with the department shall bear no impoundment, towing, or storage fees, and any security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the registered tow truck operator against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vehicle, or other item of personal property registered or titled with the department, for reasonable damages for loss of the use of the vehicle during the time the same was impounded, for not less than fifty dollars per day, against the person or agency authorizing the impound. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO:
YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the Court located at in the sum of \$., in an action

entitled, Case No. YOU ARE FURTHER NOTIFIED that attorneys fees and costs will be awarded against you under RCW . . . if the judgment is not paid within 15 days of the date of this notice.

DATED this day of, 19. . .

Signature

Typed name and address of party mailing notice

(4) Any impounded abandoned vehicle or item of personal property registered or titled with the department that is not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(2) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle or item of personal property registered or titled with the department may be redeemed at any time before the start of the auction upon payment of the applicable towing and storage fees. [1995 c 360 § 7; 1993 c 121 § 3; 1989 c 111 § 11; 1987 c 311 § 12; 1985 c 377 § 12.]

46.55.140 Operator's lien, deficiency claim, liability.

(1) A registered tow truck operator who has a valid and signed impoundment authorization has a lien upon the impounded vehicle for services provided in the towing and storage of the vehicle, unless the impoundment is determined to have been invalid. The lien does not apply to personal property in or upon the vehicle that is not permanently attached to or is not an integral part of the vehicle except for items of personal property registered or titled with the department. The registered tow truck operator also has a deficiency claim against the registered owner of the vehicle for services provided in the towing and storage of the vehicle not to exceed the sum of five hundred dollars after deduction of the amount bid at auction, and for vehicles of over ten thousand pounds gross vehicle weight, the operator has a deficiency claim of one thousand dollars after deduction of the amount bid at auction, unless the impound is determined to be invalid. The limitation on towing and storage deficiency claims does not apply to an impound directed by a law enforcement officer. In no case may the cost of the auction or a buyer's fee be added to the amount charged for the vehicle at the auction, the vehicle's lien, or the overage due. A registered owner who has completed and filed with the department the seller's report as provided for by RCW 46.12.101 and has timely and properly filed the seller's report is relieved of liability under this section. The person named as the new owner of the vehicle on the timely and properly filed seller's report shall assume liability under this section.

(2) Any person who tows, removes, or otherwise disturbs any vehicle parked, stalled, or otherwise left on privately owned or controlled property, and any person owning or controlling the private property, or either of them, are liable to the owner or operator of a vehicle, or each of them, for consequential and incidental damages arising from any interference with the ownership or use of the vehicle which does not comply with the requirements of this chapter. [1995 c 360 § 8; 1992 c 200 § 1; 1991 c 20 § 2; 1989 c 111 § 13; 1987 c 311 § 14; 1985 c 377 § 14.]

Chapter 46.61
RULES OF THE ROAD

Sections

- 46.61.015 Obedience to police officers, flagmen, or fire fighters—Penalty.
 46.61.020 Refusal to give information to or cooperate with officer—Penalty.
 46.61.380 Rules for design, marking, and mode of operating school buses.
 46.61.503 Driver under twenty-one consuming alcohol—Penalties. through 46.61.5053 Repealed.
 46.61.5054 Alcohol violators—Additional fee—Distribution.
 46.61.5055 Alcohol violators—Penalty schedule.
 46.61.5056 Alcohol violators—Information school—Evaluation and treatment.
 46.61.5058 Alcohol violators—Vehicle seizure and forfeiture.
 46.61.506 Persons under influence of intoxicating liquor or drug—Evidence—Tests—Information concerning tests.
 46.61.5151 Sentences—Intermittent fulfillment—Restrictions.
 46.61.625 Riding in trailers or towed vehicles.

46.61.015 Obedience to police officers, flagmen, or fire fighters—Penalty. No person shall wilfully fail or refuse to comply with any lawful order or direction of any duly authorized flagman or any police officer or fire fighter invested by law with authority to direct, control, or regulate traffic.

A violation of this section is a misdemeanor. [1995 c 50 § 1; 1975 c 62 § 17; 1965 ex.s. c 155 § 3.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.020 Refusal to give information to or cooperate with officer—Penalty. It is unlawful for any person while operating or in charge of any vehicle to refuse when requested by a police officer to give his name and address and the name and address of the owner of such vehicle, or for such person to give a false name and address, and it is likewise unlawful for any such person to refuse or neglect to stop when signaled to stop by any police officer or to refuse upon demand of such police officer to produce his certificate of license registration of such vehicle, his insurance identification card, or his vehicle driver's license or to refuse to permit such officer to take any such license, card, or certificate for the purpose of examination thereof or to refuse to permit the examination of any equipment of such vehicle or the weighing of such vehicle or to refuse or neglect to produce the certificate of license registration of such vehicle, insurance card, or his vehicle driver's license when requested by any court. Any police officer shall on request produce evidence of his authorization as such.

A violation of this section is a misdemeanor. [1995 c 50 § 2; 1989 c 353 § 6; 1967 c 32 § 65; 1961 c 12 § 46.56.190. Prior: 1937 c 189 § 126; RRS § 6360-126; 1927 c 309 § 38; RRS § 6362-38. Formerly RCW 46.56.190.]

Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.

Severability—Effective date—1989 c 353: See RCW 46.30.900 and 46.30.901.

46.61.380 Rules for design, marking, and mode of operating school buses. The state superintendent of public

instruction shall adopt and enforce rules not inconsistent with the law of this state to govern the design, marking, and mode of operation of all school buses owned and operated by any school district or privately owned and operated under contract or otherwise with any school district in this state for the transportation of school children. Those rules shall by reference be made a part of any such contract or other agreement with the school district. Every school district, its officers and employees, and every person employed under contract or otherwise by a school district is subject to such rules. It is unlawful for any officer or employee of any school district or for any person operating any school bus under contract with any school district to violate any of the provisions of such rules. [1995 c 269 § 2501; 1984 c 7 § 70; 1961 c 12 § 46.48.150. Prior: 1937 c 189 § 131; RRS § 6360-131. Formerly RCW 46.48.150.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Severability—1984 c 7: See note following RCW 47.01.141.

Design and markings of school buses: RCW 46.37.190.

46.61.503 Driver under twenty-one consuming alcohol—Penalties. (1) Notwithstanding any other provision of this title, a person is guilty of driving a motor vehicle after consuming alcohol if the person operates a motor vehicle within this state and the person:

(a) Is under the age of twenty-one;

(b) Has, within two hours after operating the motor vehicle, an alcohol concentration of 0.02 or more, as shown by analysis of the person's breath or blood made under RCW 46.61.506.

(2) It is an affirmative defense to a violation of subsection (1) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.02 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the earlier of: (a) Seven days prior to trial; or (b) the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(3) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of 0.02 or more in violation of subsection (1) of this section.

(4) A violation of this section is a misdemeanor. [1995 c 332 § 2; 1994 c 275 § 10. Formerly RCW 46.20.309.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Driver under twenty-one, duties upon being stopped by law enforcement officer: RCW 46.61.5057.

46.61.5051 through 46.61.5053 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.61.5054 Alcohol violators—Additional fee—Distribution. (1)(a) In addition to penalties set forth in *RCW 46.61.5051 through 46.61.5053 until September 1, 1995, and RCW 46.61.5055 thereafter, a one hundred twenty-five dollar fee shall be assessed to a person who is either convicted, sentenced to a lesser charge, or given deferred prosecution, as a result of an arrest for violating RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the purpose of funding the Washington state toxicology laboratory and the Washington state patrol for grants and activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs.

(b) Upon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay.

(c) When a minor has been adjudicated a juvenile offender for an offense which, if committed by an adult, would constitute a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall assess the one hundred twenty-five dollar fee under (a) of this subsection. Upon a verified petition by a minor assessed the fee, the court may suspend payment of all or part of the fee if it finds that the minor does not have the ability to pay the fee.

(2) The fee assessed under subsection (1) of this section shall be collected by the clerk of the court and distributed as follows:

(a) Forty percent shall be subject to distribution under RCW 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

(b) The remainder of the fee shall be forwarded to the state treasurer who shall, through June 30, 1997, deposit: Fifty percent in the death investigations' account to be used solely for funding the state toxicology laboratory blood or breath testing programs; and fifty percent in the state patrol highway account to be used solely for funding activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs. Effective July 1, 1997, the remainder of the fee shall be forwarded to the state treasurer who shall deposit: Fifteen percent in the death investigations' account to be used solely for funding the state toxicology laboratory blood or breath testing programs; and eighty-five percent in the state patrol highway account to be used solely for funding activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs.

(3) This section applies to any offense committed on or after July 1, 1993. [1995 c 398 § 15; 1995 c 332 § 13; 1994 c 275 § 7.]

Reviser's note: *(1) RCW 46.61.5051, 46.61.5052, and 46.61.5053 were repealed by 1995 c 332 § 21, effective September 1, 1995.

(2) This section was amended by 1995 c 332 § 13 and by 1995 c 398 § 15, 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—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.61.5055 Alcohol violators—Penalty schedule. (1) A person who is convicted of a violation of RCW 46.61.502

or 46.61.504 and who has no prior offense within five years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By suspension of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of ninety days. The period of license, permit, or privilege suspension may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall suspend the offender's license, permit, or privilege; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By suspension of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of one hundred twenty days. The period of license, permit, or privilege suspension may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall suspend the offender's license, permit, or privilege.

(2) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within five years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the

person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than one year. Thirty days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of one year. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than one year. Forty-five days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of four hundred fifty days. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege.

(3) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or more prior offenses within five years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than one year. Ninety days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental

well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of two years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than one year. One hundred twenty days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of three years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege.

(4) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property.

(5) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(6) After expiration of any period of suspension or revocation of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(7)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding two years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and

proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a) (i) and (ii) or (a) (i) and (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(8)(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) An out-of-state conviction for a violation that would have been a violation of (a) (i), (ii), (iii), or (iv) of this subsection if committed in this state; or

(vi) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance.

(b) "Within five years" means that the arrest for a prior offense occurred within five years of the arrest for the current offense. [1995 1st sp.s. c 17 § 2; 1995 c 332 § 5.]

Effective date—1995 1st sp.s. c 17: See note following RCW 46.20.355.

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

46.61.5056 Alcohol violators—Information school—Evaluation and treatment. (1) A person subject to alcohol assessment and treatment under RCW 46.61.5055 shall be required by the court to complete a course in an alcohol information school approved by the department of social and health services or to complete more intensive treatment in a

program approved by the department of social and health services, as determined by the court. The court shall notify the department of licensing whenever it orders a person to complete a course or treatment program under this section.

(2) A diagnostic evaluation and treatment recommendation shall be prepared under the direction of the court by an alcoholism agency approved by the department of social and health services or a qualified probation department approved by the department of social and health services. A copy of the report shall be forwarded to the department of licensing. Based on the diagnostic evaluation, the court shall determine whether the person shall be required to complete a course in an alcohol information school approved by the department of social and health services or more intensive treatment in a program approved by the department of social and health services.

(3) Standards for approval for alcohol treatment programs shall be prescribed by the department of social and health services. The department of social and health services shall periodically review the costs of alcohol information schools and treatment programs.

(4) Any agency that provides treatment ordered under RCW 46.61.5055, shall immediately report to the appropriate probation department where applicable, otherwise to the court, and to the department of licensing any noncompliance by a person with the conditions of his or her ordered treatment. The court shall notify the department of licensing and the department of social and health services of any failure by an agency to so report noncompliance. Any agency with knowledge of noncompliance that fails to so report shall be fined two hundred fifty dollars by the department of social and health services. Upon three such failures by an agency within one year, the department of social and health services shall revoke the agency's approval under this section.

(5) The department of licensing and the department of social and health services may adopt such rules as are necessary to carry out this section. [1995 c 332 § 14; 1994 c 275 § 9.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.61.5058 Alcohol violators—Vehicle seizure and forfeiture. (1) Upon the arrest of a person or upon the filing of a complaint, citation, or information in a court of competent jurisdiction, based upon probable cause to believe that a person has violated RCW 46.61.502 or 46.61.504 or any similar municipal ordinance, if such person has a prior offense within five years as defined in RCW 46.61.5055, and where the person has been provided written notice that any transfer, sale, or encumbrance of such person's interest in the vehicle over which that person was actually driving or had physical control when the violation occurred, is unlawful pending either acquittal, dismissal, sixty days after conviction, or other termination of the charge, such person shall be prohibited from encumbering, selling, or transferring his or her interest in such vehicle, except as otherwise provided in (a), (b), and (c) of this subsection, until either acquittal, dismissal, sixty days after conviction, or other termination of

the charge. The prohibition against transfer of title shall not be stayed pending the determination of an appeal from the conviction.

(a) A vehicle encumbered by a bona fide security interest may be transferred to the secured party or to a person designated by the secured party;

(b) A leased or rented vehicle may be transferred to the lessor, rental agency, or to a person designated by the lessor or rental agency; and

(c) A vehicle may be transferred to a third party or a vehicle dealer who is a bona fide purchaser or may be subject to a bona fide security interest in the vehicle unless it is established that (i) in the case of a purchase by a third party or vehicle dealer, such party or dealer had actual notice that the vehicle was subject to the prohibition prior to the purchase, or (ii) in the case of a security interest, the holder of the security interest had actual notice that the vehicle was subject to the prohibition prior to the encumbrance of title.

(2) On conviction for a violation of either RCW 46.61.502 or 46.61.504 or any similar municipal ordinance where the person convicted has a prior offense within five years as defined in RCW 46.61.5055, the motor vehicle the person was driving or over which the person had actual physical control at the time of the offense, if the person has a financial interest in the vehicle, is subject to seizure and forfeiture pursuant to this section.

(3) A vehicle subject to forfeiture under this chapter may be seized by a law enforcement officer of this state upon process issued by a court of competent jurisdiction. Seizure of a vehicle may be made without process if the vehicle subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) Seizure under subsection (3) of this section automatically commences proceedings for forfeiture. The law enforcement agency under whose authority the seizure was made shall cause notice of the seizure and intended forfeiture of the seized vehicle to be served within fifteen days after the seizure on the owner of the vehicle seized, on the person in charge of the vehicle, and on any person having a known right or interest in the vehicle, including a community property interest. The notice of seizure may be served by any method authorized by law or court rule, including but not limited to service by certified mail with return receipt requested. Service by mail is complete upon mailing within the fifteen-day period after the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected on a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(5) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized vehicle within forty-five days of the seizure, the vehicle is deemed forfeited.

(6) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized vehicle within forty-five days of the seizure, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law

enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020, the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the vehicle is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the vehicle involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to be the legal owner or the person claiming to have the lawful right to possession of the vehicle. The seizing law enforcement agency shall promptly return the vehicle to the claimant upon a determination by the administrative law judge or court that the claimant is the present legal owner under Title 46 RCW or is lawfully entitled to possession of the vehicle.

(7) When a vehicle is forfeited under this chapter the seizing law enforcement agency may sell the vehicle, retain it for official use, or upon application by a law enforcement agency of this state release the vehicle to that agency for the exclusive use of enforcing this title; provided, however, that the agency shall first satisfy any bona fide security interest to which the vehicle is subject under subsection (1) (a) or (c) of this section.

(8) When a vehicle is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the vehicle, the disposition of the vehicle, the value of the vehicle at the time of seizure, and the amount of proceeds realized from disposition of the vehicle.

(9) Each seizing agency shall retain records of forfeited vehicles for at least seven years.

(10) Each seizing agency shall file a report including a copy of the records of forfeited vehicles with the state treasurer each calendar quarter.

(11) The quarterly report need not include a record of a forfeited vehicle that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(12) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of vehicles forfeited during the preceding calendar year. Money remitted shall be deposited in the public safety and education account.

(13) The net proceeds of a forfeited vehicle is the value of the forfeitable interest in the vehicle after deducting the cost of satisfying a bona fide security interest to which the vehicle is subject at the time of seizure; and in the case of

a sold vehicle, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(14) The value of a sold forfeited vehicle is the sale price. The value of a retained forfeited vehicle is the fair market value of the vehicle at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing. A seizing agency may, but need not, use an independent qualified appraiser to determine the value of retained vehicles. If an appraiser is used, the value of the vehicle appraised is net of the cost of the appraisal. [1995 c 332 § 6; 1994 c 139 § 1.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

46.61.506 Persons under influence of intoxicating liquor or drug—Evidence—Tests—Information concerning tests.

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.10, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

(2) The breath analysis shall be based upon grams of alcohol per two hundred ten liters of breath. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under the provisions of this section or RCW 46.61.502 or 46.61.504 shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

(4) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a physician, a registered nurse, or a qualified technician. This limitation shall not apply to the taking of breath specimens.

(5) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(6) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney. [1995 c 332

§ 18; 1994 c 275 § 26; 1987 c 373 § 4; 1986 c 153 § 4; 1979 ex.s. c 176 § 5; 1975 1st ex.s. c 287 § 1; 1969 c 1 § 3 (Initiative Measure No. 242, approved November 5, 1968).]

Rules of court: *Evidence of Breathalyzer, BAC Verifier, simulator solution tests—CrRLJ 6.13.*

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Legislative finding, purpose—Severability—1987 c 373: See notes following RCW 46.61.502.

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

Severability, implied consent law—1969 c 1: See RCW 46.20.911.

Arrest of driver under influence of intoxicating liquor or drugs: RCW 10.31.100.

46.61.5151 Sentences—Intermittent fulfillment—

Restrictions. A sentencing court may allow persons convicted of violating RCW 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in RCW 46.61.5055 in nonconsecutive or intermittent time periods. However, any mandatory minimum sentence under RCW 46.61.5055 shall be served consecutively unless suspended or deferred as otherwise provided by law. [1995 c 332 § 15; 1994 c 275 § 39; 1983 c 165 § 33.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.61.625 Riding in trailers or towed vehicles.

(1) No person or persons shall occupy any trailer while it is being moved upon a public highway, except a person occupying a proper position for steering a trailer designed to be steered from a rear-end position.

(2) No person or persons may occupy a vehicle while it is being towed by a tow truck as defined in RCW 46.55.010(8). [1995 c 360 § 10; 1965 ex.s. c 155 § 73.]

Chapter 46.63

DISPOSITION OF TRAFFIC INFRACTIONS

Sections

46.63.020 Violations as traffic infractions—Exceptions.

46.63.030 Notice of traffic infraction—Issuance—Abandoned vehicles.

46.63.020 Violations as traffic infractions—

Exceptions. Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

- (1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;
- (2) RCW 46.09.130 relating to operation of nonhighway vehicles;
- (3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;
- (4) RCW 46.10.130 relating to the operation of snowmobiles;
- (5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;
- (6) RCW 46.16.010 relating to initial registration of motor vehicles;
- (7) RCW 46.16.011 relating to permitting unauthorized persons to drive;
- (8) RCW 46.16.160 relating to vehicle trip permits;
- (9) RCW 46.16.381 (6) or (9) relating to unauthorized use or acquisition of a special placard or license plate for disabled persons' parking;
- (10) RCW 46.20.021 relating to driving without a valid driver's license;
- (11) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;
- (12) RCW 46.20.342 relating to driving with a suspended or revoked license or status;
- (13) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;
- (14) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;
- (15) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;
- (16) RCW 46.25.170 relating to commercial driver's licenses;
- (17) Chapter 46.29 RCW relating to financial responsibility;
- (18) RCW 46.30.040 relating to providing false evidence of financial responsibility;
- (19) RCW 46.37.435 relating to wrongful installation of sunscreening material;
- (20) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
- (21) RCW 46.48.175 relating to the transportation of dangerous articles;
- (22) RCW 46.52.010 relating to duty on striking an unattended car or other property;
- (23) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (24) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;
- (25) RCW 46.52.100 relating to driving under the influence of liquor or drugs;
- (26) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;
- (27) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;
- (28) RCW 46.55.035 relating to prohibited practices by tow truck operators;
- (29) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;
- (30) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;
- (31) RCW 46.61.022 relating to failure to stop and give identification to an officer;
- (32) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
- (33) RCW 46.61.500 relating to reckless driving;
- (34) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;
- (35) *RCW 46.61.5055 (section 5, chapter 332 (Substitute Senate Bill No. 5141), Laws of 1995) relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;
- (36) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
- (37) RCW 46.61.522 relating to vehicular assault;
- (38) RCW 46.61.525 relating to negligent driving;
- (39) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;
- (40) RCW 46.61.530 relating to racing of vehicles on highways;
- (41) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;
- (42) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;
- (43) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;
- (44) Chapter 46.65 RCW relating to habitual traffic offenders;
- (45) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;
- (46) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;
- (47) Chapter 46.80 RCW relating to motor vehicle wreckers;
- (48) Chapter 46.82 RCW relating to driver's training schools;
- (49) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;
- (50) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW. [1995 1st sp.s. c 16 § 1; 1995 c 332 § 16; 1995 c 256 § 25. Prior: 1994 c 275 § 33; 1994 c 141 § 2; 1993 c 501 § 8; 1992 c 32 § 4; 1991 c 339 § 27; prior: 1990 c 250 § 59; 1990 c 95 § 3; prior: 1989 c 353 § 8; 1989 c 178 § 27; 1989 c 111 § 20; prior: 1987 c 388 § 11; 1987 c 247 § 6; 1987 c 244 § 55; 1987 c 181 § 2; 1986 c 186 § 3; prior: 1985 c 377 § 28; 1985 c 353 § 2; 1985 c 302 § 7; 1983 c 164 § 6; 1982 c 10 § 12; prior: 1981 c 318 § 2; 1981 c 19 § 1; 1980 c 148 § 7; 1979 ex.s. c 136 § 2.]

Reviser's note: *(1) RCW 46.61.5055 does not specifically relate to persons under twenty-one. Substitute Senate Bill No. 5141 was amended and reordered several times during its enactment as chapter 332, Laws of 1995, and the substance of a previous section 5 was placed into section 2.

Apparently reference to the latter, codified as RCW 46.61.503, was intended.

(2) This section was amended by 1995 c 256 § 25, 1995 c 332 § 16, and by 1995 1st sp.s. c 16 § 1, each 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—1995 1st sp.s. c 16: "This act shall take effect September 1, 1995." [1995 1st sp.s. c 16 § 2.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Effective date—1994 c 141: See note following RCW 46.61.527.

Severability—1990 c 250: See note following RCW 46.16.301.

Severability—Effective date—1989 c 353: See RCW 46.30.900 and 46.30.901.

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Severability—1987 c 388: See note following RCW 46.20.342.

Effective dates—1987 c 244: See note following RCW 46.12.020.

Severability—Effective date—1985 c 377: See RCW 46.55.900 and 46.55.902.

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 19: "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 19 § 7.]

Effective date—1980 c 148: See note following RCW 46.10.090.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Allowing unauthorized persons to drive: RCW 46.20.344.

46.63.030 Notice of traffic infraction—Issuance—Abandoned vehicles. (1) A law enforcement officer has the authority to issue a notice of traffic infraction:

(a) When the infraction is committed in the officer's presence;

(b) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed; or

(c) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction.

(2) A court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.

(3) If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction.

(4) In the case of failure to redeem an abandoned vehicle under RCW 46.55.120, upon receiving a complaint by a registered tow truck operator that has incurred costs in removing, storing, and disposing of an abandoned vehicle, an officer of the law enforcement agency responsible for directing the removal of the vehicle shall send a notice of infraction by certified mail to the last known address of the registered owner of the vehicle. The officer shall append to

the notice of infraction, on a form prescribed by the department of licensing, a notice indicating the amount of costs incurred as a result of removing, storing, and disposing of the abandoned vehicle, less any amount realized at auction, and a statement that monetary penalties for the infraction will not be considered as having been paid until the monetary penalty payable under this chapter has been paid and the court is satisfied that the person has made restitution in the amount of the deficiency remaining after disposal of the vehicle. [1995 c 219 § 5; 1994 c 176 § 3; 1987 c 66 § 2; 1980 c 128 § 10; 1979 ex.s. c 136 § 3.]

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Chapter 46.68

DISPOSITION OF REVENUE

Sections

46.68.041 Disposition of drivers' license fees.
46.68.090 Distribution of state-wide taxes.

46.68.041 Disposition of drivers' license fees. The department shall forward all funds accruing under the provisions of chapter 46.20 RCW together with a proper identifying, detailed report to the state treasurer who shall deposit such moneys to the credit of the highway safety fund. [1995 2nd sp.s. c 3 § 1; 1985 ex.s. c 1 § 12; 1981 c 245 § 3; 1979 c 63 § 3; 1977 c 27 § 1; 1975 1st ex.s. c 293 § 20; 1971 ex.s. c 91 § 2; 1969 c 99 § 9; 1967 c 174 § 3; 1965 c 25 § 4.]

Effective date—1995 2nd sp.s. c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 3 § 2.]

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Effective date—1981 c 245: See note following RCW 46.20.161.

Severability—Effective date—1975 1st ex.s. c 293: See RCW 43.88.902 and 43.88.910.

Effective date—1967 c 174: See note following RCW 46.29.050.

Effective date—1965 c 25: See note following RCW 46.16.060.

46.68.090 Distribution of state-wide taxes.

Invalidation based on requirements of Initiative 601: "(1) If a court enters a final order invalidating or remanding section 1, chapter 225, Laws of 1994 on the grounds that it does not comply with section 13, chapter 2, Laws of 1994, it is the intent of the legislature that chapter 225, Laws of 1994 as amended be submitted to the people for their adoption, ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof.

(2) If a court remands this act for a vote of the people, the ballot title shall be substantially as follows: "Shall the alcohol fuel tax exemption given to fuel distributors be eliminated?"

(3) If the voters approve the repeal as provided in section 1, chapter 364, Laws of 1995, the repeal shall be made retroactive to May 1, 1994." [1995 c 364 § 4; 1994 c 225 § 3.] Effective if section 1, chapter 225, Laws of 1994 is not upheld by order of the court of appeals or the supreme court of this state.

Chapter 46.70

UNFAIR BUSINESS PRACTICES—DEALERS'
LICENSES

Sections

- 46.70.023 Place of business.
46.70.180 Unlawful acts and practices.

46.70.023 Place of business. (1) An "established place of business" requires a permanent, enclosed commercial building located within the state of Washington easily accessible at all reasonable times. An established place of business shall have an improved display area of not less than three thousand square feet in or immediately adjoining the building, or a display area large enough to display six or more vehicles of the type the dealer is licensed to sell, whichever area is larger. The business of a vehicle dealer, including the display of vehicles, may be lawfully carried on at an established place of business in accordance with the terms of all applicable building code, zoning, and other land-use regulatory ordinances. The dealer shall keep the building open to the public so that they may contact the vehicle dealer or the dealer's salespersons at all reasonable times. The books, records, and files necessary to conduct the business shall be kept and maintained at that place. The established place of business shall display an exterior sign with the business name and nature of the business, such as auto sales, permanently affixed to the land or building, with letters clearly visible to the major avenue of traffic. In no event may a room or rooms in a hotel, rooming house, or apartment house building or part of a single or multiple-unit dwelling house be considered an "established place of business" unless the ground floor of such a dwelling is devoted principally to and occupied for commercial purposes and the dealer offices are located on the ground floor. A mobile office or mobile home may be used as an office if it is connected to utilities and is set up in accordance with state law. A state-wide trade association representing manufactured housing dealers shall be permitted to use a manufactured home as an office if the office complies with all other applicable building code, zoning, and other land-use regulatory ordinances. This subsection does not apply to auction companies that do not own vehicle inventory or sell vehicles from an auction yard.

(2) An auction company shall have office facilities within the state. The books, records, and files necessary to conduct the business shall be maintained at the office facilities. All storage facilities for inventory shall be listed with the department, and shall meet local zoning and land use ordinances. An auction company shall maintain a telecommunications system.

(3) Auction companies shall post their vehicle dealer license at each auction where vehicles are offered, and shall provide the department with the address of the auction at least three days before the auction.

(4) If a dealer maintains a place of business at more than one location or under more than one name in this state, he or she shall designate one location as the principal place of business of the firm, one name as the principal name of the firm, and all other locations or names as subagencies. A subagency license is required for each and every subagency: PROVIDED, That the department may grant an exception to

the subagency requirement in the specific instance where a licensed dealer is unable to locate their used vehicle sales facilities adjacent to or at the established place of business. This exception shall be granted and defined under the promulgation of rules consistent with the Administrative Procedure Act.

(5) All vehicle dealers shall maintain ownership or leasehold throughout the license year of the real property from which they do business. The dealer shall provide the department with evidence of ownership or leasehold whenever the ownership changes or the lease is terminated.

(6) A subagency shall comply with all requirements of an established place of business, except that auction companies shall comply with the requirements in subsection (2) of this section.

(7) A temporary subagency shall meet all local zoning and building codes for the type of merchandising being conducted. The dealer license certificate shall be posted at the location. No other requirements of an established place of business apply to a temporary subagency. Auction companies are not required to obtain a temporary subagency license.

(8) A wholesale vehicle dealer shall have office facilities in a commercial building within this state, and all storage facilities for inventory shall be listed with the department, and shall meet local zoning and land use ordinances. A wholesale vehicle dealer shall maintain a telecommunications system. An exterior sign visible from the nearest street shall identify the business name and the nature of business. A wholesale dealer need not maintain a display area as required in this section. When two or more vehicle dealer businesses share a location, all records, office facilities, and inventory, if any, must be physically segregated and clearly identified.

(9) A retail vehicle dealer shall be open during normal business hours, maintain office and display facilities in a commercially zoned location or in a location complying with all applicable building and land use ordinances, and maintain a business telephone listing in the local directory. When two or more vehicle dealer businesses share a location, all records, office facilities, and inventory shall be physically segregated and clearly identified.

(10) A listing dealer need not have a display area if the dealer does not physically maintain any vehicles for display.

(11) A subagency license is not required for a mobile home dealer to display an on-site display model, a consigned mobile home not relocated from its site, or a repossessed mobile home if sales are handled from a principal place of business or subagency. A mobile home dealer shall identify on-site display models, repossessed mobile homes, and those consigned at their sites with a sign that includes the dealer's name and telephone number.

(12) Every vehicle dealer shall advise the department of the location of each and every place of business of the firm and the name or names under which the firm is doing business at such location or locations. If any name or location is changed, the dealer shall notify the department of such change within ten days. The license issued by the department shall reflect the name and location of the firm and shall be posted in a conspicuous place at that location by the dealer.

(13) A vehicle dealer's license shall upon the death or incapacity of an individual vehicle dealer authorize the personal representative of such dealer, subject to payment of license fees, to continue the business for a period of six months from the date of the death or incapacity. [1995 c 7 § 1; 1993 c 307 § 5; 1991 c 339 § 28; 1989 c 301 § 2; 1986 c 241 § 4.]

46.70.180 Unlawful acts and practices. Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2) To incorporate within the terms of any purchase and sale agreement any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold to a person for a consideration and upon further consideration that the purchaser agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Taking from a prospective buyer of a vehicle a written order or offer to purchase, or a contract document signed by the buyer, which:

(a) Is subject to the dealer's, or his or her authorized representative's future acceptance, and the dealer fails or refuses within forty-eight hours, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotia-

tions with said buyer, to deliver to the buyer either the dealer's signed acceptance or all copies of the order, offer, or contract document together with any initial payment or security made or given by the buyer, including but not limited to money, check, promissory note, vehicle keys, a trade-in, or certificate of title to a trade-in; or

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer as part of the purchase price, for any reason except:

(i) Failure to disclose that the vehicle's certificate of ownership has been branded for any reason, including, but not limited to, status as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075; and

(ii) Substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesman to refuse to furnish, upon request of a prospective purchaser, the name and address of the previous registered owner of any used vehicle offered for sale.

(7) To commit any other offense under RCW 46.37.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle.

(9) For a dealer, salesman, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser prior to the delivery of the bargained-for vehicle, to commingle the "on deposit" funds with assets of the dealer, salesman, or mobile home manufacturer instead of holding the "on deposit" funds as trustee in a separate trust account until the purchaser has taken delivery of the bargained-for vehicle. Delivery of a manufactured home shall be deemed to occur in accordance with RCW 46.70.135(5). Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his or her customary total customer deposits for vehicles for future delivery. For purposes of this section, "on deposit" funds received from a purchaser of a manufactured home means those funds that a seller requires a purchaser to advance before ordering the manufactured home, but does not include any loan proceeds or moneys that might have been paid on an installment contract.

(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales agreement signed by the seller and buyer.

(11) For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, gratuity, or reward in connection with the purchase or sale of a new motor vehicle.

(12) For a buyer's agent acting directly or through a subsidiary to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase or sale of a new motor vehicle.

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW.

(14) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.94 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his or her capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he or she is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and (ii) the cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith.

(c) Encourage, aid, abet, or teach a vehicle dealer to sell vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale of new and unused vehicles sold or distributed by such

manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser of any new or unused vehicle that has been sold, distributed for sale, or transferred into this state for resale by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (14)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050. [1995 c 256 § 26; 1994 c 284 § 13; 1993 c 175 § 3; 1990 c 44 § 14; 1989 c 415 § 20; 1986 c 241 § 18; 1985 c 472 § 13; 1981 c 152 § 6; 1977 ex.s. c 125 § 4; 1973 1st ex.s. c 132 § 18; 1969 c 112 § 1; 1967 ex.s. c 74 § 16.]

Severability—Effective date—1994 c 284: See RCW 43.63B.900 and 43.63B.901.

Severability—1990 c 44: See RCW 19.116.900.

Severability—1989 c 415: See RCW 46.96.900.

Severability—1985 c 472: See RCW 46.94.900.

Odometers—Disconnecting, resetting, turning back, replacing without notifying purchaser: RCW 46.37.540 through 46.37.570.

Chapter 46.80

VEHICLE WRECKERS

(Formerly: Motor vehicle wreckers)

Sections

46.80.005	Legislative declaration.
46.80.010	Definitions.
46.80.020	License required—Penalty.
46.80.040	Issuance of license—Fee.
46.80.050	Expiration, renewal—Fee.
46.80.055	Repealed.
46.80.060	License plates—Fee—Display.
46.80.070	Bond.
46.80.080	Records—Penalty.
46.80.090	Reports to department—Evidence of ownership.
46.80.100	Cancellation of bond.
46.80.110	License penalties, civil fines, criminal penalties.
46.80.121	False or unqualified applications.
46.80.130	All storage at place of business—Screening required—Penalty.
46.80.150	Inspection of licensed premises and records.
46.80.160	Municipal compliance.
46.80.170	Violations—Penalties.
46.80.180	Cease and desist orders—Fines.
46.80.190	Subpoenas.
46.80.900	Liberal construction.

46.80.005 Legislative declaration. The legislature finds and declares that the distribution and sale of vehicle parts in the state of Washington vitally affects the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and the public welfare and in the exercise of its police power, it is necessary to regulate and license vehicle wreckers and dismantlers, the buyers-for-resale, and the sellers of second-hand vehicle components doing business in Washington, in order to prevent the sale of stolen vehicle parts, to prevent frauds, impositions, and other abuses, and to preserve the investments and properties of the citizens of this state. [1995 c 256 § 3; 1977 ex.s. c 253 § 1.]

Severability—1977 ex.s. c 253: "If any provision of this 1977 amendatory act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the amendatory act and the applicability thereof to persons and circumstances shall not be affected thereby." [1977 ex.s. c 253 § 14.]

46.80.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Vehicle wrecker" means every person, firm, partnership, association, or corporation engaged in the business of buying, selling, or dealing in vehicles of a type required to be licensed under the laws of this state, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of a vehicle, or who buys or sells integral second-hand parts of component material thereof, in whole or in part, or who deals in second-hand vehicle parts.

(2) "Established place of business" means a building or enclosure which the vehicle wrecker occupies either continuously or at regular periods and where his books and records are kept and business is transacted and which must conform with zoning regulations.

(3) "Major component part" includes at least each of the following vehicle parts: (a) Engines and short blocks; (b) frame; (c) transmission and/or transfer case; (d) cab; (e) door; (f) front or rear differential; (g) front or rear clip; (h) quarter panel; (i) truck bed or box; (j) seat; (k) hood; (l) bumper; (m) fender; and (n) airbag. The director may supplement this list by rule.

(4) "Wrecked vehicle" means a vehicle which is disassembled or dismantled or a vehicle which is acquired with the intent to dismantle or disassemble and never again to operate as a vehicle, or a vehicle which has sustained such damage that its cost to repair exceeds the fair market value of a like vehicle which has not sustained such damage, or a damaged vehicle whose salvage value plus cost to repair equals or exceeds its fair market value, if repaired, or a vehicle which has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state for which the salvage value plus cost to repair exceeds its fair market value, if repaired; further, it is presumed that a vehicle is a wreck if it has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state. [1995 c 256 § 4; 1977 ex.s. c 253 § 2; 1961 c 12 § 46.80.010. Prior: 1947 c 262 § 1; Rem. Supp. 1947 § 8326-40.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.020 License required—Penalty. It is unlawful for a person to engage in the business of wrecking vehicles

without having first applied for and received a license. A person or firm engaged in the unlawful activity is guilty of a gross misdemeanor. A second or subsequent offense is a class C felony. [1995 c 256 § 5; 1979 c 158 § 192; 1977 ex.s. c 253 § 3; 1971 ex.s. c 7 § 1; 1967 c 32 § 94; 1961 c 12 § 46.80.020. Prior: 1947 c 262 § 2; Rem. Supp. 1947 § 8326-41.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.040 Issuance of license—Fee. The application, together with a fee of twenty-five dollars, and a surety bond as provided in RCW 46.80.070, shall be forwarded to the department. Upon receipt of the application the department shall, if the application is in order, issue a vehicle wrecker's license authorizing the wrecker to do business as such and forward the fee to the state treasurer, to be deposited in the motor vehicle fund. Upon receiving the certificate the owner shall cause it to be prominently displayed in the place of business, where it may be inspected by an investigating officer at any time. [1995 c 256 § 6; 1971 ex.s. c 7 § 3; 1967 c 32 § 96; 1961 c 12 § 46.80.040. Prior: 1947 c 262 § 4; Rem. Supp. 1947 § 8326-43.]

46.80.050 Expiration, renewal—Fee. A license issued on this application remains in force until suspended or revoked and may be renewed annually upon reapplication according to RCW 46.80.030 and upon payment of a fee of ten dollars. A vehicle wrecker who fails or neglects to renew the license before the assigned expiration date shall pay the fee for an original vehicle wrecker license as provided in this chapter.

Whenever a vehicle wrecker ceases to do business as such or the license has been suspended or revoked, the wrecker shall immediately surrender the license to the department. [1995 c 256 § 7; 1985 c 109 § 7; 1971 ex.s. c 7 § 4; 1967 ex.s. c 13 § 2; 1967 c 32 § 97; 1961 c 12 § 46.80.050. Prior: 1947 c 262 § 5; Rem. Supp. 1947 § 8326-44.]

46.80.055 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.80.060 License plates—Fee—Display. The vehicle wrecker shall obtain a special set of license plates in addition to the regular licenses and plates required for the operation of such vehicles. The special plates must be displayed on vehicles owned and/or operated by the wrecker and used in the conduct of the business. The fee for these plates shall be five dollars for the original plates and two dollars for each additional set of plates bearing the same license number. A wrecker with more than one licensed location in the state may use special plates bearing the same license number for vehicles operated out of any of the licensed locations. [1995 c 256 § 8; 1961 c 12 § 46.80.060. Prior: 1957 c 273 § 21; 1947 c 262 § 6; Rem. Supp. 1947 § 8326-45.]

46.80.070 Bond. Before issuing a vehicle wrecker's license, the department shall require the applicant to file with the department a surety bond in the amount of one thousand

dollars, running to the state of Washington and executed by a surety company authorized to do business in the state of Washington. The bond shall be approved as to form by the attorney general and conditioned upon the wrecker conducting the business in conformity with the provisions of this chapter. Any person who has suffered any loss or damage by reason of fraud, carelessness, neglect, violation of the terms of this chapter, or misrepresentation on the part of the wrecking company, may institute an action for recovery against the vehicle wrecker and surety upon the bond. However, the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. [1995 c 256 § 9; 1977 ex.s. c 253 § 5; 1971 ex.s. c 7 § 5; 1967 c 32 § 98; 1961 c 12 § 46.80.070. Prior: 1947 c 262 § 7; Rem. Supp. 1947 § 8326-46.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.080 Records—Penalty. (1) Every vehicle wrecker shall maintain books or files in which the wrecker shall keep a record and a description of:

(a) Every vehicle wrecked, dismantled, disassembled, or substantially altered by the wrecker; and

(b) Every major component part acquired by the wrecker; together with a bill of sale signed by a seller whose identity has been verified and the name and address of the person, firm, or corporation from whom the wrecker purchased the vehicle or part. Major component parts shall be further identified by the vehicle identification number of the vehicle from which the part came.

(2) The record shall also contain the following data regarding the wrecked or acquired vehicle or vehicle that is the source of a major component part:

(a) The certificate of title number (if previously titled in this or any other state);

(b) Name of state where last registered;

(c) Number of the last license number plate issued;

(d) Name of vehicle;

(e) Motor or identification number and serial number of the vehicle;

(f) Date purchased;

(g) Disposition of the motor and chassis;

(h) Yard number assigned by the licensee to the vehicle or major component part, which shall also appear on the identified vehicle or part; and

(i) Such other information as the department may require.

(3) The records shall also contain a bill of sale signed by the seller for other minor component parts acquired by the licensee, identifying the seller by name, address, and date of sale.

(4) The records shall be maintained by the licensee at his or her established place of business for a period of three years from the date of acquisition.

(5) The record is subject to inspection at all times during regular business hours by members of the police department, sheriff's office, members of the Washington state patrol, or officers or employees of the department.

(6) A vehicle wrecker shall also maintain a similar record of all disabled vehicles that have been towed or transported to the motor vehicle wrecker's place of business or to other places designated by the owner of the vehicle or

his or her representative. This record shall specify the name and description of the vehicle, name of owner, number of license plate, condition of the vehicle and place to which it was towed or transported.

(7) Failure to comply with this section is a gross misdemeanor. [1995 c 256 § 10; 1977 ex.s. c 253 § 6; 1971 ex.s. c 7 § 6; 1967 c 32 § 99; 1961 c 12 § 46.80.080. Prior: 1947 c 262 § 8; Rem. Supp. 1947 § 8326-47.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.090 Reports to department—Evidence of ownership. Within thirty days after acquiring a vehicle, the vehicle wrecker shall furnish a written report to the department. This report shall be in such form as the department shall prescribe and shall be accompanied by evidence of ownership as determined by the department. No vehicle wrecker may acquire a vehicle without first obtaining evidence of ownership as determined by the department. The vehicle wrecker shall furnish a monthly report of all acquired vehicles. This report shall be made on forms prescribed by the department and contain such information as the department may require. This statement shall be signed by the vehicle wrecker or an authorized representative and the facts therein sworn to before a notary public, or before an officer or employee of the department designated by the director to administer oaths or acknowledge signatures, pursuant to RCW 46.01.180. [1995 c 256 § 11; 1979 c 158 § 194; 1977 ex.s. c 253 § 7; 1971 ex.s. c 7 § 7; 1967 c 32 § 100; 1961 c 12 § 46.80.090. Prior: 1947 c 262 § 9; Rem. Supp. 1947 § 8326-48.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.100 Cancellation of bond. If, after issuing a vehicle wrecker's license, the bond is canceled by the surety in a method provided by law, the department shall immediately notify the principal covered by the bond and afford the principal the opportunity of obtaining another bond before the termination of the original. If the principal fails, neglects, or refuses to obtain a replacement, the director may cancel or suspend the vehicle wrecker's license. Notice of cancellation of the bond may be accomplished by sending a notice by first class mail using the last known address in department records for the principal covered by the bond and recording the transmittal on an affidavit of first class mail. [1995 c 256 § 12; 1977 ex.s. c 253 § 8; 1967 c 32 § 101; 1961 c 12 § 46.80.100. Prior: 1947 c 262 § 10; Rem. Supp. 1947 § 8326-49.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.110 License penalties, civil fines, criminal penalties. (1) The director or a designee may, pursuant to the provisions of chapter 34.05 RCW, by order deny, suspend, or revoke the license of a vehicle wrecker, or assess a civil fine of up to five hundred dollars for each violation, if the director finds that the applicant or licensee has:

(a) Acquired a vehicle or major component part other than by first obtaining title or other documentation as provided by this chapter;

(b) Willfully misrepresented the physical condition of any motor or integral part of a vehicle;

(c) Sold, had in the wrecker's possession, or disposed of a vehicle or any part thereof when he or she knows that the vehicle or part has been stolen, or appropriated without the consent of the owner;

(d) Sold, bought, received, concealed, had in the wrecker's possession, or disposed of a vehicle or part thereof having a missing, defaced, altered, or covered manufacturer's identification number, unless approved by a law enforcement officer;

(e) Committed forgery or misstated a material fact on any title, registration, or other document covering a vehicle that has been reassembled from parts obtained from the disassembling of other vehicles;

(f) Committed any dishonest act or omission that the director has reason to believe has caused loss or serious inconvenience as a result of a sale of a vehicle or part thereof;

(g) Failed to comply with any of the provisions of this chapter or with any of the rules adopted under it, or with any of the provisions of Title 46 RCW relating to registration and certificates of title of vehicles;

(h) Procured a license fraudulently or dishonestly;

(i) Been convicted of a crime that directly relates to the business of a vehicle wrecker and the time elapsed since conviction is less than ten years, or suffered any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purposes of this section, conviction means in addition to a final conviction in either a federal, state, or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended.

(2) In addition to actions by the department under this section, it is a gross misdemeanor to violate subsection (1) (a), (b), or (h) of this section. [1995 c 256 § 13; 1989 c 337 § 17; 1977 ex.s. c 253 § 9; 1971 ex.s. c 7 § 8; 1967 ex.s. c 13 § 3; 1967 c 32 § 102; 1961 c 12 § 46.80.110. Prior: 1947 c 262 § 11; Rem. Supp. 1947 § 8326-50.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.121 False or unqualified applications. If a person whose vehicle wrecker license has previously been canceled for cause by the department files an application for a license to conduct business as a vehicle wrecker, or if the department is of the opinion that the application is not filed in good faith or that the application is filed by some person as a subterfuge for the real person in interest whose license has previously been canceled for cause, the department may refuse to issue the person a license to conduct business as a vehicle wrecker. [1995 c 256 § 14.]

46.80.130 All storage at place of business—Screening required—Penalty. (1) It is unlawful for a vehicle wrecker to keep a vehicle or any integral part thereof in any place other than the established place of business, designated in the certificate issued by the department, without permission of the department.

(2) All premises containing vehicles or parts thereof shall be enclosed by a wall or fence of such height as to obscure the nature of the business carried on therein. To the

extent reasonably necessary or permitted by the topography of the land, the department may establish specifications or standards for the fence or wall. The wall or fence shall be painted or stained a neutral shade that blends in with the surrounding premises, and the wall or fence must be kept in good repair. A living hedge of sufficient density to prevent a view of the confined area may be substituted for such a wall or fence. Any dead or dying portion of the hedge shall be replaced.

(3) Violation of subsection (1) of this section is a gross misdemeanor. [1995 c 256 § 15; 1971 ex.s. c 7 § 9; 1967 ex.s. c 13 § 4; 1967 c 32 § 103; 1965 c 117 § 1; 1961 c 12 § 46.80.130. Prior: 1947 c 262 § 13; Rem. Supp. 1947 § 8326-52.]

46.80.150 Inspection of licensed premises and records. It shall be the duty of the chiefs of police, or the Washington state patrol, in cities having a population of over five thousand persons, and in all other cases the Washington state patrol, to make periodic inspection of the vehicle wrecker's licensed premises and records provided for in this chapter during normal business hours, and furnish a certificate of inspection to the department in such manner as may be determined by the department. In any instance, an authorized representative of the department may make the inspection. [1995 c 256 § 16; 1983 c 142 § 9; 1977 ex.s. c 253 § 10; 1971 ex.s. c 7 § 10; 1967 ex.s. c 13 § 5; 1967 c 32 § 105; 1961 c 12 § 46.80.150. Prior: 1947 c 262 § 15; Rem. Supp. 1947 § 8326-54.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.160 Municipal compliance. Any municipality or political subdivision of this state that now has or subsequently makes provision for the regulation of vehicle wreckers shall comply strictly with the provisions of this chapter. [1995 c 256 § 17; 1961 c 12 § 46.80.160. Prior: 1947 c 262 § 16; Rem. Supp. 1947 § 8326-55.]

46.80.170 Violations—Penalties. Unless otherwise provided by law, it is a misdemeanor for any person to violate any of the provisions of this chapter or the rules adopted under this chapter. [1995 c 256 § 18; 1977 ex.s. c 253 § 11.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.180 Cease and desist orders—Fines. (1) If it appears to the director that an unlicensed person has engaged in an act or practice constituting a violation of this chapter, or a rule adopted or an order issued under this chapter, the director may issue an order directing the person to cease and desist from continuing the act or practice. The director shall give the person reasonable notice of and opportunity for a hearing. The director may issue a temporary order pending a hearing. The temporary order remains in effect until ten days after the hearing is held and becomes final if the person to whom the notice is addressed does not request a hearing within fifteen days after receipt of the notice.

(2) The director may assess a fine of up to one thousand dollars with the final order for each act or practice constitut-

ing a violation of this chapter by an unlicensed person. [1995 c 256 § 19.]

46.80.190 Subpoenas. The department of licensing or its authorized agent may examine or subpoena any persons, books, papers, records, data, vehicles, or vehicle parts bearing upon the investigation or proceeding under this chapter.

The persons subpoenaed may be required to testify and produce any books, papers, records, data, vehicles, or vehicle parts that the director deems relevant or material to the inquiry.

The director or an authorized agent may administer an oath to the person required to testify, and a person giving false testimony after the administration of the oath is guilty of perjury in the first degree.

A court of competent jurisdiction may, upon application by the director, issue to a person who fails to comply, an order to appear before the director or officer designated by the director, to produce documentary or other evidence touching the matter under investigation or in question. [1995 c 256 § 20.]

46.80.900 Liberal construction. The provisions of this chapter shall be liberally construed to the end that traffic in stolen vehicle parts may be prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of wrecking vehicles or selling used vehicle parts in this state and reliable persons may be encouraged to engage in businesses of wrecking or reselling vehicle parts in this state. [1995 c 256 § 21; 1977 ex.s. c 253 § 13.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

Title 47

PUBLIC HIGHWAYS AND TRANSPORTATION

Chapters

- 47.02 Department buildings.
- 47.06 State-wide transportation planning.
- 47.10 Highway construction bonds.
- 47.12 Acquisition and disposition of state highway property.
- 47.13 Transportation capital facilities account.
- 47.26 Development in urban areas—Urban arterials.
- 47.39 Scenic and Recreational Highway Act of 1967.
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- 47.46 Public-private transportation initiatives.
- 47.50 Highway access management.
- 47.56 State toll bridges, tunnels, and ferries.
- 47.60 Puget sound ferry and toll bridge system.
- 47.64 Marine employees—Public employment relations.
- 47.66 Multimodal transportation programs.
- 47.68 Aeronautics.
- 47.76 Rail freight service.

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47.78 High capacity transportation development.

Chapter 47.02

DEPARTMENT BUILDINGS

Sections

- 47.02.160 District I headquarters bonds—Statement of general obligation—Pledge of excise taxes.

47.02.160 District 1 headquarters bonds—Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.02.120 through 47.02.190 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.02.120 through 47.02.190 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.02.120 through 47.02.190, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.02.120 through 47.02.190. [1995 c 274 § 5; 1990 c 293 § 5.]

Severability—1990 c 293: See note following RCW 47.02.120.

Chapter 47.06

STATE-WIDE TRANSPORTATION PLANNING

Sections

- 47.06.110 Public transportation plan.

47.06.110 Public transportation plan. The state-interest component of the state-wide multimodal transportation plan shall include a state public transportation plan that:

(1) Articulates the state vision of an interest in public transportation and provides quantifiable objectives, including benefits indicators;

(2) Identifies the goals for public transit and the roles of federal, state, regional, and local entities in achieving those goals;

(3) Recommends mechanisms for coordinating state, regional, and local planning for public transportation;

(4) Recommends mechanisms for coordinating public transportation with other transportation services and modes;

(5) Recommends criteria, consistent with the goals identified in subsection (2) of this section and with RCW 82.44.180 (2) and (3), for existing federal authorizations administered by the department to transit agencies; and

(6) Recommends a state-wide public transportation facilities and equipment management system as required by federal law.

In developing the state public transportation plan, the department shall involve local jurisdictions, public and private providers of transportation services, nonmotorized interests, and state agencies with an interest in public transportation, including but not limited to the departments of community, trade, and economic development, social and health services, and ecology, the state energy office, the office of the superintendent of public instruction, the office of the governor, and the office of financial management.

The department shall submit an initial report to the legislative transportation committee by December 1, 1993, and shall provide annual reports summarizing the plan's progress each year thereafter. [1995 c 399 § 120; 1993 c 446 § 11.]

Environmental review of transportation projects: RCW 47.01.290.

Chapter 47.10

HIGHWAY CONSTRUCTION BONDS

Sections

47.10.793	Statement of general obligation—Pledge of excise taxes.
47.10.804	Statement of general obligation—Pledge of excise taxes.
47.10.815	Statement of general obligation—Pledge of excise taxes.
47.10.822	Statement of general obligation—Pledge of excise taxes.
47.10.829	Statement of general obligation—Pledge of excise taxes.
47.10.834	Issuance and sale of general obligation bonds.
47.10.836	Proceeds—Deposit and use.
47.10.837	Designation of funds to repay bonds and interest.
47.10.838	Statement of general obligation—Pledge of excise taxes.
47.10.839	Repayment procedure—Bond retirement fund.
47.10.840	Repealed.
47.10.841	Equal charge against motor vehicle excise tax revenues.

47.10.793 Statement of general obligation—Pledge of excise taxes. Bonds issued under the provisions of RCW 47.10.790 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 47.10.790 through 47.10.798 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.790 through 47.10.798, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.790 through 47.10.798. [1995 c 274 § 6; 1979 ex.s. c 180 § 4.]

47.10.804 Statement of general obligation—Pledge of excise taxes. Bonds issued under RCW 47.10.801 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first

payable in the manner provided in RCW 47.10.801 through 47.10.809 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under RCW 47.10.801 through 47.10.809, and the legislature hereby agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under RCW 47.10.801 through 47.10.809. [1995 c 274 § 7; 1981 c 316 § 4.]

47.10.815 Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.10.812 through 47.10.817 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.10.812 through 47.10.817 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.812 through 47.10.817, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.812 through 47.10.817. [1995 c 274 § 8; 1993 c 431 § 4.]

47.10.822 Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.10.819 through 47.10.824 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.10.819 through 47.10.824 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.819 through 47.10.824, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.819 through 47.10.824. [1995 c 274 § 9; 1993 c 432 § 4.]

47.10.829 Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.10.826 through 47.10.831 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and

interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.10.826 through 47.10.831 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.826 through 47.10.831, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.826 through 47.10.831. [1995 c 274 § 10; 1993 c 6 § 4.]

Contingent expiration date—1993 c 6: See RCW 47.10.826.

47.10.834 Issuance and sale of general obligation bonds. In order to provide funds necessary to implement the public-private transportation initiatives authorized by chapter 47.46 RCW, there shall be issued and sold upon the request of the Washington state transportation commission a total of twenty-five million six hundred twenty-five thousand dollars of general obligation bonds of the state of Washington. [1995 2nd sp.s. c 15 § 2; 1994 c 183 § 2.]

Severability—1995 2nd sp.s. c 15: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 2nd sp.s. c 15 § 9.]

Effective date—1995 2nd sp.s. c 15: "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 immediately [June 16, 1995]." [1995 2nd sp.s. c 15 § 10.]

Finding—1994 c 183: "The legislature finds and declares:

Successful implementation of the public-private transportation initiatives program authorized in chapter 47.46 RCW may require the financial participation of the state in projects authorized in that chapter.

The participation may take the form of loans, loan guarantees, user charge guarantees, including incidental costs incurred by the department in direct support of activities required under chapter 47.46 RCW, or such other cash contribution arrangements as may improve the ability of the private entities sponsoring the projects to obtain financing.

It is in the best interests of the people of the state that state funding of possible financial participation in the projects authorized under chapter 47.46 RCW be in the form of long-term bonds. In order to repay expenditures incurred in the 1993-1995 biennium, up to two million two hundred thousand dollars of these bonds may be expended on highway improvement projects, under chapter 47.05 RCW." [1995 2nd sp.s. c 15 § 1; 1994 c 183 § 1.]

47.10.836 Proceeds—Deposit and use. (1) The proceeds from the sale of bonds authorized by RCW 47.10.834 through 47.10.841 that are in support of possible loans as specified under RCW 47.10.835 shall be deposited into the motor vehicle fund. The proceeds shall be available only for the purposes of making loans to entities authorized to undertake projects selected under chapter 47.46 RCW as enumerated in RCW 47.10.835, including incidental costs incurred by the department in direct support of activities required under chapter 47.46 RCW, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting.

(2) The proceeds from the sale of bonds authorized by RCW 47.10.834 through 47.10.841 that are in support of all forms of cash contributions to projects selected under chapter 47.46 RCW, including incidental costs incurred by the department in direct support of activities required under

chapter 47.46 RCW, except loans shall be deposited into the motor vehicle fund. The proceeds shall be available only for the purposes of making any contributions except loans to projects selected under chapter 47.46 RCW, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting.

(3) Up to two million two hundred thousand dollars of the proceeds from the sale of bonds authorized by RCW 47.10.834 through 47.10.841 may be expended on highway improvement projects under chapter 47.05 RCW and for the payment of bond issuance cost, including the cost of underwriting. Such proceeds shall be deposited into the motor vehicle fund. [1995 2nd sp.s. c 15 § 3; 1994 c 183 § 4.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

47.10.837 Designation of funds to repay bonds and interest. Principal and interest payments made on loans authorized by chapter 47.46 RCW shall be deposited into the motor vehicle fund and shall be available for the payment of principal and interest on bonds authorized by RCW 47.10.834 through 47.10.841 and for such other purposes as may be specified by law. [1995 2nd sp.s. c 15 § 4; 1994 c 183 § 5.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

47.10.838 Statement of general obligation—Pledge of excise taxes. (1) Bonds issued under the authority of RCW 47.10.834 through 47.10.841 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due.

(2) The principal and interest on the bonds issued for the purposes enumerated in RCW 47.10.836 shall be first payable in the manner provided in RCW 47.10.834 through 47.10.841 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of those excise taxes are pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.834 through 47.10.841, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.834 through 47.10.841. [1995 2nd sp.s. c 15 § 5; 1994 c 183 § 6.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

47.10.839 Repayment procedure—Bond retirement fund. (1) Both principal and interest on the bonds issued for the purposes of RCW 47.10.834 through 47.10.841 are payable from the highway bond retirement fund.

(2) The state finance committee shall, on or before June 30th of each year certify to the state treasurer the amount required for principal and interest on the bonds issued for the purposes specified in RCW 47.10.836 in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the motor vehicle fund and deposit into the

highway bond retirement fund such amounts, and at such times, as are required by the bond proceedings.

(3) Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.834 through 47.10.841 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels which is, or may be appropriated to the department of transportation for state highway purposes. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, or towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the state in the motor vehicle fund proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

(4) Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel and special fuel taxes that are distributable to the state, counties, cities, or towns shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the motor vehicle fund not required for bond retirement or interest on the bonds. [1995 2nd sp.s. c 15 § 6; 1994 c 183 § 7.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

47.10.840 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

47.10.841 Equal charge against motor vehicle excise tax revenues. Bonds issued under the authority of RCW 47.10.834 through 47.10.839 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels taxes for the payment of principal and interest thereon are an equal charge against the revenues from the motor vehicle and special fuels excise taxes. [1995 2nd sp.s. c 15 § 7; 1994 c 183 § 9.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

Chapter 47.12

ACQUISITION AND DISPOSITION OF STATE HIGHWAY PROPERTY

Sections

47.12.064 Affordable housing—Inventory of suitable property.

47.12.064 Affordable housing—Inventory of suitable property. (1) The department shall identify and catalog real property that is no longer required for department purposes and is suitable for the development of affordable housing for very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510. The inventory shall include the location, approximate size, and current zoning classification of the property. The department shall provide a copy of the inventory to the department of community, trade, and economic development by November 1, 1993, and every November 1 thereafter.

(2) By November 1 of each year, beginning in 1994, the department shall purge the inventory of real property of sites that are no longer available for the development of affordable housing. The department shall include an updated listing of real property that has become available since the last update. As used in this section, "real property" means buildings, land, or buildings and land. [1995 c 399 § 121; 1993 c 461 § 10.]

Finding—1993 c 461: See note following RCW 43.63A.510.

Chapter 47.13

TRANSPORTATION CAPITAL FACILITIES ACCOUNT

Sections

47.13.020 Federal moneys.

47.13.020 Federal moneys. The department may transfer to the transportation capital facilities account all federal moneys made available for the purpose of purchase, acquisition, exchange, sale, construction, repair, replacement, maintenance, or operation of real property, buildings, or structures necessary or convenient for the planning, design, construction, operation, maintenance, or administration of the state transportation system under the jurisdiction of the department. [1995 c 271 § 1; 1989 c 397 § 2.]

Chapter 47.26

DEVELOPMENT IN URBAN AREAS—URBAN ARTERIALS

Sections

47.26.121 Transportation improvement board—Membership—Appointments—Terms—Chair—Expenses.
 47.26.140 Transportation improvement board—Staff and facilities—Costs and expenses—Executive director.
 47.26.160 Transportation improvement board—Powers and duties.
 47.26.424 Bonds—Statement describing nature of obligation—Pledge of excise taxes.
 47.26.4252 Bonds—Series II bonds, 1979 reenactment—Designation of funds to repay bonds and interest.
 47.26.4254 Bonds—Series III bonds—Designation of funds to repay bonds and interest.
 47.26.504 Statement of obligation—Pledge of excise taxes.

47.26.121 Transportation improvement board—Membership—Appointments—Terms—Chair—Expenses.

(1) There is hereby created a transportation improvement board of twenty-one members, six of whom shall be county members and six of whom shall be city members. The remaining members shall be: (a) One representative appointed by the governor who shall be a state employee with responsibility for transportation policy, planning, or funding; (b) two representatives from the department of transportation; (c) two representatives of public transit systems; (d) a private sector representative; (e) a member representing the ports; (f) a member representing nonmotorized transportation; and (g) a member representing special needs transportation.

(2) Of the county members of the board, one shall be a county engineer or public works director; one shall be the executive director of the county road administration board;

one shall be a county planning director or planning manager; one shall be a county executive, councilmember, or commissioner from a county with a population of one hundred twenty-five thousand or more; one shall be a county executive, councilmember, or commissioner of a county who serves on the board of a public transit system; and one shall be a county executive, councilmember, or commissioner from a county with a population of less than one hundred twenty-five thousand. All county members of the board, except the executive director of the county road administration board, shall be appointed. Not more than one county member of the board shall be from any one county. No more than two of the three county-elected officials may represent counties located in either the eastern or western part of the state as divided north and south by the summit of the Cascade mountains.

(3) Of the city members of the board one shall be a chief city engineer, public works director, or other city employee with responsibility for public works activities, of a city with a population of twenty thousand or more; one shall be a chief city engineer, public works director, or other city employee with responsibility for public works activities, of a city of less than twenty thousand population; one shall be a city planning director or planning manager; one shall be a mayor, commissioner, or city councilmember of a city with a population of twenty thousand or more; one shall be a mayor, commissioner, or city councilmember of a city who serves on the board of a public transit system; and one shall be a mayor, commissioner, or councilmember of a city of less than twenty thousand population. All of the city members shall be appointed. Not more than one city member of the board shall be from any one city. No more than two of the three city-elected officials may represent cities located in either the eastern or western part of the state as divided north and south by the summit of the Cascade mountains.

(4) Of the transit members, at least one shall be a general manager, executive director, or transit director of a public transit system in an urban area with a population over two hundred thousand and at least one representative from a rural or small urban transit system in an area with a population less than two hundred thousand.

(5) The private sector member shall be a citizen with business, management, and transportation related experience and shall be active in a business community-based transportation organization.

(6) The public member shall have professional experience in transportation or land use planning, a demonstrated interest in transportation issues, and involvement with community groups or grass roots organizations.

(7) The port member shall be a commissioner or senior staff person of a public port.

(8) The nonmotorized transportation member shall be a citizen with a demonstrated interest and involvement with a nonmotorized transportation group.

(9) The specialized transportation member shall be a citizen with a demonstrated interest and involvement with a state-wide specialized needs transportation group.

(10) Appointments of county, city, Washington department of transportation, transit, port, nonmotorized transportation, special needs transportation, private sector, and public representatives shall be made by the secretary of the depart-

ment of transportation. Appointees shall be chosen from a list of two persons for each position nominated by the Washington state association of counties for county members, the association of Washington cities for city members, the Washington state transit association for the transit members, and the Washington public ports association for the port member. The private sector, public, nonmotorized transportation, and special needs members shall be sought through classified advertisements in selected newspapers collectively serving all urban areas of the state, and other appropriate means. Persons applying for the private sector, nonmotorized transportation, special needs transportation, or the public member position must provide a letter of interest and a resume to the secretary of the department of transportation. In the case of a vacancy, the appointment shall be only for the remainder of the unexpired term in which the vacancy has occurred. A vacancy shall be deemed to have occurred on the board when any member elected to public office completes that term of office or is removed therefrom for any reason or when any member employed by a political subdivision terminates such employment for whatsoever reason or when a private sector, nonmotorized transportation, special needs transportation, or public member resigns or is unable or unwilling to serve.

(11) Appointments shall be for terms of four years. Terms of all appointed members shall expire on June 30th of even-numbered years. The initial term of appointed members may be for less than four years. No appointed member may serve more than two consecutive four-year terms.

(12) The board shall elect a chair from among its members for a two-year term.

(13) Expenses of the board shall be paid in accordance with RCW 47.26.140.

(14) For purposes of this section, "public transit system" means a city-owned transit system, county transportation authority, metropolitan municipal corporation, public transportation benefit area, or regional transit authority. [1995 c 269 § 2603; 1994 c 179 § 13; 1993 c 172 § 1. Prior: 1991 c 363 § 124; 1991 c 308 § 1; 1990 c 266 § 4; 1988 c 167 § 1.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Effective date—1993 c 172: "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, 1993." [1993 c 172 § 2.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Effective date—1991 c 308: "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 308 § 2.]

References to urban arterial board—1988 c 167: "References in the Revised Code of Washington to the urban arterial board shall be construed to mean the transportation improvement board." [1988 c 167 § 35.]

Savings—1988 c 167: "All rules and all pending business before the urban arterial board shall be continued and acted upon by the transportation improvement board. All existing contracts and obligations of the urban arterial board shall remain in full force and shall be performed by the transportation improvement board." [1988 c 167 § 36.]

Severability—1988 c 167: "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 167 § 37.]

47.26.140 Transportation improvement board—Staff and facilities—Costs and expenses—Executive director. The transportation improvement board shall appoint an executive director, who shall serve at its pleasure and whose salary shall be set by the board, and may employ additional staff as it deems appropriate. All costs associated with staff, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060, shall be paid from the urban arterial trust account, small city account, city hardship assistance account, transportation fund, and the transportation improvement account in the motor vehicle fund as determined by the biennial appropriation. [1995 c 269 § 2605; 1994 c 179 § 14; 1988 c 167 § 16; 1977 ex.s. c 151 § 58; 1975-'76 2nd ex.s. c 34 § 140; 1969 ex.s. c 171 § 3; 1967 ex.s. c 83 § 20.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

47.26.160 Transportation improvement board—Powers and duties. The transportation improvement board shall:

(1) Adopt rules necessary to implement the provisions of chapter 47.66 RCW and this chapter relating to the allocation of funds;

(2) Adopt reasonably uniform design standards for city and county arterials. [1995 c 269 § 2607; 1994 c 179 § 15; 1988 c 167 § 18; 1987 c 505 § 51; 1984 c 7 § 155; 1977 ex.s. c 235 § 17; 1971 ex.s. c 291 § 1; 1967 ex.s. c 83 § 22.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1984 c 7: See note following RCW 47.01.141.

47.26.424 Bonds—Statement describing nature of obligation—Pledge of excise taxes. The first authorization bonds, series II bonds, and series III bonds shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on such bonds shall be first payable in the manner provided in RCW 47.26.420 through 47.26.427, 47.26.425, and 47.26.4254 from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any such bonds and the interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all such bonds. [1995 c

274 § 11; 1981 c 315 § 9; 1979 c 5 § 7; 1977 ex.s. c 317 § 19; 1973 1st ex.s. c 169 § 6; 1967 ex.s. c 83 § 49.]

Effective date—1981 c 315: See note following RCW 47.26.060.

Construction—1979 c 5: See note following RCW 47.26.420.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.4252 Bonds—Series II bonds, 1979 reenactment—Designation of funds to repay bonds and interest.

Any funds required to repay the authorization of series II bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, or the interest thereon when due, shall first be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW and which is distributed to the urban arterial trust account in the motor vehicle fund and the certain sums received by the small city account in the motor vehicle fund imposed by RCW 82.36.025(3) and 46.68.100(9), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979. If the moneys distributed to the urban arterial trust account and the small city account shall ever be insufficient to repay the first authorization bonds together with interest thereon, and the series II bonds or the interest thereon when due, the amount required to make such payments on such bonds or interest thereon shall next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.100 as now existing or hereafter amended. Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues which are distributable to the state, counties, cities, and towns, shall be repaid from the first moneys distributed to the urban arterial trust account not required for redemption of the first authorization bonds or series II and series III bonds or interest on those bond issues. [1995 c 274 § 12; 1994 c 179 § 23; 1983 1st ex.s. c 49 § 23; 1979 c 5 § 8.]

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.4254 Bonds—Series III bonds—Designation of funds to repay bonds and interest. (1) Any funds

required to repay series III bonds authorized by RCW 47.26.420, or the interest thereon, when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW and that is distributed to the urban arterial trust account in the motor vehicle fund and the certain sums received by the small city account in the motor vehicle fund imposed by RCW 82.36.025(3) and 46.68.100(9), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420. If the moneys so distributed to the urban arterial trust account and the small city account, after first being applied to administrative expenses of the transportation improvement board and to the requirements of bond retirement and payment of interest on first authorization

bonds and series II bonds as provided in RCW 47.26.425 and 47.26.4252, are insufficient to meet the requirements for bond retirement or interest on any series III bonds, the amount required to make such payments on series III bonds or interest thereon shall next be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.100, subject, however, to subsection (2) of this section.

(2) To the extent that moneys so distributed to the urban arterial trust account and the small city account are insufficient to meet the requirements for bond retirement or interest on any series III bonds, sixty percent of the amount required to make such payments when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state. The remaining forty percent shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the cities and towns pursuant to RCW 46.68.100(1) and to the counties pursuant to RCW 46.68.100(3). Of the counties', cities', and towns' share of any additional amounts required in the fiscal year ending June 30, 1984, fifteen percent shall be taken from the counties' distributive share and eighty-five percent from the cities' and towns' distributive share. Of the counties', cities', and towns' share of any additional amounts required in each fiscal year thereafter, the percentage thereof to be taken from the counties' distributive share and from the cities' and towns' distributive share shall correspond to the percentage of funds authorized for specific county projects and for specific city and town projects, respectively, from the proceeds of series III bonds, for the period through the first eleven months of the prior fiscal year as determined by the chairman of the transportation improvement board and reported to the state finance committee and the state treasurer not later than the first working day of June.

(3) Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues that are distributable to the state, counties, cities, and towns shall be repaid from the first moneys distributed to the urban arterial trust account and the small city account not required for redemption of the first authorization bonds, series II bonds, or series III bonds or interest on these bonds. [1995 c 274 § 13; 1994 c 179 § 24; 1988 c 167 § 30; 1983 1st ex.s. c 49 § 24; 1981 c 315 § 10.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective date—1981 c 315: See note following RCW 47.26.060.

47.26.504 Statement of obligation—Pledge of excise taxes. Bonds issued under the provisions of RCW 47.26.500 through 47.26.507 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on

such bonds shall be first payable in the manner provided in RCW 47.26.500 through 47.26.507 from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any such bonds and the interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all such bonds. [1995 c 274 § 14; 1993 c 440 § 5.]

Chapter 47.39

SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

Sections

- 47.39.040 Planning and design standards established by department of community, trade, and economic development.
47.39.090 Consultation with other agencies and parties—Identification of tourist routes.

47.39.040 Planning and design standards established by department of community, trade, and economic development. The establishment of planning and design standards for items provided for in RCW 47.39.050 shall be coordinated by the department of community, trade, and economic development. The department of transportation, parks and recreation commission, and any other departments or commissions whose interests are affected shall prepare, submit, and file with the department of community, trade, and economic development standards relating to the scenic and recreational highway system. If varying planning and design standards are filed, the department of community, trade, and economic development shall consult with the submitting agencies on the merits of the several proposals and, based upon such consultation, establish a set of standards. Pursuant to the planning and design standards so established, the department of transportation and the parks and recreation commission shall develop the highways and areas adjacent thereto to accomplish the purposes of this chapter, but the department shall retain exclusive authority over the highway right of way.

Responsibility for construction and maintenance is hereby established between the department and the parks and recreation commission with the department responsible for activities financed with funds provided for under RCW 47.39.030(1) and the parks and recreation commission responsible for activities financed from other sources of funds. By mutual consent, responsibility for development and/or maintenance may be transferred between the two agencies. [1995 c 399 § 122; 1985 c 6 § 16; 1984 c 7 § 208; 1967 ex.s. c 85 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

Department of community, trade, and economic development: Chapter 43.330 RCW.

47.39.090 Consultation with other agencies and parties—Identification of tourist routes. In developing the scenic and recreational highways program, the department shall consult with the department of community, trade, and economic development, the department of natural resources,

the parks and recreation commission, affected cities, towns, and counties, regional transportation planning organizations, state-wide bicycling organizations, and other interested parties. The scenic and recreational highways program may identify entire highway loops or similar tourist routes that could be developed to promote tourist activity and provide concurrent economic growth while protecting the scenic and recreational quality surrounding state highways. [1995 c 399 § 123; 1993 c 430 § 9.]

Chapter 47.40
ROADSIDE IMPROVEMENT AND
BEAUTIFICATION

Sections

47.40.100 State adopt-a-highway program.

47.40.100 State adopt-a-highway program. (1) The department of transportation shall establish a state-wide adopt-a-highway program. The purpose of the program is to provide volunteers and businesses an opportunity to contribute to a cleaner environment, enhanced roadsides, and protection of wildlife habitats. Participating volunteers and businesses shall adopt department-designated sections of state highways, rest areas, park and ride lots, intermodal facilities, and any other facilities the department deems appropriate, in accordance with rules adopted by the department. The department may elect to coordinate a consortium of participants for adopt-a-highway projects.

The adopt-a-highway program shall include, at a minimum, litter control for the adopted section, and may include additional responsibilities such as planting and maintaining vegetation, controlling weeds, graffiti removal, and any other roadside improvement or clean-up activities the department deems appropriate. The department shall not accept adopt-a-highway proposals that would have the effect of terminating classified employees or classified employee positions.

(2) A volunteer group or business choosing to participate in the adopt-a-highway program must submit a proposal to the department. The department shall review the proposal for consistency with departmental policy and rules. The department may accept, reject, or modify an applicant's proposal.

(3) The department shall seek partnerships with volunteer groups and businesses to facilitate the goals of this section. The department may solicit funding for the adopt-a-highway program that allows private entities to undertake all or a portion of financing for the initiatives. The department shall develop guidelines regarding the cash, labor, and in-kind contributions to be performed by the participants.

(4) An organization whose name: (a) Endorses or opposes a particular candidate for public office, (b) advocates a position on a specific political issue, initiative, referendum, or piece of legislation, or (c) includes a reference to a political party shall not be eligible to participate in the adopt-a-highway program.

(5) In administering the adopt-a-highway program, the department shall:

(a) Provide a standardized application form, registration form, and contractual agreement for all participating groups.

The forms shall notify the prospective participants of the risks and responsibilities to be assumed by the department and the participants;

(b) Require all participants to be at least fifteen years of age;

(c) Require parental consent for all minors;

(d) Require at least one adult supervisor for every eight minors;

(e) Require one designated leader for each participating organization, unless the department chooses to coordinate a consortium of participants;

(f) Assign each participating organization a section or sections of state highway, or other state-owned transportation facilities, for a specified period of time;

(g) Recognize the efforts of a participating organization by erecting and maintaining signs with the organization's name on both ends of the organization's section of highway;

(h) Provide appropriate safety equipment. Safety equipment issued to participating groups must be returned to the department upon termination of the applicable adopt-a-highway agreement;

(i) Provide safety training for all participants;

(j) Pay any and all premiums or assessments required under RCW 51.12.035 to secure medical aid benefits under chapter 51.36 RCW for all volunteers participating in the program;

(k) Require participating businesses to pay all employer premiums or assessments required to secure medical aid benefits under chapter 51.36 RCW for all employees or agents participating in the program;

(l) Maintain records of all injuries and accidents that occur;

(m) Adopt rules that establish a process to resolve any question of an organization's eligibility to participate in the adopt-a-highway program;

(n) Obtain permission from property owners who lease right of way before allowing an organization to adopt a section of highway on such leased property; and

(o) Establish procedures and guidelines for the adopt-a-highway program.

(6) Nothing in this section affects the rights or activities of, or agreements with, adjacent landowners, including the use of rights of way and crossings, nor impairs these rights and uses by the placement of signs. [1995 c 106 § 1; 1990 c 258 § 5.]

Legislative findings and intent—1990 c 258: "The legislature finds that despite the efforts of the department of transportation, the department of ecology, and the ecology youth corps to pick up litter along state highways, roadside litter in Washington state has increased by thirty-six percent since 1983. The legislature further finds that in twenty-seven states, volunteer organizations are able to give of their time and energy, demonstrate commitment to a clean environment, and discourage would-be litterers by keeping sections of highway litter free because those states have established programs to encourage and recognize such voluntary efforts. Therefore, it is the legislature's intent to establish an "adopt-a-highway" litter control program as a partnership between citizen volunteers and the state to reduce roadside litter and build civic pride in a litter-free Washington." [1990 c 258 § 4.]

Chapter 47.46

PUBLIC-PRIVATE TRANSPORTATION
INITIATIVES

Sections

- 47.46.010 Finding.
 47.46.030 Demonstration projects—Selection—Public involvement.
 47.46.040 Demonstration projects—Terms of agreements—Public participation.
 47.46.050 Financial arrangements.

47.46.010 Finding. The legislature finds and declares:

It is essential for the economic, social, and environmental well-being of the state and the maintenance of a high quality of life that the people of the state have an efficient transportation system.

The ability of the state to provide an efficient transportation system will be enhanced by a public-private sector program providing for private entities to undertake all or a portion of the study, planning, design, development, financing, acquisition, installation, construction or improvement, operation, and maintenance of transportation systems and facility projects.

A public-private initiatives program will provide benefits to both the public and private sectors. Public-private initiatives provide a sound economic investment opportunity for the private sector. Such initiatives will provide the state with increased access to property development and project opportunities, financial and development expertise, and will supplement state transportation revenues, allowing the state to use its limited resources for other needed projects.

The public-private initiatives program, to the fullest extent possible, should encourage and promote business and employment opportunities for Washington state citizens.

The public-private initiatives program shall be implemented in cooperation, consultation, and with the support of the affected communities and local jurisdictions.

The secretary of transportation should be permitted and encouraged to test the feasibility of building privately funded transportation systems and facilities or segments thereof through the use of innovative agreements with the private sector. The secretary of transportation should be vested with the authority to solicit, evaluate, negotiate, and administer public-private agreements with the private sector relating to the planning, construction, upgrading, or reconstruction of transportation systems and facilities.

Agreements negotiated under a public-private initiatives program will not bestow on private entities an immediate right to construct and operate the proposed transportation facilities. Rather, agreements will grant to private entities the opportunity to design the proposed facilities, demonstrate public support for proposed facilities, and complete the planning processes required in order to obtain a future decision by the department of transportation and other state and local lead agencies on whether the facilities should be permitted and built.

Agreements negotiated under the public-private initiatives program should establish the conditions under which the private developer may secure the approval necessary to develop and operate the proposed transportation facilities; create a framework to attract the private capital necessary to finance their development; ensure that the transportation

facilities will be designed, constructed, and operated in accordance with applicable local, regional, state, and federal laws and the applicable standards and policies of the department of transportation; and require a demonstration that the proposed transportation facility has the support of the affected communities and local jurisdictions.

The legislature finds that the Puget Sound congestion pricing project, selected under this chapter, raises major transportation policy, economic, and equity concerns. These relate to the integrity of the state's high-occupancy vehicle program; the cost-effective movement of freight and goods; the diversion of traffic to local streets and arterials; and possible financial hardship to commuters. The legislature further finds that these potential economic and social impacts require comprehensive legislative review prior to advancement of the project and directs that the secretary not proceed with the implementation of the project without prior approval of the legislature.

The department of transportation should be encouraged to take advantage of new opportunities provided by federal legislation under section 1012 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). That section establishes a new program authorizing federal participation in construction or improvement or improvement of publicly or privately owned toll roads, bridges, and tunnels, and allows states to leverage available federal funds as a means for attracting private sector capital. [1995 2nd sp.s. c 19 § 1; 1993 c 370 § 1.]

Effective date—1995 2nd sp.s. c 19: "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 immediately [June 16, 1995]." [1995 2nd sp.s. c 19 § 5.]

47.46.030 Demonstration projects—Selection—Public involvement. (1) The secretary or a designee shall solicit proposals from, and negotiate and enter into agreements with, private entities to undertake as appropriate, together with the department and other public entities, all or a portion of the study, planning, design, construction, operation, and maintenance of transportation systems and facilities, using in whole or in part private sources of financing.

The public-private initiatives program may develop up to six demonstration projects. Each proposal shall be weighed on its own merits, and each of the six agreements shall be negotiated individually, and as a stand-alone project.

(2) If project proposals selected prior to September 1, 1994, are terminated by the public or private sectors, the department shall not select any new projects, including project proposals submitted to the department prior to September 1, 1994, and designated by the transportation commission as placeholder projects, after June 16, 1995, until June 30, 1997.

The department, in consultation with the legislative transportation committee, shall conduct a program and fiscal audit of the public-private initiatives program for the biennium ending June 30, 1997. The department shall submit a progress report to the legislative transportation committee on the program and fiscal audit by June 30, 1996, with preliminary and final audit reports due December 1, 1996, and June 30, 1997, respectively.

The department shall develop and submit a proposed public involvement plan to the 1997 legislature to identify the process for selecting new potential projects and the associated costs of implementing the plan. The legislature must adopt the public involvement plan before the department may proceed with any activity related to project identification and selection. Following legislative adoption of the public involvement plan, the department is authorized to implement the plan and to identify potential new projects.

The public involvement plan for projects selected after June 30, 1997, shall, at a minimum, identify projects that: (a) Have the potential of achieving overall public support among users of the projects, residents of communities in the vicinity of the projects, and residents of communities impacted by the projects; (b) meet a state transportation need; (c) provide a significant state benefit; and (d) provide competition among proposers and maximum cost benefits to users. Prospective projects may include projects identified by the department or submitted by the private sector.

Projects that meet the minimum criteria established under this section and the requirements of the public involvement plan developed by the department and approved by the legislature shall be submitted to the Washington state transportation commission for its review. The commission, in turn, shall submit a list of eligible projects to the legislative transportation committee for its consideration. Forty-five days after the submission to the legislative transportation committee of the list of eligible projects, the secretary is authorized to solicit proposals for the eligible project.

(3) Prior to entering into agreements with private entities under the requirements of RCW 47.46.040 for any project proposal selected before September 1, 1994, or after June 30, 1997, except as provided for in subsections (10) and (11) of this section, the department shall require an advisory vote as provided under subsections (4) through (9) of this section.

(4) In preparing for the advisory vote, the department shall conduct a comprehensive analysis of traffic patterns and economic impact to define the geographical boundary of the project area that is affected by the imposition of tolls or user fees authorized under this chapter. The area so defined is referred to in this section as the affected project area. In defining the affected project area, the department shall, at a minimum, undertake: (a) A comparison of the estimated percentage of residents of communities in the vicinity of the project and in other communities impacted by the project who could be subject to tolls or user fees and the estimated percentage of other users and transient traffic that could be subject to tolls or user fees; (b) an analysis of the anticipated traffic diversion patterns; (c) an analysis of the potential economic impact resulting from proposed toll rates or user fee rates imposed on residents, commercial traffic, and commercial entities in communities in the vicinity of and impacted by the project; (d) an analysis of the economic impact of tolls or user fees on the price of goods and services generally; and (e) an analysis of the relationship of the project to state transportation needs and benefits.

(5)(a) After determining the definition of the affected project area, the department shall establish a committee comprised of individuals who represent cities and counties in the affected project area; organizations formed to support

or oppose the project; and users of the project. The committee shall be named the public-private local involvement committee, and be known as the local involvement committee.

(b) The members of the local involvement committee shall be: (i) An elected official from each city within the affected project area; (ii) an elected official from each county within the affected project area; (iii) two persons from each county within the affected project area who represent an organization formed in support of the project, if the organization exists; (iv) two persons from each county within the affected project area who represent an organization formed to oppose the project, if the organization exists; and (v) four public members active in a state-wide transportation organization. If the committee makeup results in an even number of committee members, there shall be an additional appointment of an elected official from the county in which all, or the greatest portion of the project is located.

(c) City and county elected officials shall be appointed by a majority of the members of the city or county legislative authorities of each city or county within the affected project area, respectively. The county legislative authority of each county within the affected project area shall identify and validate organizations officially formed in support of or in opposition to the project and shall make the appointments required under this section from a list submitted by the chair of the organizations. Public members shall be appointed by the governor. All appointments to the local involvement committee shall be made and submitted to the department of transportation no later than January 1, 1996, for projects selected prior to September 1, 1994, and no later than thirty days after the affected project area is defined for projects selected after June 30, 1997. Vacancies in the membership of the local involvement committee shall be filled by the appointing authority under (b)(i) through (v) of this subsection for each position on the committee.

(d) The local involvement committee shall serve in an advisory capacity to the department on all matters related to the execution of the advisory vote.

(e) Members of the local involvement committee serve without compensation and may not receive subsistence, lodging expenses, or travel expenses.

(6) The department shall conduct a minimum thirty-day public comment period on the definition of the geographical boundary of the project area. The department, in consultation with the local involvement committee, shall make adjustments, if required, to the definition of the geographical boundary of the affected project area, based on comments received from the public. Within fourteen calendar days after the public comment period, the department shall set the boundaries of the affected project area in units no smaller than a precinct as defined in RCW 29.01.120.

(7) The department, in consultation with the local involvement committee, shall develop a description for selected project proposals. After developing the description of the project proposal, the department shall publish the project proposal description in newspapers of general circulation for seven calendar days in the affected project area. Within fourteen calendar days after the last day of the publication of the project proposal description, the department shall transmit a copy of the map depicting the affected

project area and the description of the project proposal to the county auditor of the county in which any portion of the affected project area is located.

(8) The department shall provide the legislative transportation committee with progress reports on the status of the definition of the affected project area and the description of the project proposal.

(9) Upon receipt of the map and the description of the project proposal, the county auditor shall, within thirty days, verify the precincts that are located within the affected project area. The county auditor shall prepare the text identifying and describing the affected project area and the project proposal using the definition of the geographical boundary of the affected project area and the project description submitted by the department and shall set an election date for the submission of a ballot proposition authorizing the imposition of tolls or user fees to implement the proposed project within the affected project area, which date may be the next succeeding general election to be held in the state, or at a special election, if requested by the department. The text of the project proposal must appear in a voter's pamphlet for the affected project area. The department shall pay the costs of publication and distribution. The special election date must be the next date for a special election provided under RCW 29.13.020 that is at least sixty days but, if authorized under RCW 29.13.020, no more than ninety days after the receipt of the final map and project description by the auditor. The department shall pay the cost of an election held under this section.

(10) Subsections (4) through (9) of this section shall not apply to project proposals selected prior to September 1, 1994, that have no organized public opposition as demonstrated by the submission to the department of original petitions bearing at least five thousand signatures of individuals opposing the project, collected and submitted after September 1, 1994, and by thirty calendar days after June 16, 1995.

(11) Subsections (4) through (9) of this section shall not apply to project proposals selected after June 30, 1997, that have no organized public opposition as demonstrated by the submission to the department of original petitions bearing at least five thousand signatures of individuals opposing the project, collected and submitted by ninety calendar days after project selection. [1995 2nd sp.s. c 19 § 2; 1993 c 370 § 3.]

Effective date—1995 2nd sp.s. c 19: See note following RCW 47.46.010.

47.46.040 Demonstration projects—Terms of agreements—Public participation. (1) All projects designed, constructed, and operated under this authority must comply with all applicable rules and statutes in existence at the time the agreement is executed, including but not limited to the following provisions: Chapter 39.12 RCW, this title, RCW 41.06.380, chapter 47.64 RCW, RCW 49.60.180, and 49 C.F.R. Part 21.

(2) The secretary or a designee shall consult with legal, financial, and other experts within and outside state government in the negotiation and development of the agreements.

(3) Agreements shall provide for private ownership of the projects during the construction period. After completion and final acceptance of each project or discrete segment thereof, the agreement shall provide for state ownership of

the transportation systems and facilities and lease to the private entity unless the state elects to provide for ownership of the facility by the private entity during the term of the agreement.

The state shall lease each of the demonstration projects, or applicable project segments, to the private entities for operating purposes for up to fifty years.

(4) The department may exercise any power possessed by it to facilitate the development, construction, financing operation, and maintenance of transportation projects under this chapter. Agreements for maintenance services entered into under this section shall provide for full reimbursement for services rendered by the department or other state agencies. Agreements for police services for projects, involving state highway routes, developed under agreements shall be entered into with the Washington state patrol. The agreement for police services shall provide that the state patrol will be reimbursed for costs on a comparable basis with the costs incurred for comparable service on other state highway routes. The department may provide services for which it is reimbursed, including but not limited to preliminary planning, environmental certification, and preliminary design of the demonstration projects.

(5) The plans and specifications for each project constructed under this section shall comply with the department's standards for state projects. A facility constructed by and leased to a private entity is deemed to be a part of the state highway system for purposes of identification, maintenance, and enforcement of traffic laws and for the purposes of applicable sections of this title. Upon reversion of the facility to the state, the project must meet all applicable state standards. Agreements shall address responsibility for reconstruction or renovations that are required in order for a facility to meet all applicable state standards upon reversion of the facility to the state.

(6) For the purpose of facilitating these projects and to assist the private entity in the financing, development, construction, and operation of the transportation systems and facilities, the agreements may include provisions for the department to exercise its authority, including the lease of facilities, rights of way, and airspace, exercise of the power of eminent domain, granting of development rights and opportunities, granting of necessary easements and rights of access, issuance of permits and other authorizations, protection from competition, remedies in the event of default of either of the parties, granting of contractual and real property rights, liability during construction and the term of the lease, authority to negotiate acquisition of rights of way in excess of appraised value, and any other provision deemed necessary by the secretary.

(7) The agreements entered into under this section may include provisions authorizing the state to grant necessary easements and lease to a private entity existing rights of way or rights of way subsequently acquired with public or private financing. The agreements may also include provisions to lease to the entity airspace above or below the right of way associated or to be associated with the private entity's transportation facility. In consideration for the reversion rights in these privately constructed facilities, the department may negotiate a charge for the lease of airspace rights during the term of the agreement for a period not to exceed fifty years. If, after the expiration of this period, the department

continues to lease these airspace rights to the private entity, it shall do so only at fair market value. The agreement may also provide the private entity the right of first refusal to undertake projects utilizing airspace owned by the state in the vicinity of the public-private project.

(8) Agreements under this section may include any contractual provision that is necessary to protect the project revenues required to repay the costs incurred to study, plan, design, finance, acquire, build, install, operate, enforce laws, and maintain toll highways, bridges, and tunnels and which will not unreasonably inhibit or prohibit the development of additional public transportation systems and facilities. Agreements under this section must secure and maintain liability insurance coverage in amounts appropriate to protect the project's viability and may address state indemnification of the private entity for design and construction liability where the state has approved relevant design and construction plans.

(9) Agreements shall include a process that provides for public involvement in decision making with respect to the development of the projects.

(10)(a) In carrying out the public involvement process required in subsection (9) of this section, the private entity shall proactively seek public participation through a process appropriate to the characteristics of the project that assesses and demonstrates public support among: Users of the project, residents of communities in the vicinity of the project, and residents of communities impacted by the project.

(b) The private entity shall conduct a comprehensive public involvement process that provides, periodically throughout the development and implementation of the project, users and residents of communities in the affected project area an opportunity to comment upon key issues regarding the project including, but not limited to: (i) Alternative sizes and scopes; (ii) design; (iii) environmental assessment; (iv) right of way and access plans; (v) traffic impacts; (vi) tolling or user fee strategies and tolling or user fee ranges; (vii) project cost; (viii) construction impacts; (ix) facility operation; and (x) any other salient characteristics.

(c) If the affected project area has not been defined, the private entity shall define the affected project area by conducting, at a minimum: (i) A comparison of the estimated percentage of residents of communities in the vicinity of the project and in other communities impacted by the project who could be subject to tolls or user fees and the estimated percentage of other users and transient traffic that could be subject to tolls or user fees; (ii) an analysis of the anticipated traffic diversion patterns; (iii) an analysis of the potential economic impact resulting from proposed toll rates or user fee rates imposed on residents, commercial traffic, and commercial entities in communities in the vicinity of and impacted by the project; (iv) an analysis of the economic impact of tolls or user fees on the price of goods and services generally; and (v) an analysis of the relationship of the project to state transportation needs and benefits.

The agreement may require an advisory vote by users of and residents in the affected project area.

(d) In seeking public participation, the private entity shall establish a local involvement committee or committees comprised of residents of the affected project area, individu-

als who represent cities and counties in the affected project area, organizations formed to support or oppose the project, if such organizations exist, and users of the project. The private entity shall, at a minimum, establish a committee as required under the specifications of RCW 47.46.030(5)(b)(ii) and (iii) and appointments to such committee shall be made no later than thirty days after the project area is defined.

(e) Local involvement committees shall act in an advisory capacity to the department and the private entity on all issues related to the development and implementation of the public involvement process established under this section.

(f) The department and the private entity shall provide the legislative transportation committee and local involvement committees with progress reports on the status of the public involvement process including the results of an advisory vote, if any occurs.

(11) Nothing in this chapter limits the right of the secretary and his or her agents to render such advice and to make such recommendations as they deem to be in the best interests of the state and the public. [1995 2nd sp.s. c 19 § 3; 1993 c 370 § 4.]

Effective date—1995 2nd sp.s. c 19: See note following RCW 47.46.010.

47.46.050 Financial arrangements. (1) The department may enter into agreements using federal, state, and local financing in connection with the projects, including without limitation, grants, loans, and other measures authorized by section 1012 of ISTEA, and to do such things as necessary and desirable to maximize the funding and financing, including the formation of a revolving loan fund to implement this section.

(2) Agreements entered into under this section shall authorize the private entity to lease the facilities within a designated area or areas from the state and to impose user fees or tolls within the designated area to allow a reasonable rate of return on investment, as established through a negotiated agreement between the state and the private entity. The negotiated agreement shall determine a maximum rate of return on investment, based on project characteristics. If the negotiated rate of return on investment is not affected, the private entity may establish and modify toll rates and user fees.

(3) Agreements may establish "incentive" rates of return beyond the negotiated maximum rate of return on investment. The incentive rates of return shall be designed to provide financial benefits to the affected public jurisdictions and the private entity, given the attainment of various safety, performance, or transportation demand management goals. The incentive rates of return shall be negotiated in the agreement.

(4) Agreements shall require that over the term of the ownership or lease the user fees or toll revenues be applied only to payment of the private entity's capital outlay costs for the project, including project development costs, interest expense, the costs associated with design, construction, operations, toll collection, maintenance and administration of the project, reimbursement to the state for all costs associated with an election as required under RCW 47.46.030, the costs of project review and oversight, technical and law

enforcement services, establishment of a fund to assure the adequacy of maintenance expenditures, and a reasonable return on investment to the private entity. A negotiated agreement shall not extend the term of the ownership or lease beyond the period of time required for payment of the private entity's capital outlay costs for the project under this subsection. [1995 2nd sp.s. c 19 § 4; 1993 c 370 § 5.]

Effective date—1995 2nd sp.s. c 19: See note following RCW 47.46.010.

Chapter 47.50

HIGHWAY ACCESS MANAGEMENT

Sections

47.50.090 Access management standards.

47.50.090 Access management standards. (1) The department shall develop, adopt, and maintain an access control classification system for all routes on the state highway system, the purpose of which shall be to provide for the implementation and continuing applications of the provision of this chapter.

(2) The principal component of the access control classification system shall be access management standards, the purpose of which shall be to provide specific minimum standards to be adhered to in the planning for and approval of access to state highways.

(3) The control classification system shall be developed consistent with the following:

(a) The department shall, no later than January 1, 1993, adopt rules setting forth procedures governing the implementation of the access control classification system required by this chapter. The rule shall provide for input from the entities described in (b) of this subsection as well as for public meetings to discuss the access control classification system. Nothing in this chapter shall affect the validity of the department's existing or subsequently adopted rules concerning access to the state highway system. Such rules shall remain in effect until repealed or replaced by the rules required by this chapter.

(b) The access control classification system shall be developed in cooperation with counties, cities and towns, the department of community, trade, and economic development, regional transportation planning organizations, and other local governmental entities, and for city streets designated as state highways pursuant to chapter 47.24 RCW, adopted with the concurrence of the city design standards committee.

(c) The rule required by this section shall provide that assignment of a road segment to a specific access category be made in consideration of the following criteria:

- (i) Local land use plans and zoning, as set forth in comprehensive plans;
- (ii) The current functional classification as well as potential future functional classification of each road on the state highway system;
- (iii) Existing and projected traffic volumes;
- (iv) Existing and projected state, local, and metropolitan planning organization transportation plans and needs;
- (v) Drainage requirements;
- (vi) The character of lands adjoining the highway;
- (vii) The type and volume of traffic requiring access;

(viii) Other operational aspects of access;

(ix) The availability of reasonable access by way of county roads and city streets to a state highway; and

(x) The cumulative effect of existing and projected connections on the state highway system's ability to provide for the safe and efficient movement of people and goods within the state.

(d) Access management standards shall include, but not be limited to, connection location standards, safety factors, design and construction standards, desired levels of service, traffic control devices, and effective maintenance of the roads. The standards shall also contain minimum requirements for the spacing of connections, intersecting streets, roads, and highways.

(e) An access control category shall be assigned to each segment of the state highway system by July 1, 1993. [1995 c 399 § 124; 1991 c 202 § 9.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

Chapter 47.56

STATE TOLL BRIDGES, TUNNELS, AND FERRIES

Sections

- 47.56.030 Powers and duties regarding toll facilities—Purchasing.
- 47.56.749 Columbia river bridge at Hom Rapids—Bonds—Statement describing nature of obligation—Sources of payment.
- 47.56.750 Columbia river bridge at Hom Rapids—Bonds—Account created in highway bond retirement fund—Deposit of revenue—Pledge of excise taxes—Repayment procedure—Legislative covenant.
- 47.56.771 Refunding bonds—General obligation—Signatures, negotiability—Payment of principal and interest—Pledge of excise taxes.

47.56.030 Powers and duties regarding toll facilities—Purchasing. The department of transportation shall have full charge of the construction of all toll bridges and other toll facilities including the Washington state ferries, and the operation and maintenance thereof. The transportation commission shall determine and establish the tolls and charges thereon, and shall perform all duties and exercise all powers relating to the financing, refinancing, and fiscal management of all toll bridges and other toll facilities including the Washington state ferries, and bonded indebtedness in the manner provided by law. The department shall have full charge of design of all toll facilities. The department shall proceed with the construction of such toll bridges and other facilities and the approaches thereto by contract in the manner of state highway construction immediately upon there being made available funds for such work and shall prosecute such work to completion as rapidly as practicable. The department is authorized to negotiate contracts for any amount without bid in order to make repairs to ferries or ferry terminal facilities or removal of such facilities whenever continued use of ferries or ferry terminal facilities constitutes a real or immediate danger to the traveling public or precludes prudent use of such ferries or facilities.

The department shall proceed with the procurement of materials, supplies, services, and equipment needed for the support, maintenance, and use of a ferry, ferry terminal, or other facility operated by Washington state ferries, in accordance with chapter 43.19 RCW except as follows:

(1) When the secretary of the department of transportation determines in writing that the use of invitation for bid is either not practicable or not advantageous to the state and it may be necessary to make competitive evaluations, including technical or performance evaluations among acceptable proposals to complete the contract award, a contract may be entered into by use of a competitive sealed proposals method, and a formal request for proposals solicitation. Such formal request for proposals solicitation shall include a functional description of the needs and requirements of the state and the significant factors.

(2) When purchases are made through a formal request for proposals solicitation the contract shall be awarded to the responsible proposer whose competitive sealed proposal is determined in writing to be the most advantageous to the state taking into consideration price and other evaluation factors set forth in the request for proposals. No significant factors may be used in evaluating a proposal that are not specified in the request for proposals. Factors that may be considered in evaluating proposals include but are not limited to: Price maintainability; reliability; commonality; performance levels; life cycle cost if applicable under this section; cost of transportation or delivery; delivery schedule offered; installation cost; cost of spare parts; availability of parts and service offered; and the following:

(a) The ability, capacity, and skill of the proposer to perform the contract or provide the service required;

(b) The character, integrity, reputation, judgment, experience, and efficiency of the proposer;

(c) Whether the proposer can perform the contract within the time specified;

(d) The quality of performance of previous contracts or services;

(e) The previous and existing compliance by the proposer with laws relating to the contract or services;

(f) Objective, measurable criteria defined in the request for proposal. These criteria may include but are not limited to items such as discounts, delivery costs, maintenance services costs, installation costs, and transportation costs; and

(g) Such other information as may be secured having a bearing on the decision to award the contract.

When purchases are made through a request for proposal process, proposals received shall be evaluated based on the evaluation factors set forth in the request for proposal. When a life cycle cost analysis is used, the life cycle cost of a proposal shall be given at least the same relative importance as the initial price element specified in the request of proposal documents. The department may reject any and all proposals received. If the proposals are not rejected, the award shall be made to the proposer whose proposal is most advantageous to the department, considering price and the other evaluation factors set forth in the request for proposal.

(3) The legislative transportation committee shall review the secretary's use of the request for proposals solicitation for Washington state ferries projects to determine if the process established under chapter 4, Laws of 1995 1st sp. sess. is appropriate. The results of the review, including recommendations for modification of the request for proposal process, shall be reported to the house of representatives and senate transportation committees by January 1, 1997. [1995 1st sp.s. c 4 § 1; 1977 ex.s. c 151 § 66; 1969 ex.s. c 180 §

3; 1961 c 278 § 8; 1961 c 13 § 47.56.030. Prior: 1937 c 173 § 10; RRS § 6524-10.]

Effective date—1995 1st sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 14, 1995]." [1995 1st sp.s. c 4 § 4.]

47.56.749 Columbia river bridge at Horn Rapids—Bonds—Statement describing nature of obligation—Sources of payment. Bonds and bond anticipation notes issued under the provisions of RCW 47.56.740 through 47.56.756 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in chapter 212, Laws of 1979 ex. sess. from the proceeds of state excise taxes on motor vehicles and special fuels imposed by chapters 82.36 and 82.38 RCW and from the tolls and revenues derived from the operation of such toll bridge. [1995 c 274 § 15; 1979 ex.s. c 212 § 10.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.750 Columbia river bridge at Horn Rapids—Bonds—Account created in highway bond retirement fund—Deposit of revenue—Pledge of excise taxes—Repayment procedure—Legislative covenant. There is hereby created in the highway bond retirement fund in the state treasury a special account to be known as the Columbia river toll bridge account into which shall be deposited any capitalized interest from the proceeds of the bonds, and at least monthly all of the tolls and other revenues received from the operation of the toll bridge and from any interest which may be earned from the deposit or investment of these revenues after the payment of costs of operation, maintenance, management, and necessary repairs of the facility. The principal of and interest on the bonds shall be paid first from money deposited in the Columbia river toll bridge account in the highway bond retirement fund, and then, to the extent that money deposited in that account is insufficient to make any such payment when due, from the state excise taxes on motor vehicle and special fuels deposited in the highway bond retirement fund. There is hereby pledged the proceeds of state excise taxes on motor vehicle and special fuels imposed under chapters 82.36 and 82.38 RCW to pay the bonds and interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on the bonds if the money deposited in the Columbia river toll bridge account of the highway bond retirement fund is insufficient to make such payments. Not less than fifteen days prior to the date any interest or principal and interest payments are due, the state finance committee shall certify to the state treasurer such amount of additional moneys as may be required for debt service, and the treasurer shall thereupon transfer from the motor vehicle fund such amount from the proceeds of such excise taxes into the highway bond retirement fund. Any proceeds of such excise taxes required for these

purposes shall first be taken from that portion of the motor vehicle fund which results from the imposition of the excise taxes on motor vehicle and special fuels and which is distributed to the state. If the proceeds from the excise taxes distributed to the state are ever insufficient to meet the required payments on principal or interest on the bonds when due, the amount required to make the payments on the principal or interest shall next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.100 as now existing or hereafter amended. Any payments of the principal or interest taken from the motor vehicle or special fuel tax revenues which are distributable to the counties, cities, and towns shall be repaid from the first moneys distributed to the state not required for redemption of the bonds or interest thereon. The legislature covenants and pledges that it shall at all times provide sufficient revenues from the imposition of such excise taxes to pay the principal and interest due on the bonds. [1995 c 274 § 16; 1979 ex.s. c 212 § 11.]

Severability—1979 ex.s. c 212: See note following RCW 47.56.740.

47.56.771 Refunding bonds—General obligation—Signatures, negotiability—Payment of principal and interest—Pledge of excise taxes. (1) The refunding bonds authorized under RCW 47.56.770 shall be general obligation bonds of the state of Washington and shall be issued in a total principal amount not to exceed fifteen million dollars. The exact amount of refunding bonds to be issued shall be determined by the state finance committee after calculating the amount of money deposited with the trustee for the bonds to be refunded which can be used to redeem or defease outstanding toll bridge authority, ferry, and Hood Canal bridge revenue bonds after the setting aside of sufficient money from that fund to pay the first interest installment on the refunding bonds. The refunding bonds shall be serial in form maturing at such time, in such amounts, having such denomination or denominations, redemption privileges, and having such terms and conditions as determined by the state finance committee. The last maturity date of the refunding bonds shall not be later than January 1, 2002.

(2) The refunding bonds shall be signed by the governor and the state treasurer under the seal of the state, which signatures shall be made manually or in printed facsimile. The bonds shall be registered in the name of the owner in accordance with chapter 39.46 RCW. The refunding bonds shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state, and shall contain an unconditional promise to pay the principal thereof and the interest thereon when due. The refunding bonds shall be fully negotiable instruments.

(3) The principal and interest on the refunding bonds shall be first payable in the manner provided in this section from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW.

(4) The principal of and interest on the refunding bonds shall be paid first from the state excise taxes on motor vehicle and special fuels deposited in the ferry bond retirement fund. There is hereby pledged the proceeds of state

excise taxes on motor vehicle and special fuels imposed under chapters 82.36 and 82.38 RCW to pay the refunding bonds and interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on the refunding bonds. Not less than fifteen days prior to the date any interest or principal and interest payments are due, the state finance committee shall certify to the state treasurer such amount of additional money as may be required for debt service, and the treasurer shall thereupon transfer from the motor vehicle fund such amount from the proceeds of such excise taxes into the ferry bond retirement fund. Any proceeds of such excise taxes required for these purposes shall first be taken from that portion of the motor vehicle fund which results from the imposition of the excise taxes on motor vehicle and special fuels and which is distributed to the Puget Sound capital construction account. If the proceeds from excise taxes distributed to the state are ever insufficient to meet the required payments on principal or interest on the refunding bonds when due, the amount required to make the payments on the principal or interest shall next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.100 as now existing or hereafter amended. Any payments of the principal or interest taken from the motor vehicle or special fuel tax revenues which are distributable to the counties, cities, and towns shall be repaid from the first money distributed to the state not required for redemption of the refunding bonds or interest thereon. The legislature covenants that it shall at all times provide sufficient revenues from the imposition of such excise taxes to pay the principal and interest due on the refunding bonds. [1995 c 274 § 17; 1993 c 4 § 3.]

Legislative declaration—Effective date—1993 c 4: See notes following RCW 47.56.770.

Chapter 47.60

PUGET SOUND FERRY AND TOLL BRIDGE SYSTEM

Sections

47.60.140	System as self-liquidating undertaking—Powers of department—Concessions.
47.60.580	Bonds—Terms—Principal and interest payable from proceeds of state excise taxes on motor vehicle and special fuels.
47.60.645	Passenger ferry account.
47.60.651	through 47.60.661 Repealed.
47.60.806	Bonds—1992 issue—Payment of principal and interest from pledged excise taxes.

47.60.140 System as self-liquidating undertaking—Powers of department—Concessions. (1) The department is empowered to operate such ferry system, including all operations, whether intrastate or international, upon any route or routes, and toll bridges as a revenue-producing and self-liquidating undertaking. The department has full charge of the construction, rehabilitation, rebuilding, enlarging, improving, operation, and maintenance of the ferry system, including toll bridges, approaches, and roadways incidental

thereto that may be authorized by the department, including the collection of tolls and other charges for the services and facilities of the undertaking. The department has the exclusive right to enter into leases and contracts for use and occupancy by other parties of the concessions and space located on the ferries, wharves, docks, approaches, and landings, but, except as provided in subsection (2) of this section, no such leases or contracts may be entered into for more than ten years, nor without a competitive contract process, except as otherwise provided in this section. The competitive process shall be either an invitation for bids in accordance with the process established by chapter 43.19 RCW, or a request for proposals in accordance with the process established by RCW 47.56.030.

(2) As part of a joint development agreement under which a public or private developer constructs or installs improvements on ferry system property, the department may lease all or part of such property and improvements to such developers for that period of time, not to exceed fifty-five years, or not to exceed thirty years for those areas located within harbor areas, which the department determines is necessary to allow the developer to make reasonable recovery on its initial investment. Any lease entered into as provided for in this subsection that involves state aquatic lands shall conform with the Washington state Constitution and applicable statutory requirements as determined by the department of natural resources. That portion of the lease rate attributable to the state aquatic lands shall be distributed in the same manner as other lease revenues derived from state aquatic lands as provided in RCW 79.24.580. [1995 1st sp.s. c 4 § 2; 1987 c 69 § 1; 1984 c 7 § 311; 1965 ex.s. c 170 § 58; 1961 c 13 § 47.60.140. Prior: 1951 c 259 § 1; 1949 c 179 § 5, part; Rem. Supp. 1949 § 6584-34, part.]

Effective date—1995 1st sp.s. c 4: See note following RCW 47.56.030.

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.580 Bonds—Terms—Principal and interest payable from proceeds of state excise taxes on motor vehicle and special fuels. Bonds issued under the provisions of RCW 47.60.560 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 47.60.560 through 47.60.640 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.60.560 through 47.60.640 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.60.560 through 47.60.640. [1995 c 274 § 18; 1977 ex.s. c 360 § 3.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.645 Passenger ferry account. There is hereby established in the transportation fund the passenger ferry account. Money in the account shall be used for capital improvements for passenger ferry projects including, but not limited to, pedestrian and transit facilities at ferry terminals and passenger-only ferry vessels. Moneys in the account shall be expended with legislative appropriation. [1995 2nd sp.s. c 14 § 558.]

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

47.60.651 through 47.60.661 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

47.60.806 Bonds—1992 issue—Payment of principal and interest from pledged excise taxes. Bonds issued under the authority of RCW 47.60.800 through 47.60.808 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest shall be first payable in the manner provided in RCW 47.60.800 through 47.60.808 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW and distributed to the state pursuant to RCW 46.68.130 and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.60.800 through 47.60.808, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.60.800 through 47.60.808. [1995 c 274 § 19; 1992 c 158 § 4.]

Chapter 47.64

MARINE EMPLOYEES—PUBLIC EMPLOYMENT RELATIONS

Sections

47.64.270 Insurance and health care.

47.64.270 Insurance and health care. Absent a collective bargaining agreement to the contrary, the department of transportation shall provide contributions to insurance and health care plans for ferry system employees and dependents, as determined by the state health care authority, under chapter 41.05 RCW; and the ferry system management and employee organizations may collectively bargain for other insurance and health care plans, and employer contri-

butions may exceed that of other state agencies as provided in RCW 41.05.050, subject to RCW 47.64.180. To the extent that ferry employees by bargaining unit have absorbed the required offset of wage increases by the amount that the employer's contribution for employees' and dependents' insurance and health care plans exceeds that of other state general government employees in the 1985-87 fiscal biennium, employees shall not be required to absorb a further offset except to the extent the differential between employer contributions for those employees and all other state general government employees increases during any subsequent fiscal biennium. If such differential increases in the 1987-89 fiscal biennium or the 1985-87 offset by bargaining unit is insufficient to meet the required deduction, the amount available for compensation shall be reduced by bargaining unit by the amount of such increase or the 1985-87 shortage in the required offset. Compensation shall include all wages and employee benefits. [1995 1st sp.s. c 6 § 6; 1993 c 492 § 224; 1988 c 107 § 21; 1987 c 78 § 2; 1983 c 15 § 18.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

Intent—1987 c 78: "The legislature finds that the provisions of RCW 47.64.270 have been subject to misinterpretation. The objective of this act is to clarify the intent of RCW 47.64.270 as originally enacted." [1987 c 78 § 1.]

Effective date—1987 c 78: "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 78 § 3.]

Chapter 47.66

MULTIMODAL TRANSPORTATION PROGRAMS

Sections

47.66.020	Repealed.
47.66.030	Transportation improvement board—Authority—Expenses.
47.66.040	Selection process—Local matching funds.
47.66.050	Repealed.
47.66.060	Repealed.

47.66.020 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

47.66.030 Transportation improvement board—Authority—Expenses. (1)(a) The transportation improvement board is authorized and responsible for the final selection of programs and projects funded from the central Puget Sound public transportation account; public transportation systems account; high capacity transportation account; and the intermodal surface transportation and efficiency act of 1991, surface transportation program, state-wide competitive.

(b) The board may establish subcommittees as well as technical advisory committees to carry out the mandates of this chapter.

(2) Expenses of the board, including administrative expenses for managing the program, shall be paid in accor-

dance with RCW 47.26.140. [1995 c 269 § 2604; 1993 c 393 § 5.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

47.66.040 Selection process—Local matching funds.

(1) The transportation improvement board shall select programs and projects based on a competitive process consistent with the mandates governing each account or source of funds. The competition shall be consistent with the following criteria:

- (a) Local, regional, and state transportation plans;
- (b) Local transit development plans; and
- (c) Local comprehensive land use plans.

(2) The following criteria shall be considered by the board in selecting programs and projects:

(a) Objectives of the growth management act, the high capacity transportation act, the commute trip reduction act, transportation demand management programs, federal and state air quality requirements, and federal Americans with disabilities act and related state accessibility requirements; and

(b) Energy efficiency issues, freight and goods movement as related to economic development, regional significance, rural isolation, the leveraging of other funds including funds administered by this board, and safety and security issues.

(3) The board shall determine the appropriate level of local match required for each program and project based on the source of funds. [1995 c 269 § 2606; 1993 c 393 § 6.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

47.66.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

47.66.060 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 47.68

AERONAUTICS

(Formerly: Chapter 14.04 RCW, Aeronautics commission)

Sections

47.68.236	Aircraft search and rescue, safety, and education account.
47.68.250	Registration of aircraft.
47.68.340	Hazardous structures and obstacles—Marking—Hearing to determine hazard.
47.68.370	Repealed.
47.68.380	Search and rescue.

47.68.236 Aircraft search and rescue, safety, and education account. There is hereby created in the transportation fund of the state treasury an account to be known as the aircraft search and rescue, safety, and education account. All moneys received by the department under RCW 47.68.233 shall be deposited in such account. [1995 c 170 § 4; 1991 sp.s. c 13 § 38; 1985 c 57 § 63; 1983 c 3 § 144; 1967 c 207 § 3. Formerly RCW 14.04.236.]

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.

47.68.250 Registration of aircraft. Every aircraft shall be registered with the department for each calendar year in which the aircraft is operated or is based within this state. A fee of four dollars shall be charged for each such registration and each annual renewal thereof.

Possession of the appropriate effective federal certificate, permit, rating, or license relating to ownership and airworthiness of the aircraft, and payment of the excise tax imposed by Title 82 RCW for the privilege of using the aircraft within this state during the year for which the registration is sought, and payment of the registration fee required by this section shall be the only requisites for registration of an aircraft under this section.

The registration fee imposed by this section shall be payable to and collected by the secretary. The fee for any calendar year must be paid during the month of January, and shall be collected by the secretary at the time of the collection by him or her of the said excise tax. If the secretary is satisfied that the requirements for registration of the aircraft have been met, he or she shall thereupon issue to the owner of the aircraft a certificate of registration therefor. The secretary shall pay to the state treasurer the registration fees collected under this section, which registration fees shall be credited to the aeronautics account in the transportation fund.

It shall not be necessary for the registrant to provide the secretary with originals or copies of federal certificates, permits, ratings, or licenses. The secretary shall issue certificates of registration, or such other evidences of registration or payment of fees as he or she may deem proper; and in connection therewith may prescribe requirements for the possession and exhibition of such certificates or other evidences.

The provisions of this section shall not apply to:

(1) An aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(2) An aircraft registered under the laws of a foreign country;

(3) An aircraft which is owned by a nonresident and registered in another state: **PROVIDED**, That if said aircraft shall remain in and/or be based in this state for a period of ninety days or longer it shall not be exempt under this section;

(4) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(5) An aircraft owned by the commercial manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;

(6) An aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW;

(7) An aircraft based within the state that is in an unairworthy condition, is not operated within the registration

period, and has obtained a written exemption issued by the secretary.

The secretary shall be notified within one week of any change in ownership of a registered aircraft. The notification shall contain the N, NC, NR, NL, or NX number of the aircraft, the full name and address of the former owner, and the full name and address of the new owner. For failure to so notify the secretary, the registration of that aircraft may be canceled by the secretary, subject to reinstatement upon application and payment of a reinstatement fee of ten dollars by the new owner. [1995 c 170 § 3; 1993 c 208 § 7; 1987 c 220 § 3; 1979 c 158 § 206; 1967 ex.s. c 9 § 8; 1955 c 150 § 11; 1949 c 49 § 12; 1947 c 165 § 25; Rem. Supp. 1949 § 10964-105. Formerly RCW 14.04.250.]

Severability—1987 c 220: See note following RCW 47.68.230.

Aircraft dealers: Chapter 14.20 RCW.

Definition of terms: RCW 14.20.010, 47.68.020.

47.68.340 Hazardous structures and obstacles—Marking—Hearing to determine hazard. A structure or obstacle that obstructs the air space above ground or water level, when determined by the department after a hearing to be a hazard or potential hazard to the safe flight of aircraft, shall be plainly marked, illuminated, painted, lighted, or designated in a manner to be approved in accordance with the general rules of the department so that the structure or obstacle will be clearly visible to airmen. In determining which structures or obstacles constitute a safety hazard, or a hazard to flight, the department shall take into account those obstacles located at a river, lake, or canyon crossing, and in other low-altitude flight paths usually traveled by aircraft including, but not limited to, airport areas and runway departure and approach areas as defined by federal air regulations. [1995 c 153 § 2; 1984 c 7 § 361; 1961 c 263 § 2. Formerly RCW 14.04.340.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.370 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

47.68.380 Search and rescue. The aviation division is responsible for the conduct and management of all aerial search and rescue within the state. This includes search and rescue efforts involving aircraft and airships. The division is also responsible for search and rescue activities involving electronic emergency signaling devices such as emergency locator transmitters (ELT's) and emergency position indicating radio beacons (EPIRB's). [1995 c 153 § 1.]

Chapter 47.76

RAIL FREIGHT SERVICE

Sections

47.76.200	Legislative findings.
47.76.210	State freight rail program.
47.76.220	State rail plan—Contents.
47.76.230	Freight rail planning.
47.76.240	Rail preservation program.
47.76.250	Essential rail assistance account—Purposes.
47.76.260	Repealed.

47.76.270 Essential rail banking account merged into essential rail assistance account.

47.76.280 Sale or lease for use as rail service—Time limit.

47.76.200 Legislative findings. The legislature finds that a balanced multimodal transportation system is required to maintain the state's commitment to the growing mobility needs of its citizens and commerce. The state's freight rail system, including branch lines, mainlines, rail corridors, terminals, yards, and equipment, is an important element of this multimodal system. Washington's economy relies heavily upon the freight rail system to ensure movement of the state's agricultural, chemical, and natural resources and manufactured products to local, national, and international markets and thereby contributes to the economic vitality of the state.

Since 1970, Washington has lost over one-third of its rail miles to abandonment and bankruptcies. The combination of rail abandonments and rail system capacity constraints may alter the delivery to market of many commodities. In addition, the resultant motor vehicle freight traffic increases the burden on state highways and county roads. In many cases, the cost of maintaining and upgrading the state highways and county roads exceeds the cost of maintaining rail freight service. Thus, the economy of the state will be best served by a policy of maintaining and encouraging a healthy rail freight system by creating mechanisms that keep rail freight lines operating if the benefits of the service outweigh the cost.

Recognizing the implications of this trend for freight mobility and the state's economic future, the legislature finds that better freight rail planning, better cooperation to preserve rail lines, and increased financial assistance from the state are necessary to maintain and improve the freight rail system within the state. [1995 c 380 § 1; 1993 c 224 § 1; 1983 c 303 § 4. Formerly RCW 47.76.010.]

Severability—1983 c 303: See RCW 36.60.905.

47.76.210 State freight rail program. The Washington state department of transportation shall implement a state freight rail program that supports the freight rail service objectives identified in the state's multimodal transportation plan required under chapter 47.06 RCW. The support may be in the form of projects and strategies that support branch lines and light-density lines, provide access to ports, maintain adequate mainline capacity, and preserve or restore rail corridors and infrastructure. [1995 c 380 § 2; 1990 c 43 § 2. Formerly RCW 47.76.110.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.220 State rail plan—Contents. (1) The department of transportation shall prepare and periodically update a state rail plan, the objective of which is to identify, evaluate, and encourage essential rail services. The plan shall:

- (a) Identify and evaluate mainline capacity issues;
- (b) Identify and evaluate port-to-rail access and congestion issues;
- (c) Identify and evaluate those rail freight lines that may be abandoned or have recently been abandoned;

- (d) Quantify the costs and benefits of maintaining rail service on those lines that are likely to be abandoned;
- (e) Establish priorities for determining which rail lines should receive state support. The priorities should include the anticipated benefits to the state and local economy, the anticipated cost of road and highway improvements necessitated by the abandonment or capacity constraints of the rail line, the likelihood the rail line receiving funding can meet operating costs from freight charges, surcharges on rail traffic, and other funds authorized to be raised by a county or port district, and the impact of abandonment or capacity constraints on changes in energy utilization and air pollution;

- (f) Identify and describe the state's rail system;

- (g) Prepare a state freight rail system map;

- (h) Identify and evaluate rail commodity flows and traffic types;

- (i) Identify lines and corridors that have been rail banked or preserved; and

- (j) Identify and evaluate other issues affecting the state's rail traffic.

(2) The state rail plan may be prepared in conjunction with the rail plan prepared by the department pursuant to the federal Railroad Revitalization and Regulatory Reform Act. [1995 c 380 § 3; 1993 c 224 § 2; 1985 c 432 § 1; 1983 c 303 § 5. Formerly RCW 47.76.020.]

Severability—1983 c 303: See RCW 36.60.905.

47.76.230 Freight rail planning. (1) The department of transportation shall continue its responsibility for the development and implementation of the state rail plan and programs, and the utilities and transportation commission shall continue its responsibility for intrastate rates, service, and safety issues.

(2) The department of transportation shall maintain an enhanced data file on the rail system. Proprietary annual station traffic data from each railroad and the modal use of major shippers shall be obtained to the extent that such information is available.

(3) The department of transportation shall provide technical assistance, upon request, to state agencies and local interests. Technical assistance includes, but is not limited to, the following:

- (a) Rail project cost-benefit analyses conducted in accordance with methodologies recommended by the Federal Railroad Administration;

- (b) Assistance in the formation of county rail districts and port districts; and

- (c) Feasibility studies for rail service continuation and/or rail service assistance.

(4) With funding authorized by the legislature, the department of transportation, in collaboration with the department of community, trade, and economic development, and local economic development agencies, and other interested public and private organizations, shall develop a cooperative process to conduct community and business information programs and to regularly disseminate information on rail matters. [1995 c 380 § 4; 1990 c 43 § 3. Formerly RCW 47.76.120.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.240 Rail preservation program. The state, counties, local communities, ports, railroads, labor, and shippers all benefit from continuation of rail service and should participate in its preservation. Lines that provide benefits to the state and local jurisdictions, such as avoided roadway costs, reduced traffic congestion, economic development potential, environmental protection, and safety, should be assisted through the joint efforts of the state, local jurisdictions, and the private sector.

State funding for rail service, rail preservation, and corridor preservation projects must benefit the state's interests. The state's interest is served by reducing public roadway maintenance and repair costs, increasing economic development opportunities, increasing domestic and international trade, preserving jobs, and enhancing safety. State funding for projects is contingent upon appropriate local jurisdiction and private sector participation and cooperation. Before spending state moneys on projects the department shall seek federal, local, and private funding and participation to the greatest extent possible.

(1) The department of transportation shall continue to monitor the status of the state's mainline and branchline common carrier railroads and preserved rail corridors through the state rail plan and various analyses, and shall seek alternatives to abandonment prior to interstate commerce commission proceedings, where feasible.

(2) The utilities and transportation commission shall intervene in interstate commerce commission proceedings on abandonments, when necessary, to protect the state's interest.

(3) The department of transportation, in consultation with the Washington state freight rail policy advisory committee, shall establish criteria for evaluating rail projects and corridors of significance to the state.

(4) Local jurisdictions may implement rail service preservation projects in the absence of state participation.

(5) The department of transportation shall continue to monitor projects for which it provides assistance. [1995 c 380 § 5; 1993 c 224 § 3; 1990 c 43 § 4. Formerly RCW 47.76.130.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.250 Essential rail assistance account—Purposes. (1) The essential rail assistance account is created in the state treasury. Moneys in the account may be appropriated only for the purposes specified in this section.

(2) Moneys appropriated from the account to the department of transportation may be used by the department or distributed by the department to cities, county rail districts, counties, economic development councils, and port districts for the purpose of:

(a) Acquiring, rebuilding, rehabilitating, or improving rail lines;

(b) Purchasing or rehabilitating railroad equipment necessary to maintain essential rail service;

(c) Constructing railroad improvements to mitigate port access or mainline congestion;

(d) Construction of loading facilities to increase business on light density lines or to mitigate the impacts of abandonment;

(e) Preservation, including operation, of light density lines, as identified by the Washington state department of transportation, in compliance with this chapter; or

(f) Preserving rail corridors for future rail purposes by purchase of rights of way. The department shall first pursue transportation enhancement program funds, available under the federal surface transportation program, to the greatest extent practicable to preserve rail corridors. Purchase of rights of way may include track, bridges, and associated elements, and must meet the following criteria:

(i) The right of way has been identified and evaluated in the state rail plan prepared under this chapter;

(ii) The right of way may be or has been abandoned; and

(iii) The right of way has potential for future rail service.

(3) The department or the participating local jurisdiction is responsible for maintaining any right of way acquired under this chapter, including provisions for drainage management, fire and weed control, and liability associated with ownership.

(4) Nothing in this section impairs the reversionary rights of abutting landowners, if any, without just compensation.

(5) The department, cities, county rail districts, counties, and port districts may grant franchises to private railroads for the right to operate on lines acquired under this chapter.

(6) The department, cities, county rail districts, counties, and port districts may grant trackage rights over rail lines acquired under this chapter.

(7) If rail lines or rail rights of way are used by county rail districts, port districts, state agencies, or other public agencies for the purposes of rail operations and are later abandoned, the rail lines or rail rights of way cannot be used for any other purposes without the consent of the underlying fee title holder or reversionary rights holder, or until compensation has been made to the underlying fee title holder or reversionary rights holder.

(8) The department of transportation shall develop criteria for prioritizing freight rail projects that meet the minimum eligibility requirements for state assistance under RCW 47.76.240. The department shall develop criteria in consultation with the Washington state freight rail policy advisory committee. Project criteria should consider the level of local financial commitment to the project as well as cost/benefit ratio. Counties, local communities, railroads, shippers, and others who benefit from the project should participate financially to the greatest extent [extent] practicable.

(9) Moneys received by the department from franchise fees, trackage rights fees, and loan payments shall be redeposited in the essential rail assistance account. Repayment of loans made under this section shall occur within a period not longer than fifteen years, as set by the department. The repayment schedule and rate of interest, if any, shall be determined before the distribution of the moneys.

(10) The state shall maintain a contingent interest in any equipment, property, rail line, or facility that has outstanding grants or loans. The owner may not use the line as collateral, remove track, bridges, or associated elements for salvage,

or use it in any other manner subordinating the state's interest without permission from the department.

(11) Moneys distributed under this chapter shall be provided as loans wherever practicable. For improvements on or to privately owned railroads, railroad property, or other private property, moneys distributed shall be provided solely as loans. [1995 c 380 § 6; 1993 c 224 § 4; 1991 sp.s. c 13 § 22; 1991 c 363 § 125; 1990 c 43 § 11. Prior: 1985 c 432 § 2; 1985 c 57 § 64; 1983 c 303 § 6. Formerly RCW 47.76.030.]

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

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

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

Severability—1983 c 303: See RCW 36.60.905.

County rail districts: Chapter 36.60 RCW.

Port districts, acquisition and operation of facilities: RCW 53.08.020.

47.76.260 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

47.76.270 Essential rail banking account merged into essential rail assistance account. The essential rail banking account is merged into the essential rail assistance account created under RCW 47.76.250. Any appropriations made to the essential rail banking account are transferred to the essential rail assistance account, and are subject to the restrictions of that account. [1995 c 380 § 7; 1993 c 224 § 6; 1991 sp.s. c 13 § 120; 1991 c 363 § 127; 1990 c 43 § 7. Formerly RCW 47.76.160.]

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

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.280 Sale or lease for use as rail service—Time limit. The department may sell or lease property acquired under this chapter to a county rail district established under chapter 36.60 RCW, a county, a port district, or any other public or private entity authorized to operate rail service. Any public or private entity that originally donated funds to the department under this chapter shall receive credit against the purchase price for the amount donated to the department, less management costs, in the event such public or private entity purchases the property from the department.

If no county rail district, county, port district, or other public or private entity authorized to operate rail service purchases or leases the property within six years after its acquisition by the department, the department may sell or lease such property in the manner provided in RCW 47.76.290. Failing this, the department may sell or convey all such property in the manner provided in RCW 47.76.300 or 47.76.320. [1995 c 380 § 8; 1993 c 224 § 7; 1991 sp.s. c 15 § 61; 1991 c 363 § 126; 1985 c 432 § 3. Formerly RCW 47.76.040.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

[1995 RCW Supp—page 640]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Chapter 47.78

HIGH CAPACITY TRANSPORTATION DEVELOPMENT

(Formerly: Rail service development)

Sections

47.78.010 High capacity transportation account. (*Expires June 30, 1997.*)

47.78.010 High capacity transportation account. (*Expires June 30, 1997.*) (1) There is hereby established in the state treasury the high capacity transportation account. Money in the account shall be used, after appropriation, for local high capacity transportation purposes including rail freight.

(2) For the biennium ending June 30, 1997, money in the account may be transferred to the passenger ferry account as provided for in section 408, chapter 14, Laws of 1995 2nd sp. sess. [1995 2nd sp.s. c 14 § 528; 1991 sp.s. c 13 §§ 66, 121; 1990 c 43 § 47; 1987 c 428 § 1.]

Expiration date—1995 2nd sp.s. c 14 §§ 511-523, 528-533: See note following RCW 43.105.017.

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

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

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

Effective date—1987 c 428: "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 428 § 4.]

Title 48

INSURANCE

Chapters

- 48.01 Initial provisions.
- 48.03 Examinations.
- 48.05 Insurers—General requirements.
- 48.12 Assets and liabilities.
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- 48.17 Agents, brokers, solicitors, and adjusters.
- 48.18 The insurance contract.
- 48.20 Disability insurance.
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- 48.22 Casualty insurance.
- 48.30 Unfair practices and frauds.
- 48.30A Insurance fraud.
- 48.41 Health insurance coverage access act.
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48.48	State fire protection.
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Chapter 48.01

INITIAL PROVISIONS

Sections

48.01.030	Public interest.
48.01.053	"Issuer" defined.
48.01.180	Adopted children—Insurance coverage.
48.01.190	Immunity from civil liability.
48.01.200	Repealed.
48.01.210	Repealed.
48.01.230	Eligibility for coverage or making payments may not be contingent on eligibility for medical assistance.
48.01.235	Enrollment of a child under the health plan of the child's parent—Requirements—Restrictions.

48.01.030 Public interest. The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance. [1995 c 285 § 16; 1947 c 79 § .01.03; Rem. Supp. 1947 § 45.01.03.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.01.053 "Issuer" defined. "Issuer" as used in this title and chapter 26.18 RCW means insurer, fraternal benefit society, certified health plan, health maintenance organization, and health care service contractor. [1995 c 34 § 1.]

48.01.180 Adopted children—Insurance coverage.

(1) A child of an insured, subscriber, or enrollee shall be considered a dependent child for insurance purposes under this title upon assumption by the insured, subscriber, or enrollee of a legal obligation for total or partial support of a child in anticipation of adoption of the child. Upon the termination of such legal obligations, the child shall not be considered a dependent child for insurance purposes.

(2) Every policy or contract providing coverage for health benefits to a resident of this state shall provide coverage for dependent children placed for adoption under the same terms and conditions as apply to the natural, dependent children of the insured, subscriber, or enrollee whether or not the adoption has become final.

(3) No policy or contract may restrict coverage of any dependent child adopted by, or placed for adoption with, an insured, subscriber, or enrollee solely on the basis of a preexisting condition of the child at the time that the child would otherwise become eligible for coverage under the plan if the adoption or placement for adoption occurs while the insured, subscriber, or enrollee is eligible for coverage under the plan. [1995 c 34 § 4; 1986 c 140 § 1.]

Effective date, application—1986 c 140: "This act shall take effect January 1, 1987, and shall apply to all contracts or agreements issued, renewed, or delivered on or after January 1, 1987." [1986 c 140 § 6.]

Severability—1986 c 140: "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 140 § 7.]

48.01.190 Immunity from civil liability. (1) Any person who files reports, or furnishes other information, required under Title 48 RCW, required by the commissioner under authority granted by Title 48 RCW, useful to the commissioner in the administration of Title 48 RCW, or furnished to the National Association of Insurance Commissioners at the request of the commissioner or pursuant to Title 48 RCW, shall be immune from liability in any civil action or suit arising from the filing of any such report or furnishing such information to the commissioner or the National Association of Insurance Commissioners, unless actual malice, fraud, or bad faith is shown.

(2) The commissioner and the National Association of Insurance Commissioners, and the agents and employees of each, are immune from liability in any civil action or suit arising from the publication of any report or bulletin or dissemination of information related to the official activities of the commissioner or the National Association of Insurance Commissioners, unless actual malice, fraud, or bad faith is shown.

(3) Any licensee under chapter 48.17 RCW and any trade association of the licensees under chapter 48.15 RCW, and any officer, director, employee, agent, or committee of the licensee or association who furnishes information to or for the commissioner or to or for the association regarding unauthorized insurers or regarding attempts by any person to place or actual placement by any person of business with the insurers, whether in compliance with chapter 48.15 RCW or not, shall be immune from each and every kind of liability in any civil action or suit arising in whole or in part from the information or from the furnishing of the information.

(4) The immunity granted by this section is in addition to any common law or statutory privilege or immunity enjoyed by such person, and nothing in this section is intended to abrogate or modify in any way such common law or statutory privilege or immunity. [1995 c 10 § 1; 1987 c 51 § 1.]

48.01.200 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.01.210 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.01.230 Eligibility for coverage or making payments may not be contingent on eligibility for medical assistance. An issuer and an employee welfare benefit plan, whether insured or self funded, as defined in the employee retirement income security act of 1974, 29 U.S.C. Sec. 1101 et seq. may not consider the availability of eligibility for medical assistance in this state under medical assistance, RCW 74.09.500, or any other state under 42 U.S.C. Sec. 1396a, section 1902 of the social security act, in considering eligibility for coverage or making payments under its plan

for eligible enrollees, subscribers, policyholders, or certificate holders. [1995 c 34 § 2.]

48.01.235 Enrollment of a child under the health plan of the child's parent—Requirements—Restrictions.

(1) An issuer and an employee welfare benefit plan, whether insured or self funded, as defined in the employee retirement income security act of 1974, 29 U.S.C. Sec. 1101 et seq. may not deny enrollment of a child under the health plan of the child's parent on the grounds that:

- (a) The child was born out of wedlock;
- (b) The child is not claimed as a dependent on the parent's federal tax return; or
- (c) The child does not reside with the parent or in the issuer's, or insured or self funded employee welfare benefit plan's service area.

(2) Where a child has health coverage through an issuer, or an insured or self funded employee welfare benefit plan of a noncustodial parent[,] the issuer, or insured or self funded employee welfare benefit plan, shall:

(a) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;

(b) Permit the provider or the custodial parent to submit claims for covered services without the approval of the noncustodial parent. If the provider submits the claim, the provider will obtain the custodial parent's assignment of insurance benefits or otherwise secure the custodial parent's approval.

For purposes of this subsection the department of social and health services as the state medicaid agency under RCW 74.09.500 may reassign medical insurance rights to the provider for custodial parents whose children are eligible for services under RCW 74.09.500; and

(c) Make payments on claims submitted in accordance with (b) of this subsection directly to the custodial parent, to the provider, or to the department of social and health services as the state medicaid agency under RCW 74.09.500.

(3) Where a child does not reside in the issuer's service area, an issuer shall cover no less than urgent and emergent care. Where the issuer offers broader coverage, whether by policy or reciprocal agreement, the issuer shall provide such coverage to any child otherwise covered that does not reside in the issuer's service area.

(4) Where a parent is required by a court order to provide health coverage for a child, and the parent is eligible for family health coverage, the issuer, or insured or self funded employee welfare benefit plan, shall:

(a) Permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(b) Enroll the child under family coverage upon application of the child's other parent, department of social and health services as the state medicaid agency under RCW 74.09.500, or child support enforcement program as defined under *RCW 26.18.170, if the parent is enrolled but fails to make application to obtain coverage for such child; and

(c) Not disenroll, or eliminate coverage of, such child who is otherwise eligible for the coverage unless the issuer or insured or self funded employee welfare benefit plan is provided satisfactory written evidence that:

- (i) The court order is no longer in effect; or
- (ii) The child is or will be enrolled in comparable health coverage through another issuer, or insured or self funded employee welfare benefit plan, which will take effect not later than the effective date of disenrollment.

(5) An issuer, or insured or self funded employee welfare benefit plan, that has been assigned the rights of an individual eligible for medical assistance under medicaid and coverage for health benefits from the issuer, or insured or self funded employee welfare benefit plan, may not impose requirements on the department of social and health services that are different from requirements applicable to an agent or assignee of any other individual so covered. [1995 c 34 § 3.]

*Reviser's note: "Child support enforcement program" is not defined in RCW 26.18.170. See chapter 26.18 RCW for child support enforcement generally.

**Chapter 48.03
EXAMINATIONS**

Sections

48.03.060 Examination expense.

48.03.060 Examination expense. (1) Examinations within this state of any insurer domiciled or having its home offices in this state, other than a title insurer, made by the commissioner or the commissioner's examiners and employees shall, except as to fees, mileage, and expense incurred as to witnesses, be at the expense of the state.

(2) Every other examination, whatsoever, or any part of the examination of any person domiciled or having its home offices in this state requiring travel and services outside this state, shall be made by the commissioner or by examiners designated by the commissioner and shall be at the expense of the person examined; but a domestic insurer shall not be liable for the compensation of examiners employed by the commissioner for such services outside this state.

(3) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the person who is the subject of the examination, except as provided in subsection (1) of this section.

(4) The person examined and liable therefor shall reimburse the state upon presentation of an itemized statement thereof, for the actual travel expenses of the commissioner's examiners, their reasonable living expense allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem salary and expenses for employees examining insurers domiciled outside the state of Washington shall be established by the commissioner on the basis of the National Association of Insurance Commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the Washington personnel resources board and the expense schedule established by the office of financial management, whichever is higher. Domestic title insurer shall pay the

examination expense and costs to the commissioner as itemized and billed by the commissioner.

The commissioner or the commissioner's examiners shall not receive or accept any additional emolument on account of any examination.

(5) Nothing contained in this chapter limits the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action under the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are prima facie evidence in any legal or regulatory action. [1995 c 152 § 2. Prior: 1993 c 462 § 47; 1993 c 281 § 55; 1981 c 339 § 2; 1979 ex.s. c 35 § 1; 1947 c 79 § .03.06; Rem. Supp. 1947 § 45.03.06.]

Intent—1995 c 152: "The only intent of the legislature in chapter 152, Laws of 1995 is to correct double amendments. It is not the intent of the legislature to change the substance or effect of any statute previously enacted." [1995 c 152 § 1.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Effective date—1993 c 281: See note following RCW 41.06.022.

Chapter 48.05

INSURERS—GENERAL REQUIREMENTS

Sections

- 48.05.310 General agents, managers—Appointment—Powers—Licensing.
- 48.05.320 Reports of fire losses.
- 48.05.340 Capital and surplus requirements.
- 48.05.430 Definitions.
- 48.05.435 Report of RBC levels—Formula for determining levels—Inaccurate reports adjusted by commissioner.
- 48.05.440 Company action level event—Definition—RBC plan—Commissioner's review.
- 48.05.445 Regulatory action level event—Definition—Commissioner's duties—Corrective actions.
- 48.05.450 Authorized control level event—Definition—Commissioner's duties.
- 48.05.455 Mandatory control level event—Definition—Commissioner's duties.
- 48.05.460 Insurer's right to a hearing—Request—Commissioner sets date.
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- 48.05.470 Regulation of capital and surplus requirements is supplemental—Commissioner may grant exemptions.
- 48.05.475 RBC report from foreign or alien insurers—Request of commissioner—Commissioner's options.
- 48.05.480 No liability for regulation of capital and surplus requirements.
- 48.05.485 Notices by commissioner—When effective.
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- 48.05.510 Disclosure of certain material transactions—Insurer's report—Information is confidential.
- 48.05.515 Material acquisitions or dispositions.
- 48.05.520 Asset acquisitions—Asset dispositions.
- 48.05.525 Report of a material acquisition or disposition of assets—Information required.
- 48.05.530 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements.
- 48.05.535 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required.
- 48.05.900 Severability—1995 c 83.

appointing any person as its general agent or manager to represent it as such in this state shall file notice of the appointment with the commissioner on forms prescribed and furnished by the commissioner.

(2) Any such general agent or manager shall have such authority, consistent with this code, as may be conferred by the insurer. A general agent resident in this state and licensed, as in this section provided, may exercise the powers conferred by this code upon agents licensed for the kinds of insurance which the general agent is authorized to transact for the insurer so appointing him.

(3) Any such general agent may accept applications for insurance from licensed agents who are not appointed by the insurer of such general agent where the risk involved is placed in a nonstandard or specialty market of an authorized insurer as defined by regulation of the commissioner. Such nonstandard or specialty business shall not be bound by any agent not appointed by the insurer. A general agent may supply such licensed, nonappointed agent with material to write nonstandard or specialty insurance business including, but not limited to, applications for insurance, underwriting criteria, and rates. A general agent shall not provide any licensed, nonappointed agent with indicia of authority to bind an insurance risk and the general agent and nonappointed agent shall provide written disclaimers of binding authority to an applicant or prospective insured in such form as prescribed by the commissioner.

(4) The appointment of a resident general agent shall not be effective unless the person so appointed is licensed as the general agent of such insurer by the commissioner upon application and payment of the fee therefor as provided in RCW 48.14.010.

(5) A general agent's license and its renewal shall be in accordance with chapter 48.17 RCW as applicable to agents and brokers.

(6) The commissioner may deny, suspend, or revoke any such license for any cause specified in RCW 48.17.530 and in the manner provided in RCW 48.17.540. [1995 c 338 § 1; 1982 c 181 § 17; 1947 c 79 § .05.31; Rem. Supp. 1947 § 45.05.31.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.05.320 Reports of fire losses. (1) Each authorized insurer shall promptly report to the chief of the Washington state patrol, through the director of fire protection, upon forms as prescribed and furnished by him or her, each fire loss of property in this state reported to it and whether the loss is due to criminal activity or to undetermined causes.

(2) Each such insurer shall likewise report to the chief of the Washington state patrol, through the director of fire protection, upon claims paid by it for loss or damage by fire in this state. Copies of all reports required by this section shall be promptly transmitted to the state insurance commissioner. [1995 c 369 § 24; 1986 c 266 § 66; 1985 c 470 § 16; 1947 c 79 § .05.32; Rem. Supp. 1947 § 45.05.32.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.05.310 General agents, managers—Appointment—Powers—Licensing. (1) An insurer

48.05.340 Capital and surplus requirements. (1) Subject to RCW 48.05.350 and 48.05.360 to qualify for authority to transact any one kind of insurance as defined in chapter 48.11 RCW or combination of kinds of insurance as shown below, a foreign or alien insurer, whether stock or mutual, or a domestic insurer hereafter formed shall possess unimpaired paid-in capital stock, if a stock insurer, or unimpaired surplus if a mutual insurer, and additional funds in surplus, as follows, and shall thereafter maintain unimpaired a combined total of: (a) The paid-in capital stock if a stock insurer or surplus if a mutual insurer, plus (b) such additional funds in surplus equal to the total of the following initial requirements:

Kind or kinds of insurance	Paid-in capital stock or basic surplus	Additional surplus
Life	\$ 2,000,000	\$ 2,000,000
Disability	2,000,000	2,000,000
Life and disability	2,400,000	2,400,000
Property	2,000,000	2,000,000
Marine & transportation	2,000,000	2,000,000
General casualty	2,400,000	2,400,000
Vehicle	2,000,000	2,000,000
Surety	2,000,000	2,000,000
Any two of the following kinds of insurance: Property, marine & transportation, general casualty, vehicle, surety, disability	3,000,000	3,000,000
Multiple lines (all insurances except life and title insurance)	3,000,000	3,000,000
Title (in accordance with the provisions of chapter 48.29 RCW)		

(2) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer wherever it may operate or propose to operate, whether or not only a portion of such kinds are to be transacted in this state.

(3) Until December 31, 1996, a foreign or alien insurer holding a certificate of authority to transact insurance in this state immediately prior to June 9, 1994, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such authority. A domestic insurer holding a certificate of authority to transact insurance in this state immediately prior to June 9, 1994, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such an authority and thereafter maintains unimpaired the amount of paid-in capital stock, if a stock insurer, or basic surplus, if a mutual or reciprocal insurer, and special or additional surplus as required of it under laws in force immediately prior to June 9, 1994. [1995 c 83 § 14; 1994 c 171 § 1; 1993 c 462 § 50; 1991 sp.s. c 5 § 1; 1982 c 181 § 3; 1980 c 135 § 1; 1967 c 150 § 5; 1963 c 195 § 7.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Effective date—1991 sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 5 § 3.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.05.430 Definitions. As used in RCW 48.05.430 through 48.05.490, these terms have the following meanings:

- (1) "RBC" means risk-based capital.
- (2) "NAIC" means the national association of insurance commissioners.
- (3) "Domestic insurer" means any insurance company domiciled in this state.
- (4) "Foreign or alien insurer" means any insurance company that is licensed to do business in this state under this chapter but is not domiciled in this state.
- (5) "Life and disability insurer" means any insurance company authorized to write only life insurance, disability insurance, or both, as defined in chapter 48.11 RCW.
- (6) "Property and casualty insurer" means any insurance company authorized to write only property insurance, marine and transportation insurance, general casualty insurance, vehicle insurance, or any combination thereof, including disability insurance, as defined in chapter 48.11 RCW.
- (7) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.
- (8) "Negative trend" means, with respect to a life insurer, a disability insurer, or a life and disability insurer, the negative trend over a period of time, as determined in accordance with the trend test calculation included in the RBC instructions.
- (9) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with RCW 48.05.435(5).
- (10) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC.
- (11) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:
 - (a) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;
 - (b) "Regulatory action level RBC" means the product [of] 1.5 and its authorized control level RBC;
 - (c) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and
 - (d) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC.
- (12) "RBC plan" means a comprehensive financial plan containing the elements specified in RCW 48.05.440(2). If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."
- (13) "RBC report" means the report required in RCW 48.05.435.
- (14) "Total adjusted capital" means the sum of:
 - (a) An insurer's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed under RCW 48.05.250; and
 - (b) Other items, if any, as the RBC instructions may provide. [1995 c 83 § 1.]

48.05.435 Report of RBC levels—Formula for determining levels—Inaccurate reports adjusted by commissioner. (1) Every domestic insurer shall, on or prior to the filing date, which is hereby established as March 1, prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing that information required by the RBC instructions. In addition, every domestic insurer shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) With the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

(i) Fifteen days from the receipt of notice to file its RBC report with that state; or

(ii) The filing date.

(2) A life and disability insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) The risk with respect to the insurer's assets;

(b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) The interest rate risk with respect to the insurer's business; and

(d) All other business risks and other relevant risks as are set forth in the RBC instructions; determined in each case by applying the factors in the manner set forth in the RBC instructions.

(3) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and other relevant risks as are set forth in the RBC instructions; determined in each case by applying the factors in the manner set forth in the RBC instructions.

(4) An excess of capital over the amount produced by the RBC requirements and the formulas, schedules, and instructions under RCW 48.05.430 through 48.05.490 is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the RBC requirements.

(5) If a domestic insurer files an RBC report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. [1995 c 83 § 2.]

48.05.440 Company action level event—Definition—RBC plan—Commissioner's review. (1) "Company action level event" means any of the following events:

(a) The filing of an RBC report by an insurer indicating that:

(i) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC, but less than its company action level RBC; or

(ii) If a life and disability insurer, the insurer has total adjusted capital that is greater than or equal to its company action level RBC, but less than the product of its authorized control level RBC and 2.5 and has a negative trend;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under RCW 48.05.460; or

(c) If, under RCW 48.05.460, an insurer challenges an adjusted RBC report that indicates an event in (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan that:

(a) Identifies the conditions that contribute to the company action level event;

(b) Contains proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the company action level event;

(c) Provides projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identifies the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identifies the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted:

(a) Within forty-five days of the company action level event; or

(b) If the insurer challenges an adjusted RBC report under RCW 48.05.460, within forty-five days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within sixty days after the submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer whether the RBC plan may be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions that will render the RBC plan satisfactory. Upon notification

from the commissioner, the insurer shall prepare a revised RBC plan, that may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five days after the notification from the commissioner; or

(b) If the insurer challenges the notification from the commissioner under RCW 48.05.460, within forty-five days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, subject to the insurer's rights to a hearing under RCW 48.05.460, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) The state has an RBC provision substantially similar to RCW 48.05.465(1); and

(b) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised plan with the state; or

(ii) The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section. [1995 c 83 § 3.]

48.05.445 Regulatory action level event—

Definition—Commissioner's duties—Corrective actions.

(1) "Regulatory action level event" means, with respect to any insurer, any of the following events:

(a) The filing of an RBC report by the insurer indicating that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) The notification by the commissioner to an insurer of an adjusted RBC report that indicates the event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under RCW 48.05.460;

(c) If, under RCW 48.05.460, the insurer challenges an adjusted RBC report that indicates the event in (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to file an RBC report by the filing date, unless the insurer has provided an explanation for such failure that is satisfactory to the commissioner and has cured the failure within ten days after the filing date;

(e) The failure of the insurer to submit an RBC plan to the commissioner within the time period set forth in RCW 48.05.440(3);

(f) Notification by the commissioner to the insurer that:

(i) The RBC plan or revised RBC plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and

(ii) The notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under RCW 48.05.460;

(g) If, under RCW 48.05.460, the insurer challenges a determination by the commissioner under (f) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge;

(h) Notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, provided the insurer has not challenged the determination under RCW 48.05.460; or

(i) If, under RCW 48.05.460, the insurer challenges a determination by the commissioner under (h) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.

(2) In the event of a regulatory action level event the commissioner shall:

(a) Require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform the examination or analysis the commissioner deems necessary of the assets, liabilities, and operations of the insurer including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying those corrective actions the commissioner determines are required.

(3) In determining corrective actions, the commissioner may take into account those factors deemed relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken under the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five days after the occurrence of the regulatory action level event;

(b) If the insurer challenges an adjusted RBC report under RCW 48.05.460, and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or

(c) If the insurer challenges a revised RBC plan under RCW 48.05.460, and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the insurer's RBC plan or revised RBC plan, examine or analyze the assets, liabilities, and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or other party as directed by the commissioner. [1995 c 83 § 4.]

48.05.450 Authorized control level event—

Definition—Commissioner's duties. (1) "Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the insurer indicating that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under RCW 48.05.460;

(c) If, under RCW 48.05.460, the insurer challenges an adjusted RBC report that indicates the event in (a) of this subsection, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order, provided the insurer has not challenged the corrective order under RCW 48.05.460; or

(e) If the insurer has challenged a corrective order under RCW 48.05.460 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(2) In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(a) Take those actions required under RCW 48.05.445 regarding an insurer with respect to which a regulatory action level event has occurred; or

(b) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take those actions necessary to cause the insurer to be placed under regulatory control under chapter 48.31 RCW. In the event the commissioner takes these actions, the authorized control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW, and the commissioner has the rights, powers, and duties with respect to the insurer as are set forth in chapter 48.31 RCW. In the event the commissioner takes actions under this subsection pursuant to an adjusted RBC report, the insurer is entitled to those protections afforded to insurers under RCW 48.31.121 pertaining to summary proceedings. [1995 c 83 § 5.]

48.05.455 Mandatory control level event—

Definition—Commissioner's duties. (1) "Mandatory control level event" means any of the following events:

(a) The filing of an RBC report indicating that the insurer's total adjusted capital is less than its mandatory control level RBC;

(b) Notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under RCW 48.05.460; or

(c) If, under RCW 48.05.460, the insurer challenges an adjusted RBC report that indicates the event in (a) of this subsection, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a mandatory control level event:

(a) With respect to a life and disability insurer, the commissioner shall take those actions necessary to place the insurer under regulatory control under chapter 48.31 RCW. In that event, the mandatory control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW, and the commissioner has the rights, powers, and duties with respect to the insurer as are set forth in chapter 48.31 RCW. If the commissioner takes actions pursuant to an adjusted RBC report, the insurer is entitled to the protections of RCW 48.31.121 pertaining to summary proceedings. However, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

(b) With respect to a property and casualty insurer, the commissioner shall take those actions necessary to place the insurer under regulatory control under chapter 48.31 RCW, or, in the case of an insurer that is writing no business and that is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW and the commissioner has the rights, powers, and duties with respect to the insurer as are set forth in chapter 48.31 RCW. If the commissioner takes actions pursuant to an adjusted RBC report, the insurer is entitled to the protections of RCW 48.31.121 pertaining to summary proceedings. However, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period. [1995 c 83 § 6.]

48.05.460 Insurer's right to a hearing—Request—Commissioner sets date.

(1) Upon notification to an insurer by the commissioner of any of the following, the insurer shall have the right to a hearing, in accordance with chapters 48.04 and 34.05 RCW, at which the insurer may challenge any determination or action by the commissioner:

(a) Of an adjusted RBC report; or

(b)(i) That the insurer's RBC plan or revised RBC plan is unsatisfactory; and

(ii) The notification constitutes a regulatory action level event with respect to such insurer; or

(c) That the insurer has failed to adhere to its RBC plan or revised RBC plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan; or

(d) Of a corrective order with respect to the insurer.

(2) The insurer shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under this section. Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing. The date shall be no less than ten nor more than thirty days after the date of the insurer's request. [1995 c 83 § 7.]

48.05.465 Confidentiality of RBC reports and plans—Use of information for comparative purposes—Use of information to monitor solvency. (1) All RBC reports, to the extent the information is not required to be set forth in a publicly available annual statement schedule, and RBC plans, including the results or report of any examination or analysis of an insurer and any corrective order issued by the commissioner, with respect to any domestic insurer or foreign insurer that are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner.

(2) The comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not a means to rank insurers generally. Therefore, except as otherwise required under the provisions of RCW 48.05.430 through 48.05.490, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its RBC levels, or any of them, or an inappropriate comparison of any other amount to the insurer's RBC levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) The RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized to write. [1995 c 83 § 8.]

48.05.470 Regulation of capital and surplus requirements is supplemental—Commissioner may grant exemptions. (1) The provisions of RCW 48.05.430 through 48.05.490 are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under those laws, including, but not limited to, chapter 48.31 RCW.

(2) The commissioner may exempt any domestic property and casualty insurer from RCW 48.05.430 through 48.05.490, if the insurer:

- (a) Writes direct business only in this state;
- (b) Writes direct annual premiums of two million dollars or less; and
- (c) Assumes no reinsurance in excess of five percent of direct premiums written. [1995 c 83 § 9.]

48.05.475 RBC report from foreign or alien insurers—Request of commissioner—Commissioner's options.

(1) Any foreign or alien insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the calendar year just ended by the later of:

- (a) The date an RBC report would be required to be filed by a domestic insurer under RCW 48.05.435; or
- (b) Fifteen days after the request is received by the foreign or alien insurer. Any foreign or alien insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(2) In the event of a company action level event, regulatory action level event, or authorized control level event with respect to any foreign or alien insurer as determined under the RBC statute applicable in the state of domicile of the insurer or, if no RBC statute is in force in that state, under the provisions of RCW 48.05.430 through 48.05.490, if the insurance commissioner of the state of domicile of the foreign or alien insurer fails to require the foreign or alien insurer to file an RBC plan in the manner specified under that state's RBC statute, the commissioner may require the foreign or alien insurer to file an RBC plan. In this event, the failure of the foreign or alien insurer to file an RBC plan is grounds to order the insurer to cease and desist from writing new insurance business in this state.

(3) In the event of a mandatory control level event with respect to any foreign or alien insurer, if no domiciliary receiver has been appointed with respect to the foreign or alien insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign or alien insurer, the commissioner may apply for an order under RCW 48.31.080 or 48.31.090 to conserve the assets within this state of foreign or alien insurers, and the occurrence of the mandatory control level event is considered adequate grounds for the application. [1995 c 83 § 10.]

48.05.480 No liability for regulation of capital and surplus requirements. There is no liability on the part of, and no cause of action may arise against, the commissioner or insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under RCW 48.05.430 through 48.05.490. [1995 c 83 § 11.]

48.05.485 Notices by commissioner—When effective. All notices by the commissioner to an insurer that may result in regulatory action are effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission are effective upon the insurer's receipt of the notice. [1995 c 83 § 12.]

48.05.490 RBC reports for 1995—Requirements.

For RBC reports required by property and casualty insurers for 1995, the following requirements apply in lieu of RCW 48.05.440 through 48.05.455:

(1) In the event of a company action level event with respect to a domestic insurer, the commissioner shall take no regulatory action.

(2) In the event of a regulatory action level event under RCW 48.05.445(1) (a), (b), or (c) the commissioner shall take the actions required under RCW 48.05.440.

(3) In the event of a regulatory action level event under RCW 48.05.445(1) (d), (e), (f), (g), (h), or (i) or an authorized control level event, the commissioner shall take the actions required under RCW 48.05.445.

(4) In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under RCW 48.05.450. [1995 c 83 § 13.]

48.05.510 Disclosure of certain material transactions—Insurer's report—Information is confidential.

(1) Every insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

- (a) Commissioner; and
- (b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and RCW 48.05.515 through 48.05.535 are exempt from public inspection and copying and are not subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate. [1995 c 86 § 1.]

48.05.515 Material acquisitions or dispositions. No acquisitions or dispositions of assets need be reported under RCW 48.05.510 if the acquisitions or dispositions are not material. For purposes of RCW 48.05.510 through 48.05.535, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or

disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting insurer's total assets as reported in its most recent statutory statement filed with the commissioner. [1995 c 86 § 2.]

48.05.520 Asset acquisitions—Asset dispositions. (1) Asset acquisitions subject to RCW 48.05.510 through 48.05.535 include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such a purpose.

(2) Asset dispositions subject to RCW 48.05.510 through 48.05.535 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandonment, destruction, other disposition, or assignment, whether the assignment is for the benefit of creditors or otherwise. [1995 c 86 § 3.]

48.05.525 Report of a material acquisition or disposition of assets—Information required. (1) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (a) Date of the transaction;
- (b) Manner of acquisition or disposition;
- (c) Description of the assets involved;
- (d) Nature and amount of the consideration given or received;
- (e) Purpose of or reason for the transaction;
- (f) Manner by which the amount of consideration was determined;
- (g) Gain or loss recognized or realized as a result of the transaction; and
- (h) Names of the persons from whom the assets were acquired or to whom they were disposed.

(2) Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such an insurer ceded substantially all of its direct and assumed business to the pool. An insurer has ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus. [1995 c 86 § 4.]

48.05.530 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under RCW 48.05.510 if the nonrenewals, cancellations, or revisions are not material. For purposes of RCW 48.05.510 through 48.05.535, a material nonrenewal, cancellation, or revision is one that affects:

- (a) More than fifty percent of a property and casualty insurer's total ceded written premium;

(b) More than fifty percent of the property and casualty insurer's total ceded indemnity and loss adjustment reserves;

(c) More than fifty percent of a nonproperty and casualty insurer's total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement;

(d) More than ten percent of an insurer's total cession when it is replaced by one or more unauthorized reinsurers; or

(e) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if:

(a) A property and casualty insurer's total ceded written premium represents, on an annualized basis, less than ten percent of its total written premium for direct and assumed business; or

(b) A nonproperty and casualty insurer's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession. [1995 c 86 § 5.]

48.05.535 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required. (1) The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

(a) The effective date of the nonrenewal, cancellation, or revision;

(b) The description of the transaction with an identification of the initiator;

(c) The purpose of or reason for the transaction; and

(d) If applicable, the identity of the replacement reinsurers.

(2) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer has ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus. [1995 c 86 § 6.]

48.05.900 Severability—1995 c 83. 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. [1995 c 83 § 15.]

**Chapter 48.12
ASSETS AND LIABILITIES**

Sections

48.12.040 Unearned premium reserve, property, casualty, and surety insurance.

48.12.090 Loss reserves—Liability insurance.

48.12.100 Unallocated liability loss expense.

48.12.120 Loss reserve—Workers' compensation insurance.

48.12.130 Unallocated workers' compensation loss expense.

48.12.040 Unearned premium reserve, property, casualty, and surety insurance. (1) With reference to insurances against loss or damage to property, except as provided in RCW 48.12.050, and with reference to all general casualty insurances, and surety insurances, every insurer shall maintain an unearned premium reserve on all policies in force.

(2) The commissioner may require that such reserve shall be equal to the unearned portions of the gross premiums in force after deducting authorized reinsurance, as computed on each respective risk from the policy's date of issue. If the commissioner does not so require, the portions of the gross premiums in force, less authorized reinsurance, to be held as a premium reserve, shall be computed according to the following table:

Term for which policy was written	Reserve for unearned premium
One year, or less	1/2
Two years	First year 3/4 Second year 1/4
Three years	First year 5/6 Second year 1/2 Third year 1/6
Four years	First year 7/8 Second year 5/8 Third year 3/8 Fourth year 1/8
Five years	First year 9/10 Second year 7/10 Third year 1/2 Fourth year 3/10 Fifth year 1/10
Over five years	Pro rata

(3) In lieu of computation according to such table, all of such reserves may be computed, at the insurer's option, on a monthly pro rata basis.

(4) After adopting any one of the methods for computing such reserve an insurer shall not change methods without the commissioner's approval.

(5) If, for certain policies, the insurer's exposure to loss is uneven over the policy term, the commissioner may grant permission to the insurer to use a different method of calculating the unearned premium reserve on those certain policies. [1995 c 35 § 1; 1973 1st ex.s. c 162 § 2; 1947 c 79 § .12.04; Rem. Supp. 1947 § 45.12.04.]

48.12.090 Loss reserves—Liability insurance. The reserves for outstanding losses and loss expenses under policies of personal injury liability insurance and under

policies of employer's liability insurance shall be computed as follows:

(1) The reserves for outstanding losses and loss expenses under policies of personal injury liability insurance and under policies of employer's liability insurance shall be computed in accordance with accepted loss-reserving standards and principles and shall make a reasonable provision for all unpaid loss and loss expense obligations of the insurer under the terms of such policies.

(2) Reserves under liability policies written during the three years immediately preceding the date of determination shall include any additional reserves required by the annual statement instructions of the national association of insurance commissioners. [1995 c 35 § 2; 1947 c 79 § .12.09; Rem. Supp. 1947 § 45.12.09.]

48.12.100 Unallocated liability loss expense. Subject to any restrictions contained in the annual statement instructions or accounting practices and procedures manuals of the national association of insurance commissioners, all unallocated liability loss expense payments shall be distributed as follows:

(1) All payments associated with particular claims shall be distributed to the year in which the claim was covered; and

(2) All other payments shall be distributed by year in a reasonable manner. [1995 c 35 § 3; 1947 c 79 § .12.10; Rem. Supp. 1947 § 45.12.10.]

48.12.120 Loss reserve—Workers' compensation insurance. The loss reserve for workers' compensation insurance shall be as follows:

(1) For all compensation claims under policies of compensation insurance written more than three years prior to the date of determination, the loss reserve shall be not less than the present values at four percent interest of the determined and the estimated future payments.

(2) For all compensation claims under policies of compensation insurance written in the three years immediately preceding the date of determination, the loss reserve shall be not less than the present value at three and one-half percent interest of the determined and the estimated future payments, and shall include any additional reserves required by the annual statement instructions of the national association of insurance commissioners. [1995 c 35 § 4; 1987 c 185 § 20; 1947 c 79 § .12.12; Rem. Supp. 1947 § 45.12.12.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

48.12.130 Unallocated workers' compensation loss expense. Subject to any restrictions contained in the annual statement instructions or accounting practices and procedures manuals of the national association of insurance commissioners, all unallocated workers' compensation loss expense payments shall be distributed as follows:

(1) All payments associated with particular claims shall be distributed to the year in which the claim was covered; and

(2) All other payments shall be distributed by year in a reasonable manner. [1995 c 35 § 5; 1987 c 185 § 21; 1947 c 79 § .12.13; Rem. Supp. 1947 § 45.12.13.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Chapter 48.13 INVESTMENTS

Sections

48.13.270 Prohibited investments.

48.13.270 Prohibited investments. An insurer shall not, except with the commissioner's approval in advance, invest in or loan its funds upon the security of, or hold:

(1) Issued shares of its own capital stock, except for the purpose of mutualization in accordance with RCW 48.08.080;

(2) Securities issued by any corporation if a majority of its stock having voting power is owned directly or indirectly by or for the benefit of any one or more of the insurer's officers and directors;

(3) Any investment or loan ineligible under the provisions of RCW 48.13.030;

(4) Securities issued by any insolvent corporation;

(5) Obligations contrary to the provisions of RCW 48.13.273; or

(6) Any investment or security which is found by the commissioner to be designed to evade any prohibition of this code. [1995 c 84 § 1; 1993 c 92 § 4; 1982 c 218 § 5; 1947 c 79 § .13.27; Rem. Supp. 1947 § 45.13.27.]

Severability—1982 c 218: See note following RCW 48.12.020.

Chapter 48.14 FEES AND TAXES

Sections

48.14.022 Taxes—Exemptions and deductions.

48.14.022 Taxes—Exemptions and deductions. (1) The taxes imposed in RCW 48.14.020 and 48.14.0201 do not apply to premiums and prepayments collected or received for policies of insurance issued under RCW 48.41.010 through 48.41.210.

(2) In computing tax due under RCW 48.14.020 and 48.14.0201, there may be deducted from taxable premiums and prepayments the amount of any assessment against the taxpayer under RCW 48.41.010 through 48.41.210. Any portion of the deduction allowed in this section which cannot be deducted in a tax year without reducing taxable premiums below zero may be carried forward and deducted in successive years until the deduction is exhausted. [1995 c 304 § 1; 1987 c 431 § 23.]

Effective date—1995 c 304: "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 immediately [May 9, 1995]." [1995 c 304 § 2.]

Severability—1987 c 431: See RCW 48.41.910.

Business and occupation tax deductions: RCW 82.04.4329.

Chapter 48.17
AGENTS, BROKERS, SOLICITORS, AND
ADJUSTERS

Sections

48.17.060 License required—Exceptions—Penalty.
48.17.190 Limited licenses.

48.17.060 License required—Exceptions—Penalty.

(1) No person shall in this state act as or hold himself out to be an agent, broker, solicitor, or adjuster unless then licensed therefor by this state.

(2) No agent, solicitor, or broker shall solicit or take applications for, procure, or place for others any kind of insurance for which he is not then licensed.

(3) This section shall not apply with respect to any person securing and forwarding information required for the purposes of group credit life and credit disability insurance or credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations in connection with an extension of credit and such other credit life and disability insurance or credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations as the commissioner shall determine, and where no commission or other compensation is payable on account of the securing and forwarding of such information. However, the reimbursement of a creditor's actual expenses for securing and forwarding information required for the purposes of such group insurance shall not be considered a commission or other compensation if such reimbursement does not exceed three dollars per certificate issued, or in the case of a monthly premium plan extending beyond twelve months, not to exceed three dollars per loan transaction revision per year.

(4) Any person violating this section shall be liable to a fine of not to exceed five hundred dollars and imprisonment for not to exceed six months for each instance of such violation. [1995 c 214 § 1; 1975 1st ex.s. c 266 § 7; 1955 c 303 § 9; 1947 c 79 § .17.06; Rem. Supp. 1947 § 45.17.06.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.17.190 Limited licenses. The commissioner may issue limited licenses to the following:

(1) Persons selling transportation tickets of a common carrier of persons or property who shall act as such agents only as to transportation ticket policies of disability insurance or baggage insurance on personal effects.

(2) Compensated master policyholders of credit life and credit accident and health insurance and credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations, retail dealers compensated by any such master policyholders, or the authorized representative(s) of either.

(3) Persons selling special or unique policies of insurance covering goods sold or leased from a primary business or activity other than the transaction of insurance or covering collateral securing loans from a primary business or activity other than the transaction of insurance if, in the commissioner's discretion, such limited license would safeguard and promote the public interest. [1995 c 214 § 2;

[1995 RCW Supp—page 652]

1979 c 138 § 1; 1967 c 150 § 21; 1947 c 79 § .17.19; Rem. Supp. 1947 § 45.17.19.]

Chapter 48.18
THE INSURANCE CONTRACT

Sections

48.18.460 Proof of loss—Furnishing forms—May require oath.

48.18.460 Proof of loss—Furnishing forms—May require oath. An insurer shall furnish, upon request of any person claiming to have a loss under any insurance contract, forms of proof of loss for completion by such person. But such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such completion or attempted completion. If a person makes a claim under a policy of insurance, the insurer may require that the person be examined under an oath administered by a person authorized by state or federal law to administer oaths. [1995 c 285 § 17; 1949 c 190 § 26; 1947 c 79 § .18.46; Rem. Supp. 1949 § 45.18.46.]

Effective date—1995 c 285: See RCW 48.30A.900.

Chapter 48.20
DISABILITY INSURANCE

Sections

48.20.028 Mandatory offering to individuals providing basic health plan benefits—Exemption from statutory requirements—Premium rates—Definitions. (*Effective January 1, 1996.*)

48.20.418 Denturist services.

48.20.540 Repealed.

48.20.028 Mandatory offering to individuals providing basic health plan benefits—Exemption from statutory requirements—Premium rates—Definitions. (*Effective January 1, 1996.*) (1)(a) An insurer offering any health benefit plan to any individual shall offer and actively market to all individuals a health benefit plan providing benefits identical to the schedule of covered health services that are required to be delivered to an individual enrolled in the basic health plan. Nothing in this subsection shall preclude an insurer from offering, or an individual from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. An insurer offering a health benefit plan that does not include benefits provided in the basic health plan shall clearly disclose these differences to the individual in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.20.390, 48.20.393, 48.20.395, 48.20.397, 48.20.410, 48.20.411, 48.20.412, 48.20.416, and 48.20.420 if the health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan.

(2) Premiums for health benefit plans for individuals shall be calculated using the adjusted community rating method that spreads financial risk across the carrier's entire individual product population. All such rates shall conform to the following:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(3) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.21.045.

(4) As used in this section, "health benefit plan," "basic health plan," "adjusted community rate," and "wellness activities" mean the same as defined in RCW 48.43.005. [1995 c 265 § 13.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.20.418 Denturist services. Notwithstanding any provision of any disability insurance contract covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service

performed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 21 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

48.20.540 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 48.21

GROUP AND BLANKET DISABILITY INSURANCE

Sections

- 48.21.045 Mandatory offering providing basic health plan benefits for employers with fewer than twenty-five employees—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers—Definitions. (*Effective January 1, 1996.*)
- 48.21.047 Requirements for plans offered to small employers—Definitions.
- 48.21.148 Denturist services.
- 48.21.340 Repealed.

48.21.045 Mandatory offering providing basic health plan benefits for employers with fewer than twenty-five employees—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers—Definitions. (*Effective January 1, 1996.*) (1)(a) An insurer offering any health benefit plan to a small employer shall offer and actively market to the small employer a health benefit plan providing benefits identical to the schedule of covered health services that are required to be delivered to an individual enrolled in the basic health plan. Nothing in this subsection shall preclude an insurer from offering, or a small employer from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. An insurer offering a health benefit plan that does not include benefits in the basic health plan shall clearly disclose these differences to the small employer in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.21.130, 48.21.140, 48.21.141, 48.21.142, 48.21.144, 48.21.146, 48.21.160 through 48.21.197, 48.21.200, 48.21.220, 48.21.225, 48.21.230, 48.21.235, 48.21.240, 48.21.244, 48.21.250, 48.21.300, 48.21.310, or 48.21.320 if: (i) The health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan; or (ii) the health benefit plan is offered to employers with not more than twenty-five employees.

(2) Nothing in this section shall prohibit an insurer from offering, or a purchaser from seeking, benefits in excess of the basic health plan services. All forms, policies, and contracts shall be submitted for approval to the commission-

er, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or
- (iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all small groups purchasing coverage.

(4) The health benefit plans authorized by this section that are lower than the required offering shall not supplant or supersede any existing policy for the benefit of employees in this state. Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by an insurer in determining whether to provide coverage to a small employer shall be applied uniformly

among all small employers applying for coverage or receiving coverage from the carrier.

(b) An insurer shall not require a minimum participation level greater than:

- (i) One hundred percent of eligible employees working for groups with three or less employees; and
- (ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) An insurer may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(6) An insurer must offer coverage to all eligible employees of a small employer and their dependents. An insurer may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. An insurer may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

(7) As used in this section, "health benefit plan," "small employer," "basic health plan," "adjusted community rate," and "wellness activities" mean the same as defined in RCW 48.43.005. [1995 c 265 § 14; 1990 c 187 § 2.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Finding—Intent—1990 c 187: "The legislature finds that the rising cost of comprehensive group health coverage is exceeding the affordability of many small businesses and their employees. The legislature further finds that certain public policies have an adverse impact on the cost of such coverage. It is therefore the intent of the legislature to reduce costs by authorizing the development of basic hospital and medical coverage for small groups." [1990 c 187 § 1.]

Severability—1990 c 187: "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 187 § 6.]

48.21.047 Requirements for plans offered to small employers—Definitions. (1) No insurer shall offer any health benefit plan to any small employer without complying with the provisions of *RCW 48.21.045(5).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care shall not be considered small employers and such plans shall not be subject to the provisions of *RCW 48.21.045(5).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005. [1995 c 265 § 22.]

***Reviser's note:** Reference was inadvertently changed during the bill drafting process. The correct reference should be RCW 48.21.045(3).

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.21.148 Denturist services. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 22 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

48.21.340 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 48.22 CASUALTY INSURANCE

Sections

- 48.22.070 Longshoreman's and harbor worker's compensation coverage—Rules—Plan creation.
48.22.071 Repealed.
48.22.072 Repealed.

48.22.070 Longshoreman's and harbor worker's compensation coverage—Rules—Plan creation.

Expiration date—1992 c 209: "This act shall expire on July 1, 1997." [1995 c 327 § 2; 1993 c 177 § 3; 1992 c 209 s 6.]

48.22.071 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.22.072 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 48.30 UNFAIR PRACTICES AND FRAUDS

Sections

- 48.30.210 Misrepresentation in application for insurance.
48.30.220 Destruction, injury, secretion, etc., of property.

48.30.210 Misrepresentation in application for insurance. A person who knowingly makes a false or misleading statement or impersonation, or who willfully fails to reveal a material fact, in or relative to an application for insurance to an insurer, is guilty of a gross misdemeanor, and the license of any such person may be revoked. [1995 c 285 § 18; 1990 1st ex.s. c 3 § 10; 1947 c 79 § .30.21; Rem. Supp. 1947 § 45.30.21.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.30.220 Destruction, injury, secretion, etc., of property. Any person, who, with intent to defraud or prejudice the insurer thereof, burns or in any manner injures, destroys, secretes, abandons, or disposes of any property which is insured at the time against loss or damage by fire, theft, embezzlement, or any other casualty, whether the same

be the property of or in the possession of such person or any other person, under circumstances not making the offense arson in the first degree, is guilty of a class C felony. [1995 c 285 § 19; 1965 ex.s. c 70 § 25; 1947 c 79 § .30.22; Rem. Supp. 1947 § 45.30.22.]

Effective date—1995 c 285: See RCW 48.30A.900.

Chapter 48.30A INSURANCE FRAUD

Sections

- 48.30A.005 Findings—Intent.
48.30A.010 Definitions.
48.30A.015 Unlawful acts.
48.30A.020 Defenses to proceedings under this chapter.
48.30A.025 Trafficking in insurance claims—Penalties.
48.30A.030 Injunction available—Remedies—Costs—Attorneys' fees—Degree of proof—Time limit.
48.30A.035 Detrimental judgment—Written notification to appropriate regulatory or disciplinary body or agency.
48.30A.040 Violation—Cause for discipline—Unprofessional conduct—Regulatory penalty.
48.30A.045 Insurance antifraud plan—File plan and changes with commissioner.
48.30A.050 Insurance antifraud plan—Specific procedures.
48.30A.055 Insurance antifraud plan—Review—Disapproval—Notice—Audit to ensure compliance.
48.30A.060 Insurance antifraud plan—Actions taken by insurer—Report—Not public records.
48.30A.065 Insurance antifraud plan—Failure to file or exercise good faith—Penalty—Failure to follow plan—Civil penalty.
48.30A.070 Duty to investigate, enforce, and prosecute violations.
48.30A.900 Effective date—1995 c 285.

48.30A.005 Findings—Intent. The legislature finds that the business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. The payment of kickbacks, bribes, or rebates for referrals to service providers, as has been occurring with increasing regularity in this state, results in inflated or fraudulent insurance claims, results in greater insurance costs for all citizens, and is contrary to the public interest. In particular, the process whereby "cappers" buy and sell insurance claims without the controls of professional licensing and discipline creates a fertile ground for illegal activity and has, in this state, resulted in frauds committed against injured claimants, insurance companies, and the public. Operations that engage in this practice have some or all of the following characteristics: Cappers, acting under an agreement or understanding that they will receive a pecuniary benefit, refer claimants with real or imaginary claims, injuries, or property damage to service providers. This sets off a chain of events that corrupts both the provision of services and casualty or property insurance for all citizens. This chain of events includes false claims for services through the use of false estimates of repair; false prescriptions of care or rehabilitative therapy; services that either do not occur or are provided by persons unqualified to provide the services; submission of false claims; submission of and demands for fraudulent costs, lost wages, pain and suffering, and the like; and other devices meant to result in false claims under casualty or property insurance policies or

contracts, whether insured or self-insured, and either directly or through subrogation.

The legislature finds that combatting these practices requires laws carefully fashioned to identify practices that mimic customary business practices. The legislature does not intend this law to be used against medical and other business referral practices that are otherwise legal, customary, and unrelated to the furtherance of some or all of the corrupt practices identified in this chapter. [1995 c 285 § 1.]

48.30A.010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Casualty or property insurance" includes both the insurance under which a claim is filed and insurance that receives a claim through subrogation, and means insurance as defined in RCW 48.11.040 and 48.11.070 and includes self-insurance arrangements.

(2) "Claimant" means a person who has or is believed by an actor to have an insurance claim.

(3) "Group-buying arrangement" means an arrangement made by a membership organization having one hundred or more members in which the organization asks for or receives valuable consideration in exchange for referring its members to a service provider; the consideration asked for or received will be or is used to benefit the entire organization, not just one or more individuals in positions of power or influence in the organization; and reasonable efforts are made to disclose to affected members of the organization the nature of the referral relationship, including the nature, extent, amount, and use of the consideration.

(4) "Health care services" means a service provided to a claimant for treatment of physical or mental illness or injury arising in whole or substantial part from trauma.

(5) "Insurance claim" means a claim for payment, benefits, or damages under a contract, plan, or policy of casualty or property insurance.

(6) "Legal provider" means an active member in good standing of the Washington state bar association, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law.

(7) "Service provider" means a person who directly or indirectly provides, advertises, or otherwise claims to provide services.

(8) "Services" means health care services, motor vehicle body or other motor vehicle repair, and preparing, processing, presenting, or negotiating an insurance claim.

(9) "Trauma" means a physical injury or wound caused by external force or violence. [1995 c 285 § 2.]

48.30A.015 Unlawful acts. (1) It is unlawful for a person:

(a) Knowing that the payment is for the referral of a claimant to a service provider, either to accept payment from a service provider or, being a service provider, to pay another; or

(b) To provide or claim or represent to have provided services to a claimant, knowing the claimant was referred in violation of (a) of this subsection.

(2) It is unlawful for a service provider to engage in a regular practice of waiving, rebating, giving, paying, or

offering to waive, rebate, give, or pay all or any part of a claimant's casualty or property insurance deductible. [1995 c 285 § 3.]

48.30A.020 Defenses to proceedings under this chapter. In a proceeding under this chapter, it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense:

(1) The conduct alleged was authorized by the rules of professional conduct or the admission to practice rules for lawyers as adopted by the state supreme court, Washington business and professions licensing statutes, or rules adopted by the secretary of health or the director of licensing;

(2) The payment was an incidental nonmonetary gift or gratuity, or was purely social in nature;

(3) The conduct alleged was an exercise of a group-buying arrangement;

(4) The conduct alleged was a legal provider paying a service provider's bills from the proceeds of an insurance claim that included the bills;

(5) The conduct alleged was a legal provider paying for services of an expert witness, including reports, consultation, and testimony; or

(6) The conduct alleged was a service provider's purchase of advertising from an unrelated business that provides referrals from advertising for groups of ten or more service providers that are not related to the advertising business and not related to each other. [1995 c 285 § 4.]

48.30A.025 Trafficking in insurance claims—Penalties. A violation of RCW 48.30A.015 constitutes trafficking in insurance claims. A single violation is a gross misdemeanor. Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony. [1995 c 285 § 5.]

48.30A.030 Injunction available—Remedies—Costs—Attorneys' fees—Degree of proof—Time limit. Independent of authority granted to the attorney general, the prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable attorney's fee. The degree of proof required in an action brought under this section is a preponderance of the evidence. An action under this section must be brought within three years after the violation of this chapter occurred. [1995 c 285 § 6.]

48.30A.035 Detrimental judgment—Written notification to appropriate regulatory or disciplinary body or agency. Whenever a service provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under RCW 48.30A.030, the attorney general or the prosecuting attorney shall provide written

notification of the judgment to the appropriate regulatory or disciplinary body or agency. [1995 c 285 § 7.]

48.30A.040 Violation—Cause for discipline—Unprofessional conduct—Regulatory penalty. A violation of this chapter is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this chapter is unprofessional conduct in violation of RCW 18.130.180. [1995 c 285 § 8.]

48.30A.045 Insurance antifraud plan—File plan and changes with commissioner. Each insurer licensed to write direct insurance in this state shall institute and maintain an insurance antifraud plan. An insurer licensed on July 1, 1995, shall file its antifraud plan with the insurance commissioner no later than December 31, 1995. An insurer licensed after July 1, 1995, shall file its antifraud plan within six months of licensure. An insurer shall file any change to the antifraud plan with the insurance commissioner within thirty days after the plan has been modified. [1995 c 285 § 9.]

48.30A.050 Insurance antifraud plan—Specific procedures. An insurer's antifraud plan must establish specific procedures to:

- (1) Prevent insurance fraud, including internal fraud involving employees or company representatives, fraud resulting from misrepresentation on applications for insurance coverage, and claims fraud;
- (2) Review claims in order to detect evidence of possible insurance fraud and to investigate claims where fraud is suspected;
- (3) Report fraud to appropriate law enforcement agencies and cooperate with those agencies in their prosecution of fraud cases;
- (4) Undertake civil actions against persons who have engaged in fraudulent activities;
- (5) Train company employees and agents in the detection and prevention of fraud. [1995 c 285 § 10.]

48.30A.055 Insurance antifraud plan—Review—Disapproval—Notice—Audit to ensure compliance. If after review of an insurer's antifraud plan, the commissioner finds that the plan does not comply with RCW 48.30A.050, the commissioner may disapprove the antifraud plan. Notice of disapproval must include a statement of the specific reasons for disapproval. The insurer shall refile a plan disapproved by the commissioner within sixty days of the date of the notice of disapproval. The commissioner may audit insurers to ensure compliance with antifraud plans. [1995 c 285 § 11.]

48.30A.060 Insurance antifraud plan—Actions taken by insurer—Report—Not public records. Each insurer shall annually provide to the insurance commissioner a summary report on actions taken under its antifraud plan to prevent and combat insurance fraud. The report must also include, but not be limited to, measures taken to protect and

ensure the integrity of electronic data processing-generated data and manually compiled data, statistical data on the amount of resources committed to combatting fraud, and the amount of fraud identified and recovered during the reporting period. The antifraud plans and summary of the insurer's antifraud activities are not public records and are exempt from chapter 42.17 RCW, are proprietary, are not subject to public examination, and are not discoverable or admissible in civil litigation. [1995 c 285 § 12.]

48.30A.065 Insurance antifraud plan—Failure to file or exercise good faith—Penalty—Failure to follow plan—Civil penalty. An insurer that fails to file a timely antifraud plan or who does not make a good faith attempt to file an antifraud plan that complies with RCW 48.30A.050, is subject to the penalty provisions of RCW 48.01.080, but no penalty may be imposed for the first filing made by an insurer under this chapter. An insurer that fails to follow the antifraud plan is subject to a civil penalty not to exceed ten thousand dollars for each violation, at the discretion of the commissioner after consideration of all relevant factors, including the willfulness of the violation. [1995 c 285 § 13.]

48.30A.070 Duty to investigate, enforce, and prosecute violations. It is the duty of all peace officers, law enforcement officers, and law enforcement agencies within this state to investigate, enforce, and prosecute all violations of this chapter. [1995 c 285 § 14.]

48.30A.900 Effective date—1995 c 285. 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, 1995. [1995 c 285 § 39.]

Chapter 48.41

HEALTH INSURANCE COVERAGE ACCESS ACT

Sections

48.41.100 Eligibility for coverage.

48.41.100 Eligibility for coverage. (1) Any individual person who is a resident of this state is eligible for coverage upon providing evidence of rejection for medical reasons, a requirement of restrictive riders, an up-rated premium, or a preexisting conditions limitation on health insurance, the effect of which is to substantially reduce coverage from that received by a person considered a standard risk, by at least one member within six months of the date of application. Evidence of rejection may be waived in accordance with rules adopted by the board.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than nonpayment of premiums;

(b) Any person on whose behalf the pool has paid out five hundred thousand dollars in benefits;

(c) Inmates of public institutions and persons whose benefits are duplicated under public programs.

(3) Any person whose health insurance coverage is involuntarily terminated for any reason other than nonpayment of premium may apply for coverage under the plan. [1995 c 34 § 5; 1989 c 121 § 7; 1987 c 431 § 10.]

Chapter 48.42

PERSONAL COVERAGE, GENERAL AUTHORITY
(Formerly: Health care coverage, general authority)

Sections

48.42.100 Women's health care services—Duties of health care carriers.

48.42.100 Women's health care services—Duties of health care carriers. (1) For purposes of this section, health care carriers includes disability insurers regulated under chapter 48.20 or 48.21 RCW, health care services contractors regulated under chapter 48.44 RCW, health maintenance organizations regulated under chapter 48.46 RCW, plans operating under the health care authority under chapter 41.05 RCW, the state health insurance pool operating under chapter 48.41 RCW, and insuring entities regulated under chapter 48.43 RCW.

(2) For purposes of this section and consistent with their lawful scopes of practice, types of health care practitioners that provide women's health care services shall include, but need not be limited by a health care carrier to, the following: Any generally recognized medical specialty of practitioners licensed under chapter 18.57 or 18.71 RCW who provides women's health care services; practitioners licensed under chapters 18.57A and 18.71A RCW when providing women's health care services; and advanced registered nurse practitioner specialists in women's health and midwifery under chapter 18.79 RCW.

(3) For purposes of this section, women's health care services shall include, but need not be limited by a health care carrier to, the following: Maternity care; reproductive health services; gynecological care; general examination; and preventive care as medically appropriate and medically appropriate follow-up visits for the services listed in this subsection.

(4) Health care carriers shall ensure that enrolled female patients have direct access to timely and appropriate covered women's health care services from the type of health care practitioner of their choice in accordance with subsection (5) of this section.

(5)(a) Health care carrier policies, plans, and programs written, amended, or renewed after July 23, 1995, shall provide women patients with direct access to the type of health care practitioner of their choice for appropriate covered women's health care services without the necessity of prior referral from another type of health care practitioner.

(b) Health care carriers may comply with this section by including all the types of health care practitioners listed in this section for women's health care services for women patients.

(c) Nothing in this section shall prevent health care carriers from restricting women patients to seeing only health

care practitioners who have signed participating provider agreements with the health care carrier. [1995 c 389 § 1.]

Chapter 48.43

HEALTH CARE INSURANCE REFORM
(Formerly: Certified health plans)

Sections

- 48.43.005 Definitions.
- 48.43.010 Repealed.
- 48.43.015 Portability.
- 48.43.020 Repealed.
- 48.43.025 Preexisting conditions.
- 48.43.030 Repealed.
- 48.43.035 Guaranteed issue and continuity of coverage—Exceptions.
- 48.43.040 Repealed.
- 48.43.045 Health plan requirements—Annual reports.
- 48.43.050 Repealed.
- 48.43.055 Procedures for review and adjudication of complaints—Requirements.
- 48.43.060 Repealed.
- 48.43.065 Right of individuals to receive services—Right of providers, carriers, and facilities to refuse to participate in or pay for services for reason of conscience or religion—Requirements.
- 48.43.070 through 48.43.170 Repealed.
- 48.43.180 Denturist services.
- 48.43.200 Disclosure of certain material transactions—Report—Information is confidential.
- 48.43.205 Material acquisitions or dispositions.
- 48.43.210 Asset acquisitions—Asset dispositions.
- 48.43.215 Report of a material acquisition or disposition of assets—Information required.
- 48.43.220 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements.
- 48.43.225 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required.

48.43.005 Definitions. Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(3) "Eligible employee" means an employee who works on a full-time basis with a normal work week of thirty or more hours. The term includes a self-employed individual, including a sole proprietor, a partner of a partnership, and may include an independent contractor, if the self-employed individual, sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer, but does not work less than thirty hours per week and derives at least seventy-five percent of his or her income from a trade or business through which he or she has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form. Persons covered under a health benefit plan pursuant to the consolidated omnibus budget reconciliation act of 1986 shall not be considered eligible employees for purposes of

minimum participation requirements of chapter 265, Laws of 1995.

(4) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(5) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

(6) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(7) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(8) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

(9) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans; and

(j) Dental only and vision only coverage.

(10) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be

delivered to an enrollee under the basic health plan, as revised from time to time.

(11) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(12) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(13) "Small employer" means any person, firm, corporation, partnership, association, political subdivision except school districts, or self-employed individual that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar quarter, employed no more than fifty eligible employees, with a normal work week of thirty or more hours, the majority of whom were employed within this state, and is not formed primarily for purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. The term "small employer" includes a self-employed individual or sole proprietor. The term "small employer" also includes a self-employed individual or sole proprietor who derives at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year.

(14) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs.

(15) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time. [1995 c 265 § 4.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.010 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.43.015 Portability. (1) Every health carrier shall waive any preexisting condition exclusion or limitation for persons or groups who had similar health coverage under a

different health plan at any time during the three-month period immediately preceding the date of application for the new health plan if such person was continuously covered under the immediately preceding health plan. If the person was continuously covered for at least three months under the immediately preceding health plan, the carrier may not impose a waiting period for coverage of preexisting conditions. If the person was continuously covered for less than three months under the immediately preceding health plan, the carrier must credit any waiting period under the immediately preceding health plan toward the new health plan. For the purposes of this subsection, a preceding health plan includes an employer provided self-funded health plan.

(2) Subject to the provisions of subsection (1) of this section, nothing contained in this section requires a health carrier to amend a health plan to provide new benefits in its existing health plans. In addition, nothing in this section requires a carrier to waive benefit limitations not related to an individual or group's preexisting conditions or health history. [1995 c 265 § 5.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.020 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.43.025 Preexisting conditions. (1) No carrier may reject an individual for health plan coverage based upon preexisting conditions of the individual and no carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that a carrier may impose a three-month benefit waiting period for preexisting conditions for which medical advice was given, or for which a health care provider recommended or provided treatment within three months before the effective date of coverage.

(2) No carrier may avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. A new or changed rate classification will be deemed an attempt to avoid the provisions of this section if the new or changed classification would substantially discourage applications for coverage from individuals or groups who are higher than average health risks. These provisions apply only to individuals who are Washington residents. [1995 c 265 § 6.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.43.035 Guaranteed issue and continuity of coverage—Exceptions. (1) All health carriers shall accept for enrollment any state resident within the carrier's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2). The insurance commissioner may grant a temporary exemption from this subsection, if, upon application by a health carrier the

commissioner finds that the clinical, financial, or administrative capacity to serve existing enrollees will be impaired if a health carrier is required to continue enrollment of additional eligible individuals.

(2) Except as provided in subsection (5) of this section, all health plans shall contain or incorporate by endorsement a guarantee of the continuity of coverage of the plan. For the purposes of this section, a plan is "renewed" when it is continued beyond the earliest date upon which, at the carrier's sole option, the plan could have been terminated for other than nonpayment of premium. In the case of group plans, the carrier may consider the group's anniversary date as the renewal date for purposes of complying with the provisions of this section.

(3) The guarantee of continuity of coverage required in health plans shall not prevent a carrier from canceling or nonrenewing a health plan for:

- (a) Nonpayment of premium;
- (b) Violation of published policies of the carrier approved by the insurance commissioner;
- (c) Covered persons entitled to become eligible for medicare benefits by reason of age who fail to apply for a medicare supplement plan or medicare cost, risk, or other plan offered by the carrier pursuant to federal laws and regulations;

(d) Covered persons who fail to pay any deductible or copayment amount owed to the carrier and not the provider of health care services;

(e) Covered persons committing fraudulent acts as to the carrier;

(f) Covered persons who materially breach the health plan; or

(g) Change or implementation of federal or state laws that no longer permit the continued offering of such coverage.

(4) The provisions of this section do not apply in the following cases:

- (a) A carrier has zero enrollment on a product; or
- (b) A carrier replaces a product and the replacement product is provided to all covered persons within that class or line of business, includes all of the services covered under the replaced product, and does not significantly limit access to the kind of services covered under the replaced product. The health plan may also allow unrestricted conversion to a fully comparable product; or

(c) A carrier is withdrawing from a service area or from a segment of its service area because the carrier has demonstrated to the insurance commissioner that the carrier's clinical, financial, or administrative capacity to serve enrollees would be exceeded.

(5) The provisions of this section do not apply to health plans deemed by the insurance commissioner to be unique or limited or have a short-term purpose, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner. [1995 c 265 § 7.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.43.045 Health plan requirements—Annual reports. Every health plan delivered, issued for delivery, or renewed by a health carrier on and after January 1, 1996, shall:

(1) Permit every category of health care provider to provide health services or care for conditions included in the basic health plan services to the extent that:

(a) The provision of such health services or care is within the health care providers' permitted scope of practice; and

(b) The providers agree to abide by standards related to:

(i) Provision, utilization review, and cost containment of health services;

(ii) Management and administrative procedures; and

(iii) Provision of cost-effective and clinically efficacious health services.

(2) Annually report the names and addresses of all officers, directors, or trustees of the health carrier during the preceding year, and the amount of wages, expense reimbursements, or other payments to such individuals. [1995 c 265 § 8.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.43.055 Procedures for review and adjudication of complaints—Requirements. Each health carrier as defined under RCW 48.43.005 shall file with the commissioner its procedures for review and adjudication of complaints initiated by covered persons or health care providers. Procedures filed under this section shall provide a fair review for consideration of complaints. Every health carrier shall provide reasonable means whereby any person aggrieved by actions of the health carrier may be heard in person or by their authorized representative on their written request for review. If the health carrier fails to grant or reject such request within thirty days after it is made, the complaining person may proceed as if the complaint had been rejected. A complaint that has been rejected by the health carrier may be submitted to nonbinding mediation. Mediation shall be conducted pursuant to mediation rules similar to those of the American arbitration association, the center for public resources, the judicial arbitration and mediation service, RCW 7.70.100, or any other rules of mediation agreed to by the parties. [1995 c 265 § 20.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.060 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.43.065 Right of individuals to receive services—Right of providers, carriers, and facilities to refuse to participate in or pay for services for reason of conscience or religion—Requirements. (1) The legislature recognizes that every individual possesses a fundamental right to exercise their religious beliefs and conscience. The legislature further recognizes that in developing public policy, conflicting religious and moral beliefs must be respected.

Therefore, while recognizing the right of conscientious objection to participating in specific health services, the state shall also recognize the right of individuals enrolled with plans containing the basic health plan services to receive the full range of services covered under the plan.

(2)(a) No individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstances to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objection.

(b) The provisions of this section are not intended to result in an enrollee being denied timely access to any service included in the basic health plan services. Each health carrier shall:

(i) Provide written notice to enrollees, upon enrollment with the plan, listing services that the carrier refuses to cover for reason of conscience or religion;

(ii) Provide written information describing how an enrollee may directly access services in an expeditious manner; and

(iii) Ensure that enrollees refused services under this section have prompt access to the information developed pursuant to (b)(ii) of this subsection.

(c) The insurance commissioner shall establish by rule a mechanism or mechanisms to recognize the right to exercise conscience while ensuring enrollees timely access to services and to assure prompt payment to service providers.

(3)(a) No individual or organization with a religious or moral tenet opposed to a specific service may be required to purchase coverage for that service or services if they object to doing so for reason of conscience or religion.

(b) The provisions of this section shall not result in an enrollee being denied coverage of, and timely access to, any service or services excluded from their benefits package as a result of their employer's or another individual's exercise of the conscience clause in (a) of this subsection.

(c) The insurance commissioner shall define by rule the process through which health carriers may offer the basic health plan services to individuals and organizations identified in (a) and (b) of this subsection in accordance with the provisions of subsection (2)(c) of this section.

(4) Nothing in this section requires a health carrier, health care facility, or health care provider to provide any health care services without appropriate payment of premium or fee. [1995 c 265 § 25.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.070 through 48.43.170 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.43.180 Denturist services. Notwithstanding any provision of any certified health plan covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of

such person's license, and (2) such plan would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 23 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

48.43.200 Disclosure of certain material transactions—Report—Information is confidential. (1) Every certified health plan domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

- (a) Commissioner; and
- (b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and RCW 48.43.205 through 48.43.225 are exempt from public inspection and copying and shall not be subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the certified health plan to which it pertains unless the commissioner, after giving the certified health plan that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate. [1995 c 86 § 7.]

48.43.205 Material acquisitions or dispositions. No acquisitions or dispositions of assets need be reported pursuant to RCW 48.43.200 if the acquisitions or dispositions are not material. For purposes of RCW 48.43.200 through 48.43.225, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting certified health plan's total assets as reported in its most recent statutory statement filed with the commissioner. [1995 c 86 § 8.]

48.43.210 Asset acquisitions—Asset dispositions. (1) Asset acquisitions subject to RCW 48.43.200 through 48.43.225 include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the

reporting certified health plan or the acquisition of materials for such purpose.

(2) Asset dispositions subject to RCW 48.43.200 through 48.43.225 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandonment, destruction, other disposition, or assignment, whether for the benefit of creditors or otherwise. [1995 c 86 § 9.]

48.43.215 Report of a material acquisition or disposition of assets—Information required. (1) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (a) Date of the transaction;
- (b) Manner of acquisition or disposition;
- (c) Description of the assets involved;
- (d) Nature and amount of the consideration given or received;
- (e) Purpose of or reason for the transaction;
- (f) Manner by which the amount of consideration was determined;
- (g) Gain or loss recognized or realized as a result of the transaction; and
- (h) Names of the persons from whom the assets were acquired or to whom they were disposed.

(2) Certified health plans are required to report material acquisitions and dispositions on a nonconsolidated basis unless the certified health plan is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the certified health plan's reserves and such certified health plan ceded substantially all of its direct and assumed business to the pool. A certified health plan has ceded substantially all of its direct and assumed business to a pool if the certified health plan has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the certified health plan's net worth. [1995 c 86 § 10.]

48.43.220 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under RCW 48.43.200 if the nonrenewals, cancellations, or revisions are not material. For purposes of RCW 48.43.200 through 48.43.225, a material nonrenewal, cancellation, or revision is one that affects:

- (a) More than fifty percent of a certified health plan's total reserve credit taken for business ceded, on an annualized basis, as indicated in the certified health plan's most recent annual statement;
- (b) More than ten percent of a certified health plan's total cession when it is replaced by one or more unauthorized reinsurers; or
- (c) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if the certified health plan's total reserve credit taken for business ceded

represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession. [1995 c 86 § 11.]

48.43.225 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required. (1) The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

- (a) The effective date of the nonrenewal, cancellation, or revision;
- (b) The description of the transaction with an identification of the initiator;
- (c) The purpose of or reason for the transaction; and
- (d) If applicable, the identity of the replacement reinsurers.

(2) Certified health plans are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the certified health plan is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the certified health plan's reserves and the certified health plan ceded substantially all of its direct and assumed business to the pool. A certified health plan has ceded substantially all of its direct and assumed business to a pool if the certified health plan has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the certified health plan's net worth. [1995 c 86 § 12.]

Chapter 48.44

HEALTH CARE SERVICES

Sections

- 48.44.022 Mandatory offering to individuals providing basic health plan benefits—Exemption from statutory requirements—Premium rates—Definitions. (*Effective January 1, 1996.*)
- 48.44.023 Mandatory offering providing basic health plan benefits for employers with fewer than twenty-five employees—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers. (*Effective January 1, 1996.*)
- 48.44.024 Requirements for plans offered to small employers—Definitions.
- 48.44.480 Repealed.
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- 48.44.500 Denturist services.
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- 48.44.540 Asset acquisitions—Asset dispositions.
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- 48.44.550 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements.
- 48.44.555 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required.

48.44.022 Mandatory offering to individuals providing basic health plan benefits—Exemption from

statutory requirements—Premium rates—Definitions. (*Effective January 1, 1996.*) (1)(a) A health care service contractor offering any health benefit plan to any individual shall offer and actively market to all individuals a health benefit plan providing benefits identical to the schedule of covered health services that are required to be delivered to an individual enrolled in the basic health plan. Nothing in this subsection shall preclude a contractor from offering, or an individual from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. A contractor offering a health benefit plan that does not include benefits provided in the basic health plan shall clearly disclose these differences to the individual in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.44.225, 48.44.240, 48.44.245, 48.44.290, 48.44.300, 48.44.310, 48.44.320, 48.44.325, 48.44.330, 48.44.335, 48.44.340, 48.44.344, 48.44.360, 48.44.400, 48.44.440, 48.44.450, and 48.44.460 if the health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan.

(2) Premium rates for health benefit plans for individuals shall be subject to the following provisions:

(a) The health care service contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The health care service contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or

(iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(3) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.44.023.

(4) As used in this section and RCW 48.44.023 "health benefit plan," "small employer," "basic health plan," "adjusted community rates," and "wellness activities" mean the same as defined in RCW 48.43.005. [1995 c 265 § 15.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.44.023 Mandatory offering providing basic health plan benefits for employers with fewer than twenty-five employees—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers. (Effective January 1, 1996.) (1)(a) A health care services contractor offering any health benefit plan to a small employer shall offer and actively market to the small employer a health benefit plan providing benefits identical to the schedule of covered health services that are required to be delivered to an individual enrolled in the basic health plan. Nothing in this subsection shall preclude a contractor from offering, or a small employer from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. A contractor offering a health benefit plan that does not include benefits in the basic health plan shall clearly disclose these differences to the small employer in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.44.225, 48.44.240, 48.44.245, 48.44.290, 48.44.300, 48.44.310, 48.44.320, 48.44.325, 48.44.330, 48.44.335, 48.44.340, 48.44.344, 48.44.360, 48.44.400, 48.44.440, 48.44.450, and 48.44.460 if: (i) The health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan; or (ii) the health benefit plan is offered to employers with not more than twenty-five employees.

(2) Nothing in this section shall prohibit a health care service contractor from offering, or a purchaser from seeking, benefits in excess of the basic health plan services. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or
- (iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage.

(4) The health benefit plans authorized by this section that are lower than the required offering shall not supplant or supersede any existing policy for the benefit of employees in this state. Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a contractor in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A contractor shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A contractor may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(6) A contractor must offer coverage to all eligible employees of a small employer and their dependents. A contractor may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A contractor may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan. [1995 c 265 § 16; 1990 c 187 § 3.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Finding—Intent—Severability—1990 c 187: See notes following RCW 48.21.045.

48.44.024 Requirements for plans offered to small employers—Definitions. (1) No health care service contractor shall offer any health benefit plan to any small employer without complying with the provisions of *RCW 48.44.023(5).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care shall not be considered small employers and such plans shall not be subject to the provisions of *RCW 48.44.023(5).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005. [1995 c 265 § 23.]

***Reviser's note:** Reference was inadvertently changed during the bill drafting process. The correct reference should be RCW 48.44.023(3).

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.44.480 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.44.490 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.44.500 Denturist services. Notwithstanding any provision of any health care service contract covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of

such person's license, and (2) such contract would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 24 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

48.44.530 Disclosure of certain material transactions—Report—Information is confidential. (1) Every health care service contractor domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

(a) Commissioner; and

(b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and RCW 48.44.535 through 48.44.555 are exempt from public inspection and copying and shall not be subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the health care service contractor to which it pertains unless the commissioner, after giving the health care service contractor that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate. [1995 c 86 § 13.]

48.44.535 Material acquisitions or dispositions. No acquisitions or dispositions of assets need be reported pursuant to RCW 48.44.530 if the acquisitions or dispositions are not material. For purposes of RCW 48.44.530 through 48.44.555, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting health care service contractor's total assets as reported in its most recent statutory statement filed with the commissioner. [1995 c 86 § 14.]

48.44.540 Asset acquisitions—Asset dispositions. (1) Asset acquisitions subject to RCW 48.44.530 through 48.44.555 include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the

construction or development of real property by or for the reporting health care service contractor or the acquisition of materials for such purpose.

(2) Asset dispositions subject to RCW 48.44.530 through 48.44.555 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandonment, destruction, other disposition, or assignment, whether for the benefit of creditors or otherwise. [1995 c 86 § 15.]

48.44.545 Report of a material acquisition or disposition of assets—Information required. The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (1) Date of the transaction;
- (2) Manner of acquisition or disposition;
- (3) Description of the assets involved;
- (4) Nature and amount of the consideration given or received;
- (5) Purpose of or reason for the transaction;
- (6) Manner by which the amount of consideration was determined;
- (7) Gain or loss recognized or realized as a result of the transaction; and
- (8) Names of the persons from whom the assets were acquired or to whom they were disposed. [1995 c 86 § 16.]

48.44.550 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under RCW 48.44.530 if the nonrenewals, cancellations, or revisions are not material. For purposes of RCW 48.44.530 through 48.44.555, a material nonrenewal, cancellation, or revision is one that affects:

- (a) More than fifty percent of a health care service contractor's total reserve credit taken for business ceded, on an annualized basis, as indicated in the health care service contractor's most recent annual statement;
 - (b) More than ten percent of a health care service contractor's total cession when it is replaced by one or more unauthorized reinsurers; or
 - (c) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.
- (2) However, a filing is not required if a health care service contractor's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession. [1995 c 86 § 17.]

48.44.555 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required. The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

- (1) The effective date of the nonrenewal, cancellation, or revision;
- (2) The description of the transaction with an identification of the initiator;
- (3) The purpose of or reason for the transaction; and

(4) If applicable, the identity of the replacement reinsurers. [1995 c 86 § 18.]

Chapter 48.46

HEALTH MAINTENANCE ORGANIZATIONS

Sections

- 48.46.064 Mandatory offering to individuals providing basic health plan benefits—Exemption from statutory requirements—Premium rates—Definitions. (*Effective January 1, 1996.*)
- 48.46.066 Mandatory offering providing basic health plan benefits for employers with fewer than twenty-five employees—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers. (*Effective January 1, 1996.*)
- 48.46.068 Requirements for plans offered to small employers—Definitions.
- 48.46.550 Repealed.
- 48.46.560 Repealed.
- 48.46.570 Denturist services.
- 48.46.575 Doctor of osteopathic medicine and surgery—Discrimination based on board certification is prohibited.
- 48.46.600 Disclosure of certain material transactions—Report—Information is confidential.
- 48.46.605 Material acquisitions or dispositions.
- 48.46.610 Asset acquisitions—Asset dispositions.
- 48.46.615 Report of a material acquisition or disposition of assets—Information required.
- 48.46.620 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements.
- 48.46.625 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required.

48.46.064 Mandatory offering to individuals providing basic health plan benefits—Exemption from statutory requirements—Premium rates—Definitions. (*Effective January 1, 1996.*) (1)(a) A health maintenance organization offering any health benefit plan to any individual shall offer and actively market to all individuals a health benefit plan providing benefits identical to the schedule of covered health services that are required to be delivered to an individual enrolled in the basic health plan. Nothing in this subsection shall preclude a health maintenance organization from offering, or an individual from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. A health maintenance organization offering a health benefit plan that does not include benefits provided in the basic health plan shall clearly disclose these differences to the individual in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.46.275, 48.26.280 [48.46.280], 48.46.285, 48.46.290, 48.46.350, 48.46.355, 48.46.375, 48.46.440, 48.46.480, 48.46.510, 48.46.520, and 48.46.530 if the health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan.

(2) Premium rates for health benefit plans for individuals shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(3) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.46.066.

(4) As used in this section and RCW 48.46.066, "health benefit plan," "basic health plan," "adjusted community rate," "small employer," and "wellness activities" mean the same as defined in RCW 48.43.005. [1995 c 265 § 17.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.46.066 Mandatory offering providing basic health plan benefits for employers with fewer than twenty-five employees—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers. (Effective January 1, 1996.) (1)(a) A health maintenance organization offering any health benefit plan to a small employer shall offer and actively market to the small employer a health

benefit plan providing benefits identical to the schedule of covered health services that are required to be delivered to an individual enrolled in the basic health plan. Nothing in this subsection shall preclude a health maintenance organization from offering, or a small employer from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. A health maintenance organization offering a health benefit plan that does not include benefits in the basic health plan shall clearly disclose these differences to the small employer in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.46.275, 48.46.280, 48.46.285, 48.46.290, 48.46.350, 48.46.355, 48.46.375, 48.46.440, 48.46.480, 48.46.510, 48.46.520, and 48.46.530 if: (i) The health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan; or (ii) the health benefit plan is offered to employers with not more than twenty-five employees.

(2) Nothing in this section shall prohibit a health maintenance organization from offering, or a purchaser from seeking, benefits in excess of the basic health plan services. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or
- (iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage.

(4) The health benefit plans authorized by this section that are lower than the required offering shall not supplant or supersede any existing policy for the benefit of employees in this state. Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a health maintenance organization in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A health maintenance organization shall not require a minimum participation level greater than:

- (i) One hundred percent of eligible employees working for groups with three or less employees; and
- (ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A health maintenance organization may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(6) A health maintenance organization must offer coverage to all eligible employees of a small employer and their dependents. A health maintenance organization may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A health maintenance organization may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan. [1995 c 265 § 18; 1990 c 187 § 4.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Finding—Intent—Severability—1990 c 187: See notes following RCW 48.21.045.

48.46.068 Requirements for plans offered to small employers—Definitions. (1) No health maintenance organization shall offer any health benefit plan to any small employer without complying with the provisions of *RCW 48.46.066(5).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care shall not be considered small employers and such plans shall not be subject to the provisions of *RCW 48.46.066(5).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005. [1995 c 265 § 24.]

***Reviser's note:** Reference was inadvertently changed during the bill drafting process. The correct reference should be RCW 48.46.066(3).

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.46.550 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.46.560 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.46.570 Denturist services. Notwithstanding any provision of any health maintenance organization agreement covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such agreement would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 25 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

48.46.575 Doctor of osteopathic medicine and surgery—Discrimination based on board certification is prohibited. A health maintenance organization that provides health care services to the general public may not discriminate against a qualified doctor of osteopathic medicine and surgery licensed under chapter 18.57 RCW, who has applied to practice with the health maintenance organization, solely because that practitioner was board certified or eligible under an approved osteopathic certifying board instead of board certified or eligible respectively under an approved medical certifying board. [1995 c 64 § 1.]

48.46.600 Disclosure of certain material transactions—Report—Information is confidential. (1) Every health maintenance organization domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance

agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

- (a) Commissioner; and
- (b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and RCW 48.46.605 through 48.46.625 are exempt from public inspection and copying and shall not be subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the health maintenance organization to which it pertains unless the commissioner, after giving the health maintenance organization that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate. [1995 c 86 § 19.]

48.46.605 Material acquisitions or dispositions. No acquisitions or dispositions of assets need be reported pursuant to RCW 48.46.600 if the acquisitions or dispositions are not material. For purposes of RCW 48.46.600 through 48.46.625, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting health maintenance organization's total assets as reported in its most recent statutory statement filed with the commissioner. [1995 c 86 § 20.]

48.46.610 Asset acquisitions—Asset dispositions. (1) Asset acquisitions subject to RCW 48.46.600 through 48.46.625 include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting health maintenance organization or the acquisition of materials for such purpose.

(2) Asset dispositions subject to RCW 48.46.600 through 48.46.625 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandonment, destruction, other disposition, or assignment, whether for the benefit of creditors or otherwise. [1995 c 86 § 21.]

48.46.615 Report of a material acquisition or disposition of assets—Information required. The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (1) Date of the transaction;
- (2) Manner of acquisition or disposition;
- (3) Description of the assets involved;
- (4) Nature and amount of the consideration given or received;
- (5) Purpose of or reason for the transaction;
- (6) Manner by which the amount of consideration was determined;
- (7) Gain or loss recognized or realized as a result of the transaction; and
- (8) Names of the persons from whom the assets were acquired or to whom they were disposed. [1995 c 86 § 22.]

48.46.620 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under RCW 48.46.600 if the nonrenewals, cancellations, or revisions are not material. For purposes of RCW 48.46.600 through 48.46.625, a material nonrenewal, cancellation, or revision is one that affects:

(a) More than fifty percent of a health maintenance organization's total reserve credit taken for business ceded, on an annualized basis, as indicated in the health maintenance organization's most recent annual statement;

(b) More than ten percent of a health maintenance organization's total cession when it is replaced by one or more unauthorized reinsurers; or

(c) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if a health maintenance organization's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession. [1995 c 86 § 23.]

48.46.625 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required. The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

(1) The effective date of the nonrenewal, cancellation or revision;

(2) The description of the transaction with an identification of the initiator;

(3) The purpose of or reason for the transaction; and

(4) If applicable, the identity of the replacement reinsurers. [1995 c 86 § 24.]

Chapter 48.48

STATE FIRE PROTECTION

(Formerly: State fire marshal)

Sections

- 48.48.030 Examination of premises.
- 48.48.040 Standards of safety.
- 48.48.050 Removal of fire hazards—Appeal of order—Penalty.
- 48.48.060 Reports and investigation of fires—Police powers.
- 48.48.065 Statistical information and reports.

- 48.48.070 Examination of witnesses.
- 48.48.080 Criminal prosecutions.
- 48.48.090 Record of fires.
- 48.48.110 Annual report.
- 48.48.120 Repealed.
- 48.48.140 Smoke detection devices in dwelling units—Penalty.
- 48.48.150 Premises with guard animals—Registration, posting—Acts permitted fire fighters—Liability for injury to fire fighters.

48.48.030 Examination of premises. (1) The chief of the Washington state patrol, through the director of fire protection or his or her authorized deputy, shall have authority at all times of day and night, in the performance of duties imposed by this chapter, to enter upon and examine any building or premises where any fire has occurred and other buildings and premises adjoining or near thereto.

(2) The chief of the Washington state patrol, through the director of fire protection or his or her authorized deputy, shall have authority at any reasonable hour to enter into any public building or premises or any building or premises used for public purposes to inspect for fire hazards. [1995 c 369 § 25; 1986 c 266 § 67; 1985 c 470 § 17; 1947 c 79 § .33.03; Rem. Supp. 1947 § 45.33.03.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1985 c 470: "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 470 § 38.]

Effective date—1985 c 470: "This act shall take effect on January 1, 1986." [1985 c 470 § 40.]

48.48.040 Standards of safety. (1) The chief of the Washington state patrol, through the director of fire protection or his or her authorized deputy, shall have authority to enter upon all premises and into all buildings except private dwellings for the purpose of inspection to ascertain if any fire hazard exists, and to require conformance with minimum standards for the prevention of fire and for the protection of life and property against fire and panic as to use of premises, and may adopt by reference nationally recognized standards applicable to local conditions.

(2) The chief of the Washington state patrol, through the director of fire protection or his or her authorized deputy, may, upon request by the chief fire official or the local governing body or of taxpayers of such area, assist in the enforcement of any such code. [1995 c 369 § 26; 1986 c 266 § 68; 1985 c 470 § 18; 1947 c 79 § .33.04; Rem. Supp. 1947 § 45.33.04.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.050 Removal of fire hazards—Appeal of order—Penalty. (1) If the chief of the Washington state patrol, through the director of fire protection or his or her authorized deputy, finds in any building or premises subject to their inspection under this chapter, any combustible material or flammable conditions or fire hazards dangerous to the safety of the building, premises, or to the public, he or she shall by written order require such condition to be

remedied, and such order shall forthwith be complied with by the owner or occupant of the building or premises.

(2) An owner or occupant aggrieved by any such order made by the chief of the Washington state patrol, through the director of fire protection or his or her deputy, may appeal such order pursuant to chapter 34.05 RCW. If the order is confirmed, the order shall remain in force and be complied with by the owner or occupant.

(3) Any owner or occupant failing to comply with any such order not appealed from or with any order so confirmed shall be punishable by a fine of not less than ten dollars nor more than fifty dollars for each day such failure exists. [1995 c 369 § 27; 1986 c 266 § 70; 1985 c 470 § 20; 1947 c 79 § .33.05; Rem. Supp. 1947 § 45.33.05.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.060 Reports and investigation of fires—Police powers. (1) The chief of each organized fire department, the sheriff or other designated county official, and the designated city or town official shall investigate the cause and origin, and document extent of damage of all fires occurring within their respective jurisdictions, as determined by this subsection, and shall forthwith notify the chief of the Washington state patrol, through the director of fire protection, of all fires of criminal, suspected, or undetermined cause occurring within their respective jurisdictions. The county fire marshal shall also be notified of and investigate all such fires occurring in unincorporated areas of the county. Fire departments shall have the responsibility imposed by this subsection for areas within their jurisdiction. Sheriffs or other designated county officials shall have responsibility imposed by this subsection for county areas not within the jurisdiction of a fire department, unless such areas are within the boundaries of a city or town, in which case the designated city or town official shall have the responsibility imposed by this subsection. For the purposes of this subsection, county officials shall be designated by the county legislative authority, and city or town officials shall be designated by the appropriate city or town legislative or executive authority. In addition to the responsibility imposed by this subsection, any sheriff or chief of police may assist in the investigation of the cause and origin, and document extent of damage of all fires occurring within his or her respective jurisdiction.

(2) The chief of the Washington state patrol, through the director of fire protection or his or her deputy, may investigate any fire for the purpose of determining its cause, origin, and the extent of the loss. The chief of the Washington state patrol, through the director of fire protection or his or her deputy, shall assist in the investigation of those fires of criminal, suspected, or undetermined cause when requested by the reporting agency. In the investigation of any fire of criminal, suspected, or undetermined cause, the chief of the Washington state patrol and the director of fire protection or his or her deputy, are vested with police powers to enforce the laws of this state. To exercise these powers, authorized deputies must receive prior written authorization from the chief of the Washington state patrol, through the director of

fire protection, and shall have completed a course of training prescribed by the Washington state criminal justice training commission. [1995 c 369 § 28; 1986 c 266 § 71; 1985 c 470 § 21; 1981 c 104 § 1; 1980 c 181 § 1; 1947 c 79 § .33.06; Rem. Supp. 1947 § 45.33.06.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.065 Statistical information and reports. (1)

The chief of each organized fire department, or the sheriff or other designated county official having jurisdiction over areas not within the jurisdiction of any fire department, shall report statistical information and data to the chief of the Washington state patrol, through the director of fire protection, on each fire occurring within the official's jurisdiction. Reports shall be consistent with the national fire incident reporting system developed by the United States fire administration and rules established by the chief of the Washington state patrol, through the director of fire protection. The chief of the Washington state patrol, through the director of fire protection, and the department of natural resources shall jointly determine the statistical information to be reported on fires on land under the jurisdiction of the department of natural resources.

(2) The chief of the Washington state patrol, through the director of fire protection, shall analyze the information and data reported, compile a report, and distribute a copy annually by May 1st to each chief fire official in the state. Upon request, the chief of the Washington state patrol, through the director of fire protection, shall also furnish a copy of the report to any other interested person at cost.

(3) In carrying out the duties relating to collecting, analyzing, and reporting statistical fire data, the fire protection policy board may purchase statistical fire data from a qualified individual or organization. The information shall meet the diverse needs of state and local fire reporting agencies and shall be (a) defined in understandable terms of common usage in the fire community; (b) adaptable to the varying levels of resources available; (c) maintained in a manner that will foster both technical support and resource sharing; and (d) designed to meet both short and long-term needs. [1995 c 369 § 29; 1986 c 266 § 72; 1985 c 470 § 22; 1980 c 181 § 2.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.070 Examination of witnesses. In the conduct

of any investigation into the cause, origin, or loss resulting from any fire, the chief of the Washington state patrol and the director of fire protection shall have the same power and rights relative to securing the attendance of witnesses and the taking of testimony under oath as is conferred upon the insurance commissioner under RCW 48.03.070. False swearing by any such witness shall be deemed to be perjury and shall be subject to punishment as such. [1995 c 369 § 30; 1986 c 266 § 73; 1985 c 470 § 23; 1947 c 79 § .33.07; Rem. Supp. 1947 § 45.33.07.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.080 Criminal prosecutions. If as the result of any such investigation, or because of any information received, the chief of the Washington state patrol, through the director of fire protection, is of the opinion that there is evidence sufficient to charge any person with any crime, he or she may cause such person to be arrested and charged with such offense, and shall furnish to the prosecuting attorney of the county in which the offense was committed, the names of witnesses and all pertinent and material evidence and testimony within his or her possession relative to the offense. [1995 c 369 § 31; 1986 c 266 § 74; 1985 c 470 § 24; 1947 c 79 § .33.08; Rem. Supp. 1947 § 45.33.08.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.090 Record of fires. The chief of the Washington state patrol, through the director of fire protection, shall keep on file all reports of fires made to him or her pursuant to this code. Such records shall at all times during business hours be open to public inspection; except, that any testimony taken in a fire investigation may, in the discretion of the chief of the Washington state patrol, through the director of fire protection, be withheld from public scrutiny. The chief of the Washington state patrol, through the director of fire protection, may destroy any such report after five years from its date. [1995 c 369 § 32; 1986 c 266 § 75; 1985 c 470 § 25; 1947 c 79 § .33.09; Rem. Supp. 1947 § 45.33.09.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.110 Annual report. The chief of the Washington state patrol, through the director of fire protection, shall submit annually a report to the governor of this state. The report shall contain a statement of his or her official acts pursuant to this chapter. [1995 c 369 § 33; 1986 c 266 § 76; 1985 c 470 § 26; 1977 c 75 § 71; 1947 c 79 § .33.11; Rem. Supp. 1947 § 45.33.11.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.48.120 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.48.140 Smoke detection devices in dwelling units—Penalty. (1) Smoke detection devices shall be installed inside all dwelling units:

(a) Occupied by persons other than the owner on and after December 31, 1981; or

(b) Built or manufactured in this state after December 31, 1980.

(2) The smoke detection devices shall be designed, manufactured, and installed inside dwelling units in conformance with:

(a) Nationally accepted standards; and
 (b) As provided by the administrative procedure act, chapter 34.05 RCW, rules and regulations promulgated by the chief of the Washington state patrol, through the director of fire protection.

(3) Installation of smoke detection devices shall be the responsibility of the owner. Maintenance of smoke detection devices, including the replacement of batteries where required for the proper operation of the smoke detection device, shall be the responsibility of the tenant, who shall maintain the device as specified by the manufacturer. At the time of a vacancy, the owner shall insure that the smoke detection device is operational prior to the reoccupancy of the dwelling unit.

(4) Any owner or tenant failing to comply with this section shall be punished by a fine of not more than two hundred dollars.

(5) For the purposes of this section:

(a) "Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) "Smoke detection device" means an assembly incorporating in one unit a device which detects visible or invisible particles of combustion, the control equipment, and the alarm-sounding device, operated from a power supply either in the unit or obtained at the point of installation. [1995 c 369 § 34; 1991 c 154 § 1; 1986 c 266 § 89; 1980 c 50 § 1.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

48.48.150 Premises with guard animals—Registration, posting—Acts permitted fire fighters—Liability for injury to fire fighters. (1) All premises guarded by guard animals, which are animals professionally trained to defend and protect premises or the occupants of the premises, shall be registered with the local fire department. Front entrances to residences and all entrances to business premises shall be posted in a visible location with signs approved by the chief of the Washington state patrol, through the director of fire protection, indicating that guard animals are present.

(2) A fire fighter, who reasonably believes that his or her safety is endangered by the presence of a guard animal, may without liability: (a) Refuse to enter the premises, or (b) take any reasonable action necessary to protect himself or herself from attack by the guard animal.

(3) If the person responsible for the guard animal being on the premises does not comply with subsection (1) of this section, that person may be held liable for any injury to the fire fighter caused by the presence of the guard animal. [1995 c 369 § 35; 1986 c 266 § 90; 1983 c 258 § 1.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Chapter 48.50

INSURANCE FRAUD REPORTING IMMUNITY ACT

(Formerly: Arson reporting immunity act)

Sections

48.50.010	Short title.
48.50.020	Definitions (<i>as amended by 1995 c 285</i>).
48.50.020	Definitions (<i>as amended by 1995 c 369</i>).
48.50.030	Release of information or evidence by insurer.
48.50.040	Notification by insurer (<i>as amended by 1995 c 285</i>).
48.50.040	Notification by insurer (<i>as amended by 1995 c 369</i>).
48.50.060	Repealed.
48.50.075	Immunity from liability for denying claim based on written opinion of authorized agency.
48.50.080	Repealed.

48.50.010 Short title. This chapter shall be known and may be cited as the Insurance Fraud Reporting Immunity Act. [1995 c 285 § 20; 1979 ex.s. c 80 § 1.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.50.020 Definitions (*as amended by 1995 c 285*). As used in this chapter the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Authorized agency" means a public agency or its official representative having legal authority to investigate criminal activity or the cause of a fire ~~((and)) or to initiate criminal proceedings~~ ~~((or further investigations if the cause was not accidental))~~, including the following persons and agencies:

(a) The ~~((director))~~ department of community, trade, and economic development and the director of fire protection;

(b) The prosecuting attorney of the county where the ~~((fire))~~ criminal activity occurred;

(c) State, county, and local law enforcement agencies;

(d) The state attorney general ~~((when engaged in a prosecution which is or may be connected with the fire))~~;

~~((d))~~ (e) The Federal Bureau of Investigation, or any other federal law enforcement agency; ~~((and~~

~~((e))~~ (f) The United States attorney's office ~~((when authorized or charged with investigation or prosecution concerning the fire))~~; and

(g) The office of the insurance commissioner.

(2) "Insurer" means any insurer, as defined in RCW 48.01.050 ~~((which insures against loss by fire, and includes insurers under the Washington F.A.I.R. plan))~~ and any self-insurer.

(3) "Relevant information" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of criminal activity or the cause of any fire more probable or less probable than it would be without the information. [1995 c 285 § 21; 1986 c 266 § 77; 1985 c 470 § 27; 1979 ex.s. c 80 § 2.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.50.020 Definitions (*as amended by 1995 c 369*). As used in this chapter the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Authorized agency" means a public agency or its official representative having legal authority to investigate the cause of a fire and to initiate criminal proceedings or further investigations if the cause was not accidental, including the following persons and agencies:

(a) The ~~((director of community development))~~ chief of the Washington state patrol and the director of fire protection;

(b) The prosecuting attorney of the county where the fire occurred;

(c) The state attorney general, when engaged in a prosecution which is or may be connected with the fire;

(d) The Federal Bureau of Investigation, or any other federal agency; and

(e) The United States attorney's office when authorized or charged with investigation or prosecution concerning the fire.

(2) "Insurer" means any insurer, as defined in RCW 48.01.050, which insures against loss by fire, and includes insurers under the Washington F.A.I.R. plan.

(3) "Relevant information" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the cause of any fire more probable or less probable than it would be without the information. [1995 c 369 § 36; 1986 c 266 § 77; 1985 c 470 § 27; 1979 ex.s. c 80 § 2.]

Reviser's note: RCW 48.50.020 was amended twice during the 1995 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.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective date—1985 c 470: See notes following RCW 48.48.030.

48.50.030 Release of information or evidence by insurer. (1) Any authorized agency may request, in writing, that an insurer release to the agency any or all relevant information or evidence which the insurer may have in its possession relating to criminal activity, if such information or evidence is deemed important by the agency in its discretion.

(2) An insurer who has reason to believe that a person participated or is participating in criminal activity relating to a contract of insurance may report relevant information to an authorized agency.

(3) The information provided to an authorized agency under this section may include, without limitation:

(a) Pertinent insurance policy information relating to a claim under investigation and any application for such a policy;

(b) Policy premium payment records which are available;

(c) History of previous claims in which the person was involved; and

(d) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence found in the investigation.

(4) The insurer receiving a request under subsection (1) of this section shall furnish all relevant information requested to the agency within a reasonable time, orally or in writing. [1995 c 285 § 22; 1979 ex.s. c 80 § 3.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.50.040 Notification by insurer (as amended by 1995 c 285). (1) When an insurer has reason to believe that a fire loss reported to the insurer may be of other than accidental cause, the insurer shall notify the ~~((director of))~~ department of community, trade, and economic development, through the director of fire protection, in the manner prescribed under RCW 48.05.320 concerning the circumstances of the fire loss, including any and all relevant material developed from the insurer's inquiry into the fire loss.

(2) Notification of the ~~((director of))~~ department of community, trade, and economic development, through the director of fire protection, under subsection (1) of this section does not relieve the insurer of the duty to respond to a request for information from any other authorized agency and does not bar an insurer from other reporting under RCW 48.50.030(2). [1995 c 285 § 23; 1986 c 266 § 91; 1979 ex.s. c 80 § 4.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.50.040 Notification by insurer (as amended by 1995 c 369). (1) When an insurer has reason to believe that a fire loss reported to the insurer may be of other than accidental cause, the insurer shall notify the ~~((director of community development))~~ chief of the Washington state patrol, through the director of fire protection, in the manner prescribed under RCW 48.05.320 concerning the circumstances of the fire loss, including any and all relevant material developed from the insurer's inquiry into the fire loss.

(2) Notification of the ~~((director of community development))~~ chief of the Washington state patrol, through the director of fire protection, under subsection (1) of this section does not relieve the insurer of the duty to respond to a request for information from any other authorized agency. [1995 c 369 § 37; 1986 c 266 § 91; 1979 ex.s. c 80 § 4.]

Reviser's note: RCW 48.50.040 was amended twice during the 1995 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.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

48.50.060 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.50.075 Immunity from liability for denying claim based on written opinion of authorized agency. In denying a claim, an insurer who relies upon a written opinion from an authorized agency specifically enumerated in RCW 48.50.020(1) (a) through (g) that criminal activity that is related to that claim is being investigated, or a crime has been charged, and that the claimant is a target of the investigation or has been charged with a crime, is not liable for bad faith or other noncontractual theory of damages as a result of this reliance.

Immunity under this section shall exist only so long as the incident for which the claimant may be responsible is under active investigation or prosecution, or the authorized agency states its position that the claim includes or is a result of criminal activity in which the claimant was a participant. [1995 c 285 § 24; 1981 c 320 § 2.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.50.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 48.53

FIRE INSURANCE—ARSON FRAUD REDUCTION

Sections

- 48.53.020 Designation of high arson incidence areas and classes of occupancy—Anti-arson application, contents.
48.53.060 Adoption of rules.

48.53.020 Designation of high arson incidence areas and classes of occupancy—Anti-arson application, contents. (1) The chief of the Washington state patrol, through the director of fire protection, may designate certain classes of occupancy within a geographic area or may designate geographic areas as having an abnormally high incidence of arson. This designation shall not be a valid reason for cancellation, refusal to issue or renew, modification, or increasing the premium for any fire insurance policy.

(2) A fire insurance policy may not be issued to insure any property within a class of occupancy within a geographic area or within a geographic area designated by the chief of the Washington state patrol, through the director of fire protection, as having an abnormally high incidence of arson until the applicant has submitted an anti-arson application and the insurer or the insurer's representative has inspected the property. The application shall be prescribed by the chief of the Washington state patrol, through the director of

fire protection, and shall contain but not be limited to the following:

(a) The name and address of the prospective insured and any mortgagees or other parties having an ownership interest in the property to be insured;

(b) The amount of insurance requested and the method of valuation used to establish the amount of insurance;

(c) The dates and selling prices of the property, if any, during the previous three years;

(d) Fire losses exceeding one thousand dollars during the previous five years for property in which the prospective insured held an equity interest or mortgage;

(e) Current corrective orders pertaining to fire, safety, health, building, or construction codes that have not been complied with within the time period or any extension of such time period authorized by the authority issuing such corrective order applicable to the property to be insured;

(f) Present or anticipated occupancy of the structure, and whether a certificate of occupancy has been issued;

(g) Signature and title, if any, of the person submitting the application.

(3) If the facts required to be reported by subsection (2) of this section materially change, the insured shall notify the insurer of any such change within fourteen days.

(4) An anti-arson application is not required for: (a) Fire insurance policies covering one to four-unit owner-occupied residential dwellings; (b) policies existing as of June 10, 1982; or (c) the renewal of these policies.

(5) An anti-arson application shall contain a notice stating: "Designation of a class of occupancy within a geographic area or geographic areas as having an abnormally high incidence of arson shall not be a valid reason for cancellation, refusal to issue or renew, modification, or increasing the premium for any fire insurance policy." [1995 c 369 § 38; 1986 c 266 § 92; 1982 c 110 § 2.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

48.53.060 Adoption of rules. Rules designating geographic areas or classes of occupancy as having an abnormally high incidence of arson, and any other rules necessary to implement this chapter shall be adopted by the chief of the Washington state patrol, through the director of fire protection, under chapter 34.05 RCW. [1995 c 369 § 39; 1986 c 266 § 93; 1982 c 110 § 6.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Chapter 48.56

INSURANCE PREMIUM FINANCE COMPANY ACT

Sections

48.56.100 Delinquency charge—Cancellation charge.

48.56.100 Delinquency charge—Cancellation charge.

A premium finance agreement may provide for the payment by the insured of a delinquency charge of one dollar to a maximum of five percent of the delinquent installment that is in default for a period of five days or more except that if the loan is primarily for personal, family, or household

purposes the delinquency charge shall not exceed five dollars.

If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge equal to the difference between any delinquency charge imposed with respect to the installment in default and five dollars. [1995 c 72 § 1; 1969 ex.s. c 190 § 10.]

Chapter 48.66

MEDICARE SUPPLEMENTAL HEALTH INSURANCE ACT

Sections

48.66.020 Definitions.

48.66.045 Mandated coverage for replacement policies—Rates on a community-rated basis.

48.66.130 Preexisting condition limitations.

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

(1) "Medicare supplemental insurance" or "medicare supplement insurance policy" refers to a group or individual policy of disability insurance or a subscriber contract of a health care service contractor, a health maintenance organization, or a fraternal benefit society, which relates its benefits to medicare, or which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare. Such term does not include:

(a) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(b) A policy issued pursuant to a contract under Section 1876 or Section 1833 of the federal social security act (42 U.S.C. Sec. 1395 et seq.), or an issued policy under a demonstration project authorized pursuant to amendments to the federal social security act; or

(c) Insurance policies or health care benefit plans, including group conversion policies, provided to medicare eligible persons, that are not marketed or held to be medicare supplement policies or benefit plans.

(2) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(3) "Medicare eligible expenses" means health care expenses of the kinds covered by medicare, to the extent recognized as reasonable and medically necessary by medicare.

(4) "Applicant" means:

(a) In the case of an individual medicare supplement insurance policy or subscriber contract, the person who seeks to contract for insurance benefits; and

(b) In the case of a group medicare supplement insurance policy or subscriber contract, the proposed certificate holder.

(5) "Certificate" means any certificate delivered or issued for delivery in this state under a group medicare supplement insurance policy.

(6) "Loss ratio" means the incurred claims as a percentage of the earned premium computed under rules adopted by the insurance commissioner.

(7) "Preexisting condition" means a covered person's medical condition that caused that person to have received medical advice or treatment during a specified time period immediately prior to the effective date of coverage.

(8) "Disclosure form" means the form designated by the insurance commissioner which discloses medicare benefits, the supplemental benefits offered by the insurer, and the remaining amount for which the insured will be responsible.

(9) "Issuer" includes insurance companies, health care service contractors, health maintenance organizations, fraternal benefit societies, and any other entity delivering or issuing for delivery medicare supplement policies or certificates to a resident of this state. [1995 c 85 § 1; 1992 c 138 § 1; 1981 c 153 § 2.]

48.66.045 Mandated coverage for replacement policies—Rates on a community-rated basis. Every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after January 1, 1996, shall:

(1) Issue coverage under its standardized benefit plans B, C, D, E, F, and G without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement standardized benefit plan policy or certificate B, C, D, E, F, or G, or other more comprehensive coverage than the replaced policy;

(2) Issue coverage under its standardized plans A, H, I, and J without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement policy or certificate which is the same standardized plan as the replaced policy; and

(3) Set rates only on a community-rated basis. Premiums shall be equal for all policyholders and certificate holders under a standardized medicare supplement benefit plan form, except that an issuer may develop no more than two rating pools that distinguish between an insured's eligibility for medicare by reason of:

(a) Age; or

(b) Disability or end-stage renal disease. [1995 c 85 § 3.]

48.66.130 Preexisting condition limitations. (1) On or after January 1, 1996, and notwithstanding any other provision of Title 48 RCW, a medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition.

(2) On or after January 1, 1996, a medicare supplement policy or certificate shall not define a preexisting condition

more restrictively than as a condition for which medical advice was given or treatment was recommended by or received from a physician, or other health care provider acting within the scope of his or her license, within three months before the effective date of coverage.

(3) If a medicare supplement insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations." [1995 c 85 § 2; 1992 c 138 § 9; 1981 c 153 § 13.]

Chapter 48.68

HEALTH CARE SAVINGS ACCOUNT ACT

Sections

48.68.005 Intent—Health care savings accounts authorized.

48.68.010 Duties of governor and responsible agencies—Chapter to remain in effect.

48.68.005 Intent—Health care savings accounts authorized. (1) This chapter shall be known as the health care savings account act.

(2) The legislature recognizes that the costs of health care are increasing rapidly and most individuals are removed from participating in the purchase of their health care.

As a result, it becomes critical to encourage and support solutions to alleviate the demand for diminishing state resources. In response to these increasing costs in health care spending, the legislature intends to clarify that health care savings accounts may be offered as health benefit options to all residents as incentives to reduce unnecessary health services utilization, administration, and paperwork, and to encourage individuals to be in charge of and participate directly in their use of service and health care spending. To alleviate the possible impoverishment of residents requiring long-term care, health care savings accounts may promote savings for long-term care and provide incentives for individuals to protect themselves from financial hardship due to a long-term health care need.

(3) Health care savings accounts are authorized in Washington state as options to employers and residents. [1995 c 265 § 2.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.68.010 Duties of governor and responsible agencies—Chapter to remain in effect. The governor and responsible agencies shall:

(1) Request that the United States congress amend the internal revenue code to treat premiums and contributions to health benefits plans, such as health care savings account programs, basic health plans, conventional and standard health plans offered through a health carrier, by employers, self-employed persons, and individuals, as fully excluded employer expenses and deductible from individual adjusted gross income for federal tax purposes.

(2) Request that the United States congress amend the internal revenue code to exempt from federal income tax interest that accrues in health care savings accounts until

such money is withdrawn for expenditures other than eligible health expenses as defined in law.

(3) If all federal statute or regulatory waivers necessary to fully implement this chapter have not been obtained by July 1, 1995, this chapter shall remain in effect. [1995 c 265 § 3.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Chapter 48.80

HEALTH CARE FALSE CLAIM ACT

Sections

48.80.020 Definitions.

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

(1) "Claim" means any attempt to cause a health care payer to make a health care payment.

(2) "Deceptive" means presenting a claim to a health care payer that contains a statement of fact or fails to reveal a material fact, leading the health care payer to believe that the represented or suggested state of affairs is other than it actually is. For the purposes of this chapter, the determination of what constitutes a material fact is a question of law to be resolved by the court.

(3) "False" means wholly or partially untrue or deceptive.

(4) "Health care payment" means a payment for health care services or the right under a contract, certificate, or policy of insurance to have a payment made by a health care payer for a specified health care service.

(5) "Health care payer" means any insurance company authorized to provide health insurance in this state, any health care service contractor authorized under chapter 48.44 RCW, any health maintenance organization authorized under chapter 48.46 RCW, any legal entity which is self-insured and providing health care benefits to its employees, and any insurer or other person responsible for paying for health care services.

(6) "Person" means an individual, corporation, partnership, association, or other legal entity.

(7) "Provider" means any person lawfully licensed or authorized to render any health service. [1995 c 285 § 25; 1986 c 243 § 2.]

Effective date—1995 c 285: See RCW 48.30A.900.

Chapter 48.85

WASHINGTON LONG-TERM CARE PARTNERSHIP

Sections

48.85.010 Washington long-term care partnership program—Generally.

48.85.020 Protection of assets—Federal approval—Rules.

48.85.030 Insurance policy criteria—Rules.

48.85.040 Consumer education program.

48.85.050 Report to legislature.

48.85.010 Washington long-term care partnership program—Generally. The department of social and health

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services shall, in conjunction with the office of the insurance commissioner, coordinate a long-term care insurance program entitled the Washington long-term care partnership, whereby private insurance and medicaid funds shall be used to finance long-term care. For individuals purchasing a long-term care insurance policy or contract governed by chapter 48.84 RCW and meeting the criteria prescribed in this chapter, and any other terms as specified by the office of the insurance commissioner and the department of social and health services, this program shall allow for the exclusion of some or all of the individual's assets in determination of medicaid eligibility as approved by the federal health care financing administration. [1995 1st sp.s. c 18 § 76; 1993 c 492 § 458.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

48.85.020 Protection of assets—Federal approval—Rules. The department of social and health services shall seek approval from the federal health care financing administration to allow the protection of an individual's assets as provided in this chapter. The department shall adopt all rules necessary to implement the Washington long-term care partnership program, which rules shall permit the exclusion of all or some of an individual's assets in a manner specified by the department in a determination of medicaid eligibility to the extent that private long-term care insurance provides payment or benefits for services. [1995 1st sp.s. c 18 § 77; 1993 c 492 § 459.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

48.85.030 Insurance policy criteria—Rules. (1) The insurance commissioner shall adopt rules defining the criteria that long-term care insurance policies must meet to satisfy the requirements of this chapter. The rules shall provide that all long-term care insurance policies purchased for the purposes of this chapter:

(a) Be guaranteed renewable;

(b) Provide coverage for nursing home care and provide coverage for an alternative plan of care benefit as defined by the commissioner;

(c) Provide optional coverage for home and community-based services. Such home and community-based services shall be included in the coverage unless rejected in writing by the applicant;

(d) Provide automatic inflation protection or similar coverage for any policyholder through the age of seventy-nine and made optional at age eighty to protect the policyholder from future increases in the cost of long-term care;

(e) Not require prior hospitalization or confinement in a nursing home as a prerequisite to receiving long-term care benefits; and

(f) Contain at least a six-month grace period that permits reinstatement of the policy or contract retroactive to the date of termination if the policy or contract holder's nonpayment of premiums arose as a result of a cognitive impairment suffered by the policy or contract holder as certified by a physician.

(2) Insurers offering long-term care policies for the purposes of this chapter shall demonstrate to the satisfaction of the insurance commissioner that they:

(a) Have procedures to provide notice to each purchaser of the long-term care consumer education program;

(b) Offer case management services;

(c) Have procedures that provide for the keeping of individual policy records and procedures for the explanation of coverage and benefits identifying those payments or services available under the policy that meet the purposes of this chapter;

(d) Agree to provide the insurance commissioner, on or before September 1 of each year, an annual report containing information derived from the long-term care partnership long-term care insurance uniform data set as specified by the office of the insurance commissioner. [1995 1st sp.s. c 18 § 78; 1993 c 492 § 460.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

48.85.040 Consumer education program. The insurance commissioner shall, with the cooperation of the department of social and health services and members of the long-term care insurance industry, develop a consumer education program designed to educate consumers as to the need for long-term care, methods for financing long-term care, the availability of long-term care insurance, and the availability and eligibility requirements of the asset protection program provided under this chapter. [1995 1st sp.s. c 18 § 79; 1993 c 492 § 461.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

48.85.050 Report to legislature. By January 1 of each year until 1998, the insurance commissioner, in conjunction with the department of social and health services, shall report to the legislature on the progress of the asset protection program. The report shall include:

(1) The success of the agencies in implementing the program;

(2) The number of insurers offering long-term care policies meeting the criteria for asset protection;

(3) The number, age, and financial circumstances of individuals purchasing long-term care policies meeting the criteria for asset protection;

(4) The number of individuals seeking consumer information services;

(5) The extent and type of benefits paid by insurers offering policies meeting the criteria for asset protection;

(6) Estimates of the impact of the program on present and future medicaid expenditures;

(7) The cost-effectiveness of the program; and

(8) A determination regarding the appropriateness of continuing the program. [1995 1st sp.s. c 18 § 80; 1993 c 492 § 462.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Findings—Intent—1993 c 42: See notes following RCW 43.72.005.

Chapter 48.102

VIATICAL SETTLEMENTS

Sections	
48.102.005	Definitions.
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48.102.015	Commissioner may suspend, revoke, or refuse to re- new license—Information requirements— Hearing—Fine.
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48.102.035	Requirement to provide information to the viator.
48.102.040	Requirement for provider to obtain information— Medical information is confidential—Rescission rights—Time is of the essence.
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48.102.050	Rules as necessary to implement chapter.
48.102.055	Consumer protection act applies—Civil action— Damages—Costs—Attorneys' fees.
48.102.900	Short title—1995 c 161.
48.102.901	Application of chapter 21.20 RCW—1995 c 161.

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

(1) "Person" means the same as defined in RCW 48.01.070.

(2) "Viatical settlement broker" means an individual, partnership, corporation, or other entity who or which for another person, and for a fee, commission, or any other valuable consideration, does any of the following things:

(a) Offers or advertises the availability of viatical settlements;

(b) Introduces viators to viatical settlement providers;

(c) Offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. However, "viatical settlement broker" does not mean an attorney, accountant, or financial planner retained to represent the viator, whose fee or other compensation is not paid by the viatical settlement provider.

(3) "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a viator.

(4) "Viatical settlement provider" means any person that enters into an agreement with a viator under the terms of which the viatical settlement provider pays compensation or anything of value, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate of insurance to the viatical settlement provider. "Viatical settlement provider" does not mean the following:

(a) Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan; or

(b) The issuer of a life insurance policy providing accelerated benefits, as those are defined in WAC 284-23-620(1).

(5) "Viator" means the owner of a life insurance policy, or the holder of a certificate of insurance, insuring the life of a person with a catastrophic or life-threatening illness or condition, who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate of insurance, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate of insurance to the viatical settlement provider. [1995 c 161 § 1.]

48.102.010 License required for providers and brokers—Application—Requirements—Fee—Rules. (1) On or after July 23, 1995, an individual, partnership, corporation, or other entity may not act as a viatical settlement provider or enter into or solicit a viatical settlement contract in this state, or act as a viatical settlement broker, without first obtaining a license from the commissioner.

(2) Application for a license for a viatical settlement provider or viatical settlement broker shall be made on a form prescribed by the commissioner, and the application shall be accompanied by a fee as determined by the commissioner by rule.

(3) Licenses for viatical settlement providers or viatical settlement brokers may be renewed from year to year on the anniversary date or at another interval established by rule, upon payment of the renewal fee and submission of forms of information as determined by rule. Failure to pay the fee within the time prescribed shall result in automatic revocation of the license.

(4) The applicant shall provide the information the commissioner requires on forms prescribed by the commissioner.

(a) The applicant shall disclose the identity of all stockholders, partners, and corporate officers; its parent entities and affiliates, and their stockholders, partners, and officers; to the extent prescribed by the commissioner.

(b) The commissioner may refuse to issue or renew a license if he or she is not satisfied that any officer, partner, stockholder, or employee thereof, who may materially influence the conduct of the applicant or licensee, meets the standards required by the public interest.

(c) A license issued to a partnership, corporation, or other entity authorizes all its partners, officers, and employees to act as viatical settlement providers under the license, if they were identified in the application or application for renewal.

(d) Any person who willfully misrepresents any fact required to be disclosed in an application for a license to act as either a viatical settlement provider or a viatical settlement broker shall be liable to penalties as provided by applicable law.

(5) Upon the filing of an application and the payment of the fee required by rule, the commissioner shall issue or renew a license if the commissioner finds that the applicant:

(a) Has provided a detailed and adequate plan of operation;

(b) Is competent and trustworthy and intends to act in good faith in the business covered by the license for which the applicant has applied;

(c) Has a good business reputation and has had experience, training, or education so as to be qualified in the business covered by the license for which the applicant has applied; and

(d) If a corporation, is incorporated under the laws of this state, or is a foreign corporation authorized to transact business in this state.

(6) The commissioner shall not issue or renew any license unless the applicant has filed with the commissioner a written irrevocable consent that any action against the applicant may be commenced by the service of process upon the commissioner. [1995 c 161 § 2.]

48.102.015 Commissioner may suspend, revoke, or refuse to renew license—Information requirements—Hearing—Fine. (1) The commissioner may suspend, revoke, or refuse to renew the license of any viatical settlement broker or viatical settlement provider if the commissioner finds that:

(a) There was any misrepresentation, intentional or otherwise, in the application for the license or for renewal of a license;

(b) The applicant for, or holder of any such license, is or has been subject to a final administrative action for being, or is otherwise shown to be, untrustworthy or incompetent to act as either a viatical settlement broker or a viatical settlement provider;

(c) The applicant for, or holder of any such license, demonstrates a pattern of unreasonable payments to viators;

(d) The applicant for, or holder of any such license, has been convicted of a felony or of any criminal misdemeanor of which criminal fraud is an element; or

(e) The applicant for, or holder of any such license, has violated any provision of this title.

(2) The commissioner may from time to time require the holder of any license issued under this chapter to supply current information on the identity or capacity of stockholders, partners, officers, and employees, including but not limited to the following: Fingerprints, personal history, business experience, business records, and any other information which the commissioner may require.

(3) Before the commissioner suspends or revokes any license issued under this chapter, or refuses to issue any such license, the commissioner shall conduct a hearing, if the applicant or licensee requests this in writing. The hearing shall be in accordance with chapters 34.05 and 48.04 RCW.

(4) After a hearing or with the consent of any party licensed under this chapter and in addition to or in lieu of the suspension, revocation, or refusal to renew any license under this chapter, the commissioner may levy a fine upon the viatical settlement provider in an amount not more than ten thousand dollars, for each violation of this chapter. The order levying the fine shall specify the period within which the fine shall be fully paid, and that period shall not be less than fifteen nor more than thirty days from the date of the order. Upon failure to pay the fine when due, the commissioner may revoke the license if not already revoked, and the fine may be recovered in a civil action brought in behalf of

the commissioner by the attorney general. Any fine so collected shall be deposited into the general fund. [1995 c 161 § 3.]

48.102.020 Commissioner approval required for contract form, rate, fee, commission, or other compensation charged—Finding necessary for disapproval. After a date established by rule, no viatical settlement provider or viatical settlement broker may use any viatical settlement contract or brokerage contract in this state unless the contract form has been filed with and approved by the commissioner. Any such contract filing is approved if it has not been disapproved within sixty days after it is filed with the commissioner. The rate, fee, commission, or other compensation charged must also be filed with the commissioner at the same time the contract form is filed, and any changes must be filed and approved before use. The commissioner shall disapprove any such viatical settlement contract or brokerage contract, or revoke previous approval, or rates, if the commissioner makes either of the following alternative findings:

(1) The benefits offered to the viator are unreasonable in relation to the rate, fee, or other compensation that is charged; or

(2) Any other provisions or terms of the contract are unreasonable, contrary to the public interest, misleading, or unfair to the viator. [1995 c 161 § 4.]

48.102.025 Licensee must file annual statement. Each holder of any license issued under this chapter shall file with the commissioner, on or before March 1 of each year, an annual statement containing such information as the commissioner may by rule require. [1995 c 161 § 5.]

48.102.030 Examination of business and affairs of applicant or licensee—Production of information—Expenses—Confidentiality of information—Recordkeeping requirements. (1) The commissioner may examine the business and affairs of any applicant for or holder of any license issued under this chapter. The commissioner may require any applicant for or holder of any such license to produce any records, books, files, and any other writings or information reasonably necessary to determine whether or not the applicant for or holder of any such license is acting, or has acted, in violation of any laws, or otherwise contrary to the interests of the public, or has acted in a manner demonstrating incompetence or untrustworthiness to hold any such license. The expenses incurred in conducting any examination shall be paid by the applicant for or holder of any such license.

(2) The names and individual identification data of all viators are private and confidential information and shall not be disclosed by the commissioner, except under court order.

(3) Records of all transactions of viatical settlement contracts and brokerage contracts, and an advertising file containing the text of all advertising used and the dates and media in which it was used, shall be maintained by each holder of any license issued under this chapter. [1995 c 161 § 6.]

48.102.035 Requirement to provide information to the viator. A viatical settlement provider shall disclose, in writing, the following information to the viator no later than the date when the viatical settlement contract is signed by all parties:

(1) Possible alternatives to viatical settlement contracts for persons with catastrophic or life-threatening conditions. These shall include, but not be limited to, any available accelerated benefits on the life insurance policy;

(2) The fact that some or all of the proceeds of the viatical settlement may be taxable, and that advice and assistance should be sought from an attorney or tax professional;

(3) The fact that the proceeds of the viatical settlement could be subject to the claims of creditors, and that advice and assistance should be sought from an attorney;

(4) The fact that receiving the proceeds of the viatical settlement might adversely affect the viator's eligibility for medicaid, or other public benefits or entitlements, and that advice and assistance should be sought from an attorney;

(5) The right of the viator to rescind the contract on or before the later of (a) thirty days after the date when it is executed by all parties or (b) fifteen days after the receipt of the proceeds of the viatical settlement contract; and

(6) The date by which the proceeds will be available to the viator, and also the source of the proceeds. [1995 c 161 § 7.]

48.102.040 Requirement for provider to obtain information—Medical information is confidential—Rescission rights—Time is of the essence. (1) A viatical settlement provider entering into a viatical settlement contract with a viator shall first obtain the following:

(a) A written and signed statement from an attending medical doctor that in his or her professional opinion, the viator is of sound mind and under no undue influence;

(b) A document witnessed by a person not employed by or affiliated with the viatical settlement provider, in which the viator consents to the viatical settlement contract, acknowledges the catastrophic or life-threatening illness or condition, and represents that he or she:

(i) Has a complete understanding of the viatical settlement contract;

(ii) Has a full and complete understanding of the life insurance policy;

(iii) Releases his or her medical records for the limited and express purpose of making the viatical settlement agreement possible;

(iv) Has either obtained advice or assistance from an attorney or tax professional, or has had the opportunity to do so; and

(v) Has entered into the viatical settlement contract freely and voluntarily; and

(c) In those cases where the viator is not the insured person, a written consent to the viatical settlement agreement from the insured person or his or her legal representative.

(2) All medical information solicited or obtained by any holder of a license issued under this chapter is subject to all applicable laws governing confidentiality of medical information.

(3) All viatical settlement contracts entered into in this state shall contain a provision no less favorable than that in the event the viator exercises his or her right to rescind the viatical settlement contract, any proceeds previously paid shall be refunded no later than the earliest of (a) thirty days of the date of rescission or (b) fifteen days of payment of the proceeds.

(4) All viatical settlement contracts entered into in this state shall contain a rescission clause no less favorable than that the viator has the unconditional right to rescind the contract on or before the later of (a) thirty days of the date it is signed by all parties or (b) fifteen days of the receipt of the proceeds of the viatical settlement agreement; subject to refund of those proceeds as set forth in subsection (3) of this section.

(5) Time is of the essence in delivery of the proceeds of any viatical settlement contract by the date disclosed to the viator.

(6) No viatical settlement contract entered into in this state may contain any restrictions upon the use of the proceeds of the contract.

(7) Any viatical settlement contract entered into in this state shall establish the terms under which the viatical settlement provider shall pay compensation or anything of value, which compensation is less than the expected death benefit of the insurance policy or certificate of insurance, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. [1995 c 161 § 8.]

48.102.045 Must be licensed—Transfer to unlicensed entity is void—Rights in policy restored to viator—Exceptions allowed by rule. (1) A viatical settlement provider shall not directly or indirectly assign, transfer, sell, resell, or transfer by gift or bequest, or otherwise convey any insurance policy that is or has been the subject of a viatical settlement agreement, to any person, custodian, investor, investor group, or other entity that does not hold a Washington license as a viatical settlement provider, issued by the commissioner.

(2) Any attempted transfer to any person, custodian, investor, investor group, or other entity not holding such a license is void, and all rights in the insurance policy are restored to the viator as of the date of the purported transfer, except that the viator is not required to return the proceeds of the original viatical settlement agreement to the viatical settlement provider. The commissioner may allow exceptions to this subsection, by rule. [1995 c 161 § 9.]

48.102.050 Rules as necessary to implement chapter. The commissioner may adopt rules as necessary to implement this chapter. This includes, but is not limited to, the adoption of rules regarding minimum capital requirements for viatical settlement providers, training and examination requirements for viatical settlement brokers, requiring a prospective viator to contact his or her life insurer regarding possible accelerated benefits before entering into a viatical settlement agreement, licensing and examination requirements for applicants for a license as a viatical settlement broker, when benefits are or are not reasonable in relation to

the rate fee, or other compensation, and bond requirements for either or both viatical settlement providers or viatical settlement brokers. [1995 c 161 § 10.]

48.102.055 Consumer protection act applies—Civil action—Damages—Costs—Attorneys' fees. (1) The legislature finds that the subject of viatical settlements is of vital importance to 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. It is also an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) Any person who is injured by a violation of this chapter may bring a civil action against a viatical settlement provider in superior court to recover his or her actual damages. The court may increase the award of damages to an amount not more than three times the actual damages sustained, and in addition the court may award costs and attorneys' fees to the injured person. [1995 c 161 § 11.]

48.102.900 Short title—1995 c 161. This act may be known and cited as the viatical settlements act. [1995 c 161 § 12.]

48.102.901 Application of chapter 21.20 RCW—1995 c 161. The provisions of this chapter do not affect the application of chapter 21.20 RCW. [1995 c 161 § 13.]

Title 49

LABOR REGULATIONS

Chapters

49.04	Apprenticeship.
49.17	Washington industrial safety and health act.
49.26	Health and safety—Asbestos.
49.44	Violations—Prohibited practices.
49.46	Minimum wage act.
49.60	Discrimination—Human rights commission.

Chapter 49.04

APPRENTICESHIP

Sections

49.04.100	Woman and racial minority representation in apprenticeship programs—Required—Ratio.
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49.04.100 Woman and racial minority representation in apprenticeship programs—Required—Ratio. Joint apprenticeship programs entered into under authority of chapter 49.04 RCW and which receive any state assistance in instructional or other costs, shall include entrance of women and racial minorities in such program, when available, in a ratio not less than the percentage of the minority race and female (minority and nonminority) labor force in the program sponsor's labor market area, based on current

census figures issued by the office of financial management with the ultimate goal of obtaining the proportionate ratio of representation in the total program membership. Where minimum standards have been set for entering upon any such apprenticeship program, this woman and racial minority representation shall be filled when women and racial minority applicants have met such minimum standards and irrespective of individual ranking among all applicants seeking to enter the program: PROVIDED, That nothing in RCW 49.04.100 through 49.04.130 will affect the total number of entrants into the apprenticeship program or modify the dates of entrance both as established by the joint apprenticeship committee. Racial minority for the purposes of RCW 49.04.130 shall include African Americans, Asian Pacific Americans, Hispanic Americans, American Indians, Filipinos, and all other racial minority groups. [1995 c 67 § 7; 1990 c 72 § 1; 1985 c 6 § 17; 1969 ex.s. c 183 § 2.]

Purpose—Construction—1990 c 72; 1969 ex.s. c 183: "It is the policy of the legislature and the purpose of this act to provide every citizen in this state a reasonable opportunity to enjoy employment and other associated rights, benefits, privileges, and to help women and racial minorities realize in a greater measure the goals upon which this nation and this state were founded. All the provisions of this act shall be liberally construed to achieve these ends, and administered and enforced with a view to carry out the above declaration of policy." [1990 c 72 § 5; 1969 ex.s. c 183 § 1.]

Severability—1969 ex.s. c 183: "If any provision of this 1969 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 183 § 8.]

Chapter 49.17

WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT

Sections

- 49.17.041 Agricultural safety standards—Limitation on adopting or establishing from January 1, 1995, through January 15, 1996—Requirements.
49.17.180 Violations—Civil penalties.

49.17.041 Agricultural safety standards—Limitation on adopting or establishing from January 1, 1995, through January 15, 1996—Requirements. (1)(a) Except as provided in (b) of this subsection, no rules adopted under this chapter amending or establishing agricultural safety standards shall take effect during the period beginning January 1, 1995, and ending January 15, 1996. This subsection applies, but is not limited to applying, to a rule adopted before January 1, 1995, but with an effective date which is during the period beginning January 1, 1995, and ending January 15, 1996, and to provisions of rules adopted prior to January 1, 1995, which provisions are to become effective during the period beginning January 1, 1995, and ending January 15, 1996.

(b) Subsection (1)(a) of this section does not apply to: Provisions of rules that were in effect before January 1, 1995; emergency rules adopted under RCW 34.05.350; or revisions to chapter 296-306 WAC regarding rollover protective structures that were adopted in 1994 and effective March 1, 1995, and that are additionally revised to refer to the variance process available under this chapter.

(2) The rules for agricultural safety adopted under this chapter must:

(a) Establish, for agricultural employers, an agriculture safety standard that includes agriculture-specific rules and specific references to the general industry safety standard adopted under chapter 49.17 RCW; and

(b) Exempt agricultural employers from the general industry safety standard adopted under chapter 49.17 RCW for all rules not specifically referenced in the agriculture safety standard.

(3) The department shall publish in one volume all of the occupational safety rules that apply to agricultural employers and shall make this volume available to all agricultural employers before January 15, 1996. This volume must be available in both English and Spanish.

(4) The department shall provide training, education, and enhanced consultation services concerning its agricultural safety rules to agricultural employers before the rules' effective dates. The training, education, and consultation must continue throughout the winter of 1995-1996. Training and education programs must be provided throughout the state and must be coordinated with agricultural associations in order to meet their members' needs.

(5) The department shall provide, for informational purposes, a list of commercially available rollover protective structures for tractors used in agricultural operations manufactured before October 25, 1976. The list must include the name and address of the manufacturer and the approximate price of the structure. Included with the list shall be a statement indicating that an employer may apply for a variance from the rules requiring rollover protective structures under this chapter and that variances may be granted in appropriate circumstances on a case-by-case basis. The statement shall also provide examples of circumstances under which a variance may be granted. The list and statement shall be generally available to the agricultural community before the department may take any action to enforce rules requiring rollover protective structures for tractors used in agricultural operations manufactured before October 25, 1976. [1995 c 371 § 2.]

Finding—1995 c 371: "The legislature finds that:

(1) The state's highly productive and efficient agricultural sector is composed predominately of family-owned and managed farms and an industrious and efficient work force;

(2) A reasonable level of safety regulations is needed to protect workers;

(3) The smaller but highly efficient farming operations would benefit from safety rules that are easily referenced and agriculture-specific to the extent possible; and

(4) There should be lead time between the adoption of agriculture safety rules and their effective date in order to allow the department of labor and industries to provide training, education, and enhanced consultation services to family-owned and managed farms." [1995 c 371 § 1.]

Application—1995 c 371 § 2: "Section 2(1) of this act is remedial in nature and applies to rules and provisions of rules regarding agricultural safety that would take effect after December 31, 1994." [1995 c 371 § 4.]

49.17.180 Violations—Civil penalties. (1) Except as provided in RCW 43.05.090, any employer who willfully or repeatedly violates the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under

RCW 49.17.080 or 49.17.090 may be assessed a civil penalty not to exceed seventy thousand dollars for each violation. A minimum penalty of five thousand dollars shall be assessed for a willful violation.

(2) Any employer who has received a citation for a serious violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 as determined in accordance with subsection (6) of this section, shall be assessed a civil penalty not to exceed seven thousand dollars for each such violation.

(3) Any employer who has received a citation for a violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090, where such violation is specifically determined not to be of a serious nature as provided in subsection (6) of this section, may be assessed a civil penalty not to exceed seven thousand dollars for each such violation, unless such violation is determined to be de minimis.

(4) Any employer who fails to correct a violation for which a citation has been issued under RCW 49.17.120 or 49.17.130 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board of industrial insurance appeals in the case of any review proceedings under this chapter initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than seven thousand dollars for each day during which such failure or violation continues.

(5) Any employer who violates any of the posting requirements of this chapter, or any of the posting requirements of rules promulgated by the department pursuant to this chapter related to employee or employee representative's rights to notice, including but not limited to those employee rights to notice set forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall be assessed a penalty not to exceed seven thousand dollars for each such violation. Any employer who violates any of the posting requirements for the posting of informational, educational, or training materials under the authority of RCW 49.17.050(7), may be assessed a penalty not to exceed seven thousand dollars for each such violation.

(6) For the purposes of this section, a serious violation shall be deemed to exist in a work place if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such work place, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(7) The director, or his authorized representatives, shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the number of affected employees of the employer being charged, the gravity of the violation,

the size of the employer's business, the good faith of the employer, and the history of previous violations.

(8) Civil penalties imposed under this chapter shall be paid to the director for deposit in the supplemental pension fund established by RCW 51.44.033. Civil penalties may be recovered in a civil action in the name of the department brought in the superior court of the county where the violation is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150. [1995 c 403 § 629; 1991 c 108 § 1; 1986 c 20 § 2; 1973 c 80 § 18.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Chapter 49.26

HEALTH AND SAFETY—ASBESTOS

Sections

49.26.013	Inspection of construction projects required.
49.26.016	Inspection of construction projects—Penalties.
49.26.100	Asbestos projects—Definitions.
49.26.110	Asbestos projects—Worker's and supervisor's certificates.
49.26.115	Asbestos abatement projects—Contractor's certificate required.
49.26.120	Asbestos projects—Qualified asbestos workers and supervisor—Prenotification to department—Fire personnel.

49.26.013 Inspection of construction projects required. (1) Any owner or owner's agent who allows or authorizes any construction, renovation, remodeling, maintenance, repair, or demolition project which has a reasonable possibility, as defined by the department, of disturbing or releasing asbestos into the air, shall perform or cause to be performed, using practices approved by the department, a good faith inspection to determine whether the proposed project will disturb or release any material containing asbestos into the air.

Such inspections shall be conducted by persons meeting the accreditation requirements of the federal toxics substances control act, section 206(a) (1) and (3) (15 U.S.C. 2646(a) (1) and (3)).

An inspection under this section is not required if the owner or owner's agent is reasonably certain that asbestos will not be disturbed or assumes that asbestos will be disturbed by a project which involves construction, renovation, remodeling, maintenance, repair, or demolition and takes the maximum precautions as specified by all applicable federal and state requirements.

(2) Except as provided in RCW 49.26.125, the owner or owner's agent shall prepare and maintain a written report describing each inspection, or a statement of assumption of the presence or reasonable certainty of the absence of asbestos, and shall provide a copy of the written report or statement to all contractors before they apply or bid on work. In addition, upon written or oral request, the owner or owner's agent shall make a copy of the written report available to: (1) The department of labor and industries; (2) contractors; and (3) the collective bargaining representatives or employee representatives, if any, of employees who may be exposed to any asbestos or material containing asbestos.

A copy shall be posted as prescribed by the department in a place that is easily accessible to such employees. [1995 c 218 § 1; 1989 c 154 § 2. Prior: 1988 c 271 § 7.]

Purpose—1989 c 154: "The purpose of chapter 154, Laws of 1989 is to make corrections to chapter 271, Laws of 1988, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1989 c 154 § 1.]

Severability—1989 c 154: "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 154 § 14.]

49.26.016 Inspection of construction projects—

Penalties. (1) Any owner or owner's agent who allows the start of any construction, renovation, remodeling, maintenance, repair, or demolition without first (a) conducting the inspection and preparing and maintaining the report of the inspection, or preparing and maintaining a statement of assumption of the presence or reasonable certainty of the absence of asbestos, as required under RCW 49.26.013; and (b) preparing and maintaining the additional written description of the project as required under RCW 49.26.120 shall be subject to a mandatory fine of not less than two hundred fifty dollars for each violation. Each day the violation continues shall be considered a separate violation. In addition, any construction, renovation, remodeling, maintenance, repair, or demolition which was started without meeting the requirements of RCW 49.26.013 and 49.26.120 shall be halted immediately and cannot be resumed before meeting such requirements.

(2) No contractor may commence any construction, renovation, remodeling, maintenance, repair or demolition project without receiving the copy of the written report or statement from the owner or the owner's agent. Any contractor who begins any project without the copy of the written report or statement shall be subject to a mandatory fine of not less than two hundred and fifty dollars per day. Each day the violation continues shall be considered a separate violation.

(3) The certificate of any asbestos contractor who knowingly violates any provision of this chapter or any rule adopted under this chapter shall be revoked for a period of not less than six months.

(4) The penalties imposed in this section are in addition to any penalties under RCW 49.26.140. [1995 c 218 § 2; 1989 c 154 § 3. Prior: 1988 c 271 § 8.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.100 Asbestos projects—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Asbestos abatement project" means an asbestos project involving three square feet or three linear feet, or more, of asbestos-containing material.

(2) "Asbestos project" means the construction, demolition, repair, maintenance, remodeling, or renovation of any public or private building or mechanical piping equipment or systems involving the demolition, removal, encapsulation, salvage, or disposal of material, or outdoor activity, releasing or likely to release asbestos fibers into the air.

(3) "Department" means the department of labor and industries.

(4) "Director" means the director of the department of labor and industries or the director's designee.

(5) "Person" means any individual, partnership, firm, association, corporation, sole proprietorship, or the state of Washington or its political subdivisions.

(6) "Certified asbestos supervisor" means an individual who is certified by the department to supervise an asbestos project. A certified asbestos supervisor is not required for projects involving less than three square feet or three linear feet of asbestos-containing material.

(7) "Certified asbestos worker" means an individual who is certified by the department to work on an asbestos project.

(8) "Certified asbestos contractor" means any partnership, firm, association, corporation or sole proprietorship registered under chapter 18.27 RCW that submits a bid or contracts to remove or encapsulate asbestos for another and is certified by the department to remove or encapsulate asbestos.

(9) "Owner" means the owner of any public or private building, structure, facility or mechanical system, or the agent of such owner, but does not include individuals who work on asbestos projects on their own single-family residences no part of which is used for any commercial purpose. [1995 c 218 § 3; 1989 c 154 § 4. Prior: 1988 c 271 § 6; 1985 c 387 § 1.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.110 Asbestos projects—Worker's and supervisor's certificates. (1) No employee or other individual is eligible to do work governed by this chapter unless issued a certificate by the department.

(2) To qualify for a certificate:

(a) Certified asbestos workers must have successfully completed a four-day training course. Certified asbestos supervisors must have completed a five-day training course. Training courses shall be provided or approved by the department; shall cover such topics as the health and safety aspects of the removal and encapsulation of asbestos, including but not limited to the federal and state standards regarding protective clothing, respirator use, disposal, air monitoring, cleaning, and decontamination; and shall meet such additional qualifications as may be established by the department by rule for the type of certification sought. The department may require the successful completion of annual refresher courses provided or approved by the department for continued certification as an asbestos worker or supervisor. However, the authority of the director to adopt rules implementing this section is limited to rules that are specifically required, and only to the extent specifically required, for the standards to be as stringent as the applicable federal laws governing work subject to this chapter; and

(b) All applicants for certification as asbestos workers or supervisors must pass an examination in the type of certification sought which shall be provided or approved by the department.

These requirements are intended to represent the minimum requirements for certification and shall not

preclude contractors or employers from providing additional education or training.

(3) The department shall provide for the reciprocal certification of any individual trained to engage in asbestos projects in another state when the prior training is shown to be substantially similar to the training required by the department. Nothing shall prevent the department from requiring such individuals to take an examination or refreshment course before certification.

(4) The department may deny, suspend, or revoke a certificate, as provided under RCW 49.26.140, for failure of the holder to comply with any requirement of this chapter or chapter 49.17 RCW, or any rule adopted under those chapters, or applicable health and safety standards and regulations. In addition to any penalty imposed under RCW 49.26.016, the department may suspend or revoke any certificate issued under this chapter for a period of not less than six months upon the following grounds:

(a) The certificate was obtained through error or fraud; or

(b) The holder thereof is judged to be incompetent to carry out the work for which the certificate was issued.

Before any certificate may be denied, suspended, or 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 the holder's last known address. The notice shall enumerate the allegations against such holder, and shall give him or her the opportunity to request a hearing before the department. At such hearing, the department and the holder shall have opportunity to produce witnesses and give testimony.

(5) A denial, suspension, or revocation order may be appealed to the board of industrial insurance appeals within fifteen working days after the denial, suspension, or revocation order is entered. The notice of appeal may be filed with the department or the board of industrial insurance appeals. The board of industrial insurance appeals shall hold the hearing in accordance with procedures established in RCW 49.17.140. Any party aggrieved by an order of the board of industrial insurance appeals may obtain superior court review in the manner provided in RCW 49.17.150.

(6) Each person certified under this chapter shall display, upon the request of an authorized representative of the department, valid identification issued by the department. [1995 c 218 § 4; 1989 c 154 § 5. Prior: 1988 c 271 § 10; 1985 c 387 § 2.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.115 Asbestos abatement projects—Contractor's certificate required. Before working on an asbestos abatement project, a contractor shall obtain an asbestos contractor's certificate from the department and shall have in its employ at least one certified asbestos supervisor who is responsible for supervising all asbestos abatement projects undertaken by the contractor and for assuring compliance with all state laws and regulations regarding asbestos. The contractor shall apply for certification renewal every year. The department shall ensure that the expiration of the contractor's registration and the expiration of his or her asbestos contractor's certificate

coincide. [1995 c 218 § 5; 1989 c 154 § 6. Prior: 1988 c 271 § 11.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.120 Asbestos projects—Qualified asbestos workers and supervisor—Prenotification to department—Fire personnel. (1) No person may assign any employee, contract with, or permit any individual or person to remove or encapsulate asbestos in any facility unless performed by a certified asbestos worker and under the direct, on-site supervision of a certified asbestos supervisor. In cases in which an employer conducts an asbestos abatement project in its own facility and by its own employees, supervision can be performed in the regular course of a certified asbestos supervisor's duties. Asbestos workers must have access to certified asbestos supervisors throughout the duration of the project.

(2) The department shall require persons undertaking asbestos projects to provide written notice to the department before the commencement of the project except as provided in RCW 49.26.125. The notice shall include a written description containing such information as the department requires by rule. The department may by rule allow a person to report multiple projects at one site in one report. The department shall by rule establish the procedure and criteria by which a person will be considered to have attempted to meet the prenotification requirement.

(3) The department shall consult with the state fire protection policy board, and may establish any additional policies and procedures for municipal fire department and fire district personnel who clean up sites after fires which have rendered it likely that asbestos has been or will be disturbed or released into the air. [1995 c 218 § 6; 1989 c 154 § 7. Prior: 1988 c 271 § 12; 1985 c 387 § 4.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

Chapter 49.44

VIOLATIONS—PROHIBITED PRACTICES

Sections

49.44.070 Repealed.

49.44.070 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 49.46

MINIMUM WAGE ACT

Sections

49.46.130 Minimum rate of compensation for employment in excess of forty hour work week—Exceptions.

49.46.130 Minimum rate of compensation for employment in excess of forty hour work week—Exceptions. (1) Except as otherwise provided in this section, no employer shall employ any of his employees for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the

hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) This section does not apply to:

(a) Any person exempted pursuant to RCW 49.46.010(5). The payment of compensation or provision of compensatory time off in addition to a salary shall not be a factor in determining whether a person is exempted under RCW 49.46.010(5)(c);

(b) Employees who request compensating time off in lieu of overtime pay;

(c) Any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel;

(d) Seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year;

(e) Any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay;

(f) An individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week;

(g) Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(h) Any industry in which federal law provides for an overtime payment based on a work week other than forty hours. However, the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state. For the purposes of this subsection, "industry" means a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259).

(3) No employer of commissioned salespeople primarily engaged in the business of selling automobiles, trucks, recreational vessels, recreational vessel trailers, recreational vehicle trailers, recreational campers, or manufactured housing to ultimate purchasers shall violate subsection (1) of this section with respect to such commissioned salespeople if the commissioned salespeople are paid the greater of:

(a) Compensation at the hourly rate, which may not be less than the rate required under RCW 49.46.020, for each hour worked up to forty hours per week, and compensation of one and one-half times that hourly rate for all hours worked over forty hours in one week; or

(b) A straight commission, a salary plus commission, or a salary plus bonus applied to gross salary.

(4) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his or her work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his or her work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he or she is employed. [1995 c 5 § 1; 1993 c 191 § 1; 1992 c 94 § 1; 1989 c 104 § 1. Prior: 1977 ex.s. c 4 § 1; 1977 ex.s. c 74 § 1; 1975 1st ex.s. c 289 § 3.]

Intent—Application—1995 c 5: "This act is intended to clarify the original intent of RCW 49.46.010(5)(c). This act applies to all administrative and judicial actions commenced on or after February 1, 1995, and pending on March 30, 1995, and such actions commenced on or after March 30, 1995." [1995 c 5 § 2.]

Effective date—1995 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1995]." [1995 c 5 § 3.]

Chapter 49.60

DISCRIMINATION—HUMAN RIGHTS COMMISSION

Sections

49.60.010	Purpose of chapter.
49.60.030	Freedom from discrimination—Declaration of civil rights.
49.60.040	Definitions.
49.60.222	Unfair practices with respect to real estate transactions, facilities, or services.
49.60.225	Relief for unfair practice in real estate transaction—Damages—Penalty.
49.60.227	Declaratory judgment action to strike discriminatory provision of real property contract.
49.60.240	Complaint investigated—Conference, conciliation—Agreement, findings—Rules.
49.60.260	Enforcement of orders of administrative law judge—Appellate review of court order.

49.60.010 Purpose of chapter. This chapter shall be known as the "law against discrimination". It is an exercise of the police power of the state for the protection of the

public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, families with children, sex, marital status, age, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service dog by a disabled person are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, families with children, sex, marital status, age, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service dog by a disabled person; and the commission established hereunder is hereby given general jurisdiction and power for such purposes. [1995 c 259 § 1; 1993 c 510 § 1; 1985 c 185 § 1; 1973 1st ex.s. c 214 § 1; 1973 c 141 § 1; 1969 ex.s. c 167 § 1; 1957 c 37 § 1; 1949 c 183 § 1; Rem. Supp. 1949 § 7614-20.]

Effective date—1995 c 259: "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, 1995." [1995 c 259 § 7.]

Severability—1993 c 510: "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." [1993 c 510 § 26.]

Severability—1969 ex.s. c 167: "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 167 § 10.]

Severability—1957 c 37: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1957 c 37 § 27.]

Severability—1949 c 183: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1949 c 183 § 13.]

Urban renewal law—Discrimination prohibited: RCW 35.81.170.

49.60.030 Freedom from discrimination—Declaration of civil rights. (1) The right to be free from discrimination because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service dog by a disabled person is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph; and

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, the presence of any sensory, mental, or physical disability, or the use of a trained guide dog or service dog by a disabled person, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce. [1995 c 135 § 3. Prior: 1993 c 510 § 3; 1993 c 69 § 1; 1984 c 32 § 2; 1979 c 127 § 2; 1977 ex.s. c 192 § 1; 1974 ex.s. c 32 § 1; 1973 1st ex.s. c 214 § 3; 1973 c 141 § 3; 1969 ex.s. c 167 § 2; 1957 c 37 § 3; 1949 c 183 § 2; Rem. Supp. 1949 § 7614-21.]

Intent—1995 c 135: See note following RCW 29.04.160.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 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." [1993 c 69 § 17.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Severability—1957 c 37: See note following RCW 49.60.010.

Severability—1949 c 183: See note following RCW 49.60.010.

49.60.040 Definitions. As used in this chapter:

(1) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof;

(2) "Commission" means the Washington state human rights commission;

(3) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit;

(4) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person;

(5) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment;

(6) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer;

(7) "Marital status" means the legal status of being married, single, separated, divorced, or widowed;

(8) "National origin" includes "ancestry";

(9) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, national origin, or with any sensory, mental, or physical disability, or the use of a trained guide dog or service dog by a disabled person, to be treated as not welcome, accepted, desired, or solicited;

(10) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or

assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution;

(11) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein;

(12) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services;

(13) " Dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof;

(14) "Sex" means gender;

(15) "Aggrieved person" means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur;

(16) "Complainant" means the person who files a complaint in a real estate transaction;

(17) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction;

(18) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred;

(19) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any

person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years;

(20) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units;

(21) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building. [1995 c 259 § 2. Prior: 1993 c 510 § 4; 1993 c 69 § 3; prior: 1985 c 203 § 2; 1985 c 185 § 2; 1979 c 127 § 3; 1973 c 141 § 4; 1969 ex.s. c 167 § 3; 1961 c 103 § 1; 1957 c 37 § 4; 1949 c 183 § 3; Rem. Supp. 1949 § 7614-22.]

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Construction—1961 c 103: "Nothing herein shall be construed to render any person or corporation liable for breach of preexisting contracts by reason of compliance by such person or corporation with this act." [1961 c 103 § 4.]

Severability—1957 c 37: See note following RCW 49.60.010.

Severability—1949 c 183: See note following RCW 49.60.010.

49.60.222 Unfair practices with respect to real estate transactions, facilities, or services. (1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, marital status, race, creed, color, national origin, families with children status, the presence of any sensory, mental, or physical disability, or the use of a trained guide dog or service dog by a disabled person:

(a) To refuse to engage in a real estate transaction with a person;

(b) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

(c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

(d) To refuse to negotiate for a real estate transaction with a person;

(e) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his or her attention, or to refuse to permit the person to inspect real property;

(f) To discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling, to any person; or to a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or to any person associated with the person buying or renting;

(g) To make, print, circulate, post, or mail, or cause to be so made or published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

(h) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;

(i) To expel a person from occupancy of real property;

(j) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of RCW 49.60.176 relating to unfair practices in credit transactions; or

(k) To attempt to do any of the unfair practices defined in this section.

(2) For the purposes of this chapter discrimination based on the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service dog by a blind, deaf, or physically disabled person includes:

(a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the dwelling, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the dwelling to the condition that existed before the modification, reasonable wear and tear excepted;

(b) To refuse to make reasonable accommodation in rules, policies, practices, or services when such accommodations may be necessary to afford a person with the presence of any sensory, mental, or physical disability and/or the use of a trained guide dog or service dog by a blind, deaf, or physically disabled person equal opportunity to use and enjoy a dwelling; or

(c) To fail to design and construct covered multifamily dwellings and premises in conformance with the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.) and all other applicable laws or regulations pertaining to access by persons with any sensory, mental, or physical disability or use of a trained guide dog or service dog. Whenever the requirements of applicable laws or regulations differ, the requirements which require greater accessibility for persons with any sensory, mental, or physical disability shall govern.

Nothing in (a) or (b) of this subsection shall apply to:

(i) A single-family house rented or leased by the owner if the owner does not own or have an interest in the proceeds of the rental or lease of more than three such single-family houses at one time, the rental or lease occurred without the use of a real estate broker or salesperson, as defined in RCW 18.85.010, and the rental or lease occurred without the publication, posting, or mailing of any advertisement, sign, or statement in violation of subsection (1)(g) of this section; or (ii) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the rooms or units as his or her residence.

(3) Notwithstanding any other provision of this chapter, it shall not be an unfair practice or a denial of civil rights for any public or private educational institution to separate the sexes or give preference to or limit use of dormitories, residence halls, or other student housing to persons of one sex or to make distinctions on the basis of marital or families with children status.

(4) Except pursuant to subsection (2)(a) of this section, this section shall not be construed to require structural changes, modifications, or additions to make facilities accessible to a disabled person except as otherwise required by law. Nothing in this section affects the rights, responsibilities, and remedies of landlords and tenants pursuant to chapter 59.18 or 59.20 RCW, including the right to post and enforce reasonable rules of conduct and safety for all tenants and their guests, provided that chapters 59.18 and 59.20 RCW are only affected to the extent they are inconsistent with the nondiscrimination requirements of this chapter. Nothing in this section limits the applicability of any reasonable federal, state, or local restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(5) Notwithstanding any other provision of this chapter, it shall not be an unfair practice for any public establishment providing for accommodations offered for the full enjoyment of transient guests as defined by RCW 9.91.010(1)(c) to make distinctions on the basis of families with children status. Nothing in this section shall limit the effect of RCW 49.60.215 relating to unfair practices in places of public accommodation.

(6) Nothing in this chapter prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3). Nothing in this chapter authorizes requirements for housing for older persons different than the requirements in the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3). [1995 c 259 § 3. Prior: 1993 c 510 § 17; 1993 c 69 § 5; 1989 c 61 § 1; 1979 c 127 § 8; 1975 1st ex.s. c 145 § 1; 1973 c 141 § 13; 1969 ex.s. c 167 § 4.]

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.225 Relief for unfair practice in real estate transaction—Damages—Penalty. (1) When a reasonable cause determination has been made under RCW 49.60.240 that an unfair practice in a real estate transaction has been committed and a finding has been made that the respondent has engaged in any unfair practice under RCW 49.60.250, the administrative law judge shall promptly issue an order for such relief suffered by the aggrieved person as may be appropriate, which may include actual damages as provided by the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.), and injunctive or other equitable relief. Such order may, to further the public interest, assess a civil penalty against the respondent:

(a) In an amount up to ten thousand dollars if the respondent has not been determined to have committed any prior unfair practice in a real estate transaction;

(b) In an amount up to twenty-five thousand dollars if the respondent has been determined to have committed one other unfair practice in a real estate transaction during the five-year period ending on the date of the filing of this charge; or

(c) In an amount up to fifty thousand dollars if the respondent has been determined to have committed two or more unfair practices in a real estate transaction during the seven-year period ending on the date of the filing of this charge, for loss of the right secured by RCW 49.60.010, 49.60.030, 49.60.040, and 49.60.222 through 49.60.224, as now or hereafter amended, to be free from discrimination in real property transactions because of sex, marital status, race, creed, color, national origin, families with children status, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service dog by a blind, deaf, or physically disabled person. Enforcement of the order and appeal therefrom by the complainant or respondent may be made as provided in RCW 49.60.260 and 49.60.270. If acts constituting the unfair practice in a real estate transaction that is the object of the charge are determined to have been committed by the same natural person who has been previously determined to have committed acts constituting an unfair practice in a real estate transaction, then the civil penalty of up to fifty thousand dollars may be imposed without regard to the period of time within which any subsequent unfair practice in a real estate transaction occurred. All civil penalties assessed under this section shall be paid into the state treasury and credited to the general fund.

(2) Such order shall not affect any contract, sale, conveyance, encumbrance, or lease consummated before the issuance of an order that involves a bona fide purchaser, encumbrancer, or tenant who does not have actual notice of the charge filed under this chapter.

(3) Notwithstanding any other provision of this chapter, persons awarded damages under this section may not receive additional damages pursuant to RCW 49.60.250. [1995 c 259 § 4. Prior: 1993 c 510 § 20; 1993 c 69 § 9; 1985 c 185 § 19; 1979 c 127 § 11; 1973 c 141 § 14; 1969 ex.s. c 167 § 7.]

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.227 Declaratory judgment action to strike discriminatory provision of real property contract. If a written instrument contains a provision that is void by reason of RCW 49.60.224, the owner, occupant, or tenant of the property which is subject to the provision may cause the provision to be stricken from the public records by bringing an action in the superior court in the county in which the property is located. The action shall be an in rem, declaratory judgment action whose title shall be the description of the property. The necessary party to the action shall be the owner, occupant, or tenant of the property or any portion thereof. The person bringing the action shall pay a fee set under RCW 36.18.012.

If the court finds that any provisions of the written instrument are void under RCW 49.60.224, it shall enter an

order striking the void provisions from the public records and eliminating the void provisions from the title or lease of the property described in the complaint. [1995 c 292 § 18; 1993 c 69 § 10; 1987 c 56 § 2.]

Severability—1993 c 69: See note following RCW 49.60.030.

Intent—1987 c 56 § 2: "The legislature finds that some real property deeds and other written instruments contain discriminatory covenants and restrictions that are contrary to public policy and are void. The continued existence of these covenants and restrictions is repugnant to many property owners and diminishes the free enjoyment of their property. It is the intent of RCW 49.60.227 to allow property owners to remove all remnants of discrimination from their deeds." [1987 c 56 § 1.]

49.60.240 Complaint investigated—Conference, conciliation—Agreement, findings—Rules. After the filing of any complaint, the chairperson of the commission shall refer it to the appropriate section of the commission's staff for prompt investigation and ascertainment of the facts alleged in the complaint. The investigation shall be limited to the alleged facts contained in the complaint. The results of the investigation shall be reduced to written findings of fact, and a finding shall be made that there is or that there is not reasonable cause for believing that an unfair practice has been or is being committed. A copy of said findings shall be provided to the complainant and to the person named in such complaint, hereinafter referred to as the respondent.

If the finding is made that there is reasonable cause for believing that an unfair practice has been or is being committed, the commission's staff shall immediately endeavor to eliminate the unfair practice by conference, conciliation, and persuasion.

If an agreement is reached for the elimination of such unfair practice as a result of such conference, conciliation, and persuasion, the agreement shall be reduced to writing and signed by the respondent, and an order shall be entered by the commission setting forth the terms of said agreement. No order shall be entered by the commission at this stage of the proceedings except upon such written agreement, except that during the period beginning with the filing of complaints alleging an unfair practice with respect to real estate transactions pursuant to RCW 49.60.222 through 49.60.225, and ending with the filing of a finding of reasonable cause or a dismissal by the commission, the commission staff shall, to the extent feasible, engage in conciliation with respect to such complaint. Any conciliation agreement arising out of conciliation efforts by the commission shall be an agreement between the respondent and the complainant and shall be subject to the approval of the commission. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this chapter.

If no such agreement can be reached, a finding to that effect shall be made and reduced to writing, with a copy thereof provided to the complainant and the respondent.

The commission may adopt rules, including procedural time requirements, for processing complaints alleging an unfair practice with respect to real estate transactions pursuant to RCW 49.60.222 through 49.60.225 and which may be consistent with the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.), but which in no

case shall exceed or be more restrictive than the requirements or standards of such act. [1995 c 259 § 5. Prior: 1993 c 510 § 22; 1993 c 69 § 12; 1985 c 185 § 22; 1981 c 259 § 1; 1957 c 37 § 17; 1955 c 270 § 16; prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614-27, part.]

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

RCW 49.60.240 through 49.60.280 applicable to complaints concerning unlawful use of refueling services for disabled: RCW 70.84.090.

49.60.260 Enforcement of orders of administrative law judge—Appellate review of court order. (1) The commission or any person entitled to relief of a final order may petition the court within the county wherein any unfair practice occurred or wherein any person charged with an unfair practice resides or transacts business for the enforcement of any final order which is not complied with and is issued by the commission or an administrative law judge under the provisions of this chapter and for appropriate temporary relief or a restraining order, and shall certify and file in court the final order sought to be enforced. Within five days after filing such petition in court, the commission or any person entitled to relief of a final order shall cause a notice of the petition to be sent by certified mail to all parties or their representatives.

(2) If within sixty days after the date the administrative law judge's order concerning an unfair practice in a real estate transaction is entered, no petition has been filed under subsection (1) of this section and the commission has not sought enforcement of the final order under this section, any person entitled to relief under the final order may petition for a decree enforcing the order in the superior courts of the state of Washington for the county in which the unfair practice in a real estate transaction under RCW 49.60.222 through 49.60.224 is alleged to have occurred.

(3) From the time the petition is filed, the court shall have jurisdiction of the proceedings and of the questions determined thereon, and shall have the power to grant such temporary relief or restraining order as it deems just and suitable.

(4) If the petition shows that there is a final order issued by the commission or administrative law judge under RCW 49.60.240 or 49.60.250 and that the order has not been complied with in whole or in part, the court shall issue an order directing the person who is alleged to have not complied with the administrative order to appear in court at a time designated in the order, not less than ten days from the date thereof, and show cause why the administrative order should not be enforced according to the terms. The commission or any person entitled to relief of any final order shall immediately serve the noncomplying party with a copy of the court order and the petition.

(5) The administrative order shall be enforced by the court if the person does not appear, or if the person appears and the court finds that:

(a) The order is regular on its face;

(b) The order has not been complied with; and

(c) The person's answer discloses no valid reason why the order should not be enforced, or that the reason given in the person's answer could have been raised by review under

RCW 34.05.510 through 34.05.598, and the person has given no valid excuse for failing to use that remedy.

(6) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to appellate review by the supreme court or the court of appeals, on appeal, by either party, irrespective of the nature of the decree or judgment. The review shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases. [1995 c 259 § 6; 1993 c 69 § 15; 1989 c 175 § 116; 1988 c 202 § 47; 1985 c 185 § 24; 1981 c 259 § 3; 1971 c 81 § 118; 1957 c 37 § 21. Prior: 1949 c 183 § 9, part; Rem Supp. 1949 § 7614-27A, part.]

Rules of court: Cf. RAP 2.2, 18.22.

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

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

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

Effective date—1981 c 259: See note following RCW 49.60.250.

Title 50

UNEMPLOYMENT COMPENSATION

Chapters

- 50.04 Definitions.
- 50.12 Administration.
- 50.16 Funds.
- 50.20 Benefits and claims.
- 50.22 Extended benefits.
- 50.29 Employer experience rating.
- 50.38 Labor market information and economic analysis—Duties and authority.
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Chapter 50.04 DEFINITIONS

Sections

- 50.04.232 Employment—Travel services.
- 50.04.245 Employment—Services performed for temporary services agency, employee leasing agency, or services referral agency.
- 50.04.320 Wages, remuneration.

50.04.232 Employment—Travel services. The term "employment" shall not include service performed by an outside agent who sells or arranges for travel services that are provided to a travel agent as defined and registered under RCW 19.138.021, to the extent the outside agent is compensated by commission. [1995 c 242 § 1.]

Conflict with federal requirements—1995 c 242: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act 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 act. The rules under this act shall

meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 242 § 2.]

50.04.245 Employment—Services performed for temporary services agency, employee leasing agency, or services referral agency. (1) Subject to the other provisions of this title, personal services performed for, or for the benefit of, a third party pursuant to a contract with a temporary services agency, employee leasing agency, services referral agency, or other entity shall be deemed to be employment for the temporary services agency, employee leasing agency, services referral agency, or other entity when the agency is responsible, under contract or in fact, for the payment of wages in remuneration for the services performed.

(2) For the purposes of this section:

(a) "Temporary services agency" means an individual or entity that is engaged in the business of furnishing individuals to perform services on a part-time or temporary basis for a third party.

(b) "Employee leasing agency" means an individual or entity that for a fee places the employees of a client onto its payroll and leases such employees back to the client.

(c) "Services referral agency" means an individual or entity that is engaged in the business of offering the services of an individual to perform specific tasks for a third party. [1995 c 120 § 1.]

Conflict with federal requirements—1995 c 120: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act 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 act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 120 § 2.]

50.04.320 Wages, remuneration. (1) For the purpose of payment of contributions, "wages" means the remuneration paid by one employer during any calendar year to an individual in its employment under this title or the unemployment compensation law of any other state in the amount specified in RCW 50.24.010. If an employer (hereinafter referred to as a successor employer) during any calendar year acquires substantially all the operating assets of another employer (hereinafter referred to as a predecessor employer) or assets used in a separate unit of a trade or business of a predecessor employer, and immediately after the acquisition employs in the individual's trade or business an individual who immediately before the acquisition was employed in the trade or business of the predecessor employer, then, for the purposes of determining the amount of remuneration paid by the successor employer to the individual during the calendar year which is subject to contributions, any remuneration paid to the individual by the predecessor employer during that calendar year and before the acquisition shall be considered as having been paid by the successor employer.

(2) For the purpose of payment of benefits, "wages" means the remuneration paid by one or more employers to an individual for employment under this title during his base year: PROVIDED, That at the request of a claimant, wages

may be calculated on the basis of remuneration payable. The department shall notify each claimant that wages are calculated on the basis of remuneration paid, but at the claimant's request a redetermination may be performed and based on remuneration payable.

(3) For the purpose of payment of benefits and payment of contributions, the term "wages" includes tips which are received after January 1, 1987, while performing services which constitute employment, and which are reported to the employer for federal income tax purposes.

(4)(a) "Remuneration" means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash. The reasonable cash value of compensation paid in any medium other than cash and the reasonable value of gratuities shall be estimated and determined in accordance with rules prescribed by the commissioner. Remuneration does not include payments to members of a reserve component of the armed forces of the United States, including the organized militia of the state of Washington, for the performance of duty for periods not exceeding seventy-two hours at a time.

(b) Previously accrued compensation, other than severance pay or payments received pursuant to plant closure agreements, when assigned to a specific period of time by virtue of a collective bargaining agreement, individual employment contract, customary trade practice, or request of the individual compensated, shall be considered remuneration for the period to which it is assigned. Assignment clearly occurs when the compensation serves to make the individual eligible for all regular fringe benefits for the period to which the compensation is assigned.

(c) Settlements or other proceeds received by an individual as a result of a negotiated settlement for termination of an employment contract with a public agency prior to its expiration date shall be considered remuneration. The proceeds shall be deemed assigned in the same intervals and in the same amount for each interval as compensation was allocated under the contract.

(d) Except as provided in (c) of this subsection, the provisions of this subsection (4) pertaining to the assignment of previously accrued compensation shall not apply to individuals subject to RCW 50.44.050. [1995 c 296 § 1; 1986 c 21 § 1; 1984 c 134 § 2; 1983 1st ex.s. c 23 § 6; 1983 c 67 § 1; 1970 ex.s. c 2 § 3; 1953 ex.s. c 8 § 2; 1951 c 265 § 3; 1949 c 214 § 4; 1947 c 215 § 6; 1945 c 35 § 33; Rem. Supp. 1949 § 9998-171. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Severability—1995 c 296: "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." [1995 c 296 § 5.]

Conflict with federal requirements—1995 c 296: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act 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 act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 296 § 6.]

Effective date—1995 c 296: "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 immediately [May 9, 1995]." [1995 c 296 § 7.]

Conflict with federal requirements—1986 c 21: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act 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 act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 21 § 2.]

Severability—1986 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." [1986 c 21 § 3.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Severability—1951 c 265: See note following RCW 50.98.070.

Chapter 50.12 ADMINISTRATION

Sections

- 50.12.040 Rule-making authority.
50.12.270 Rural natural resources impact areas—Training and services program—Survey—Definition.

50.12.040 Rule-making authority. Permanent and emergency rules shall be adopted, amended, or repealed by the commissioner in accordance with the provisions of Title 34 RCW and the rules adopted pursuant thereto: PROVIDED, That the commissioner may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule. [1995 c 403 § 109; 1973 1st ex.s. c 158 § 3; 1945 c 35 § 43; Rem. Supp. 1945 § 9998-181. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.270 Rural natural resources impact areas—Training and services program—Survey—Definition. (1) Subject to the availability of state or federal funds, the employment security department, as a member of the agency rural community assistance task force, shall consult with and may subcontract with local educational institutions, local businesses, local labor organizations, local associate development organizations, local private industry councils, local social service organizations, and local governments in carrying out a program of training and services, including training through the entrepreneurial training program, for dislocated workers in rural natural resources impact areas.

(2) The department shall conduct a survey to determine the actual future employment needs and jobs skills in rural natural resources impact areas.

(3) The department shall coordinate the services provided in this section with all other services provided by the department and with the other economic recovery efforts undertaken by state and local government agencies on behalf of the rural natural resources impact areas.

(4) The department shall make every effort to procure additional federal and other moneys for the efforts enumerated in this section.

(5) For the purposes of this section, "rural natural resources impact area" means:

(a) A nonmetropolitan county, as defined by the 1990 decennial census, that meets two of the five criteria set forth in subsection (6) of this section; or

(b) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets two of the five criteria set forth in subsection (6) of this section.

(6) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area that is located wholly or partially in an urbanized area or within two miles of an urbanized area is considered urbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter. [1995 c 226 § 30; 1991 c 315 § 3.]

Sunset Act application: See note following RCW 43.31.601.

Severability—Conflict with federal requirements—Effective date—1995 c 226: See notes following RCW 43.31.601.

Intent—1991 c 315: "The legislature finds that:

(1) The economic health and well-being of timber-dependent communities is of substantial public concern. The significant reduction in annual timber harvest levels likely will result in reduced economic activity and persistent unemployment and underemployment over time, which would be a serious threat to the safety, health, and welfare of residents of the timber impact areas, decreasing the value of private investments and jeopardizing the sources of public revenue.

(2) Timber impact areas are most often located in areas that are experiencing little or no economic growth, creating an even greater risk to the health, safety, and welfare of these communities. The ability to remedy problems caused by the substantial reduction in harvest activity is beyond the power and control of the regulatory process and influence of the state, and the ordinary operations of private enterprise without additional governmental assistance are insufficient to adequately remedy the resulting problems of poverty and unemployment.

(3) To address these concerns, it is the intent of the legislature to increase training and retraining services accessible to timber impact areas, and provide for coordination of noneconomic development services in

timber impact areas as economic development efforts will not succeed unless social, housing, health, and other needs are addressed." [1991 c 315 § 1.]

Severability—Conflict with federal requirements—Effective date—1991 c 315: See RCW 50.70.900 through 50.70.902.

Chapter 50.16

FUNDS

Sections

50.16.094 Employment security benefits during work force training—Eligibility—Rules.

50.16.094 Employment security benefits during work force training—Eligibility—Rules. An individual may be eligible for applicable employment security benefits while participating in work force training. Eligibility is at the discretion of the commissioner of employment security after submitting a commissioner-approved training waiver and developing a detailed individualized training plan.

The commissioner shall adopt rules as necessary to implement this section. [1995 c 57 § 1; 1993 c 226 § 6.]

Sunset Act application: See note following RCW 50.12.261.

Application—1995 c 57: "This act applies only to benefit charges attributable to new claims effective after July 1, 1995." [1995 c 57 § 4.]

Effective date—1995 c 57: "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 immediately [April 17, 1995]." [1995 c 57 § 5.]

Findings—Purpose, intent—Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.24.018.

Chapter 50.20

BENEFITS AND CLAIMS

Sections

50.20.010 Benefit eligibility conditions.
50.20.011 Profiling system to identify individuals likely to exhaust benefits—Confidentiality of information—Penalty.
50.20.012 Rules—1995 c 381.
50.20.190 Recovery of benefit payments.

50.20.010 Benefit eligibility conditions. An unemployed individual shall be eligible to receive waiting period credits or benefits with respect to any week in his or her eligibility period only if the commissioner finds that:

(1) He or she has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulation as the commissioner may prescribe, except that the commissioner may by regulation waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the commissioner finds that the compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title;

(2) He or she has filed an application for an initial determination and made a claim for waiting period credit or for benefits in accordance with the provisions of this title;

(3) He or she is able to work, and is available for work in any trade, occupation, profession, or business for which

he or she is reasonably fitted. To be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him or her and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or the commissioner's agents;

(4) He or she has been unemployed for a waiting period of one week;

(5) He or she participates in reemployment services if the individual has been referred to reemployment services pursuant to the profiling system established by the commissioner under RCW 50.20.011, unless the commissioner determines that:

(a) The individual has completed such services; or

(b) There is justifiable cause for the claimant's failure to participate in such services; and

(6) As to weeks beginning after March 31, 1981, which fall within an extended benefit period as defined in RCW 50.22.010, the individual meets the terms and conditions of RCW 50.22.020 with respect to benefits claimed in excess of twenty-six times the individual's weekly benefit amount.

An individual's eligibility period for regular benefits shall be coincident to his or her established benefit year. An individual's eligibility period for additional or extended benefits shall be the periods prescribed elsewhere in this title for such benefits. [1995 c 381 § 1; 1981 c 35 § 3; 1973 c 73 § 6; 1970 ex.s. c 2 § 4; 1959 c 266 § 3; 1953 ex.s. c 8 § 7; 1951 c 265 § 9; 1951 c 215 § 11; 1949 c 214 § 9; 1945 c 35 § 68; Rem. Supp. 1949 § 9998-206. Prior: 1943 c 127 § 2; 1941 c 253 §§ 1, 2; 1939 c 214 § 2; 1937 c 162 § 4.]

Conflict with federal requirements—1995 c 381: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act 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 act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 381 § 5.]

Effective date—1995 c 381: "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 immediately [May 16, 1995]." [1995 c 381 § 6.]

Construction—Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Severability—1951 c 265: See note following RCW 50.98.070.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.20.011 Profiling system to identify individuals likely to exhaust benefits—Confidentiality of information—Penalty. (1) The commissioner shall establish and use a profiling system for new claimants for regular compensation under this title that identifies permanently separated workers who are likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment. The profiling system shall use a combination of individual characteristics and labor market information to assign each individual a unique probability of benefit exhaustion. Individuals identified as

likely to exhaust benefits shall be referred to reemployment services, such as job search assistance services, to the extent such services are available at public expense.

(2) The profiling system shall include collection and review of follow-up information relating to the services received by individuals under this section and the employment outcomes for the individuals following receipt of the services. The information shall be used in making profiling identifications.

(3) In carrying out reviews of individuals receiving services, the department may contract with public or private entities and may disclose information or records necessary to permit contracting entities to assist in the operation and management of department functions. Any information or records disclosed to public or private entities shall be used solely for the purposes for which the information was disclosed and the entity shall be bound by the same rules of privacy and confidentiality as department employees. The misuse or unauthorized disclosure of information or records deemed private and confidential under chapter 50.13 RCW by any person or organization to which access is permitted by this section shall subject the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [1995 c 381 § 2.]

Conflict with federal requirements—Effective date—1995 c 381: See notes following RCW 50.20.010.

50.20.012 Rules—1995 c 381. The commissioner may adopt rules as necessary to implement the 1995 c 381 §§ 1 and *3 amendments to RCW 50.20.010 and 50.20.043 and 50.20.011, including but not limited to definitions, eligibility standards, program review criteria and procedures, and provisions necessary to comply with applicable federal laws and regulations that are a condition to receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [1995 c 381 § 4.]

***Reviser's note:** Section 3 of this act (amendment to RCW 50.20.043) was vetoed by the governor.

Conflict with federal requirements—Effective date—1995 c 381: See notes following RCW 50.20.010.

50.20.190 Recovery of benefit payments. (1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable benefit year for which the purported overpayment was made,

whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that said overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: PROVIDED, HOWEVER, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, said determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee of five dollars. The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner

may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of their monthly payments either partially or in full. The interest penalty shall be used to fund detection and recovery of overpayment and collection activities. [1995 c 90 § 1; 1993 c 483 § 13; 1991 c 117 § 3; 1990 c 245 § 5; 1989 c 92 § 2; 1981 c 35 § 6; 1975 1st ex.s. c 228 § 3;

1973 1st ex.s. c 158 § 7; 1953 ex.s. c 8 § 14; 1951 c 215 § 8; 1947 c 215 § 18; 1945 c 35 § 87; Rem. Supp. 1947 § 9998-225. Prior: 1943 c 127 § 12; 1941 c 253 § 13; 1939 c 214 § 14; 1937 c 162 § 16.]

Conflict with federal requirements—1995 c 90: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act 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 act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 90 § 2.]

Application—1995 c 90: "This act applies to job separations occurring after July 1, 1995." [1995 c 90 § 3.]

Effective date—1995 c 90: "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 immediately [April 18, 1995]." [1995 c 90 § 4.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

Severability—1981 c 35: See note following RCW 50.22.030.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

Chapter 50.22

EXTENDED BENEFITS

Sections

50.22.090 Additional benefit period for rural natural resources impact areas—Eligibility—Training program—Rules.

50.22.090 Additional benefit period for rural natural resources impact areas—Eligibility—Training program—Rules. (1) An additional benefit period is established for rural natural resources impact areas, defined in RCW 43.31.601, and determined by the office of financial management and the employment security department. Benefits shall be paid as provided in subsection (3) of this section to exhaustees eligible under subsection (4) of this section.

(2) The additional benefit period for a county may end no sooner than fifty-two weeks after the additional benefit period begins.

(3) Additional benefits shall be paid as follows:

(a) No new claims for additional benefits shall be accepted for weeks beginning after July 1, 1997, but for claims established on or before July 1, 1997, weeks of unemployment occurring after July 1, 1997, shall be compensated as provided in this section.

(b) The total additional benefit amount shall be one hundred four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit

year. Additional benefits shall not be payable for weeks more than two years beyond the end of the benefit year of the regular claim for an individual whose benefit year ends on or after July 27, 1991, and shall not be payable for weeks ending on or after two years after March 26, 1992, for individuals who become eligible as a result of chapter 47, Laws of 1992.

(c) Notwithstanding the provisions of (b) of this subsection, individuals will be entitled to up to five additional weeks of benefits following the completion or termination of training.

(d) Notwithstanding the provisions of (b) of this subsection, individuals enrolled in prerequisite remedial education for a training program expected to last at least one year will be entitled to up to thirteen additional weeks of benefits which shall not count toward the total in (b) of this subsection.

(e) The weekly benefit amount shall be calculated as specified in RCW 50.22.040.

(f) Benefits paid under this section shall be paid under the same terms and conditions as regular benefits. The additional benefit period shall be suspended with the start of an extended benefit period, or any totally federally funded benefit program, with eligibility criteria and benefits comparable to the program established by this section, and shall resume the first week following the end of the federal program.

(g) The amendments in chapter 316, Laws of 1993 affecting subsection (3) (b) and (c) of this section shall apply in the case of all individuals determined to be monetarily eligible under this section without regard to the date eligibility was determined.

(4) An additional benefit eligibility period is established for any exhaustee who:

(a)(i) At the time of last separation from employment, resided in or was employed in a rural natural resources impact area defined in RCW 43.31.601 and determined by the office of financial management and the employment security department; or

(ii) During his or her base year, earned wages in at least six hundred eighty hours in either the forest products industry, which shall be determined by the department but shall include the industries assigned the major group standard industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment or the fishing industry assigned the standard industrial classification code "0912". The commissioner may adopt rules further interpreting the industries covered under this subsection. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(6)(c); and

(b)(i) Has received notice of termination or layoff; and
(ii) Is unlikely to return to employment in his or her principal occupation or previous industry because of a diminishing demand within his or her labor market for his or her skills in the occupation or industry; and

(c)(i) Is notified by the department of the requirements of this section and develops an individual training program that is submitted to the commissioner for approval not later

than sixty days after the individual is notified of the requirements of this section, and enters the approved training program not later than ninety days after the date of the individual's termination or layoff, or ninety days after July 1, 1991, whichever is later, unless the department determines that the training is not available during the ninety-day period, in which case the individual shall enter training as soon as it is available; or

(ii) Is enrolled in training approved under this section on a full-time basis and maintains satisfactory progress in the training.

(5) For the purposes of this section:

(a) "Training program" means:

(i) A remedial education program determined to be necessary after counseling at the educational institution in which the individual enrolls pursuant to his or her approved training program; or

(ii) A vocational training program at an educational institution that:

(A) Is training for a labor demand occupation; and

(B) Is likely to facilitate a substantial enhancement of the individual's marketable skills and earning power.

(b) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410(3).

(c) "Training allowance or stipend" means discretionary use, cash-in-hand payments available to the individual to be used as the individual sees fit, but does not mean direct or indirect compensation for training costs, such as tuition or books and supplies.

(6) The commissioner shall adopt rules as necessary to implement this section.

(7) The provisions of RCW 50.22.010(10) shall not apply to anyone who establishes eligibility for additional benefits under this section and whose benefit year ends after January 1, 1994. These individuals will have the option of remaining on the original claim or filing a new claim. [1995 c 226 § 5; 1995 c 57 § 2; 1993 c 316 § 10; 1992 c 47 § 2; 1991 c 315 § 4.]

Reviser's note: This section was amended by 1995 c 57 § 2 and by 1995 c 226 § 5, 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).

Sunset Act application: See note following RCW 43.31.601.

Severability—Conflict with federal requirements—Effective date—1995 c 226: See notes following RCW 43.31.601.

Application—Effective date—1995 c 57: See notes following RCW 50.16.094.

Effective date—1993 c 316 § 10: "Section 10 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 316 § 11.]

Finding—1992 c 47: "The legislature finds that the timber retraining benefits program as enacted in RCW 50.22.090 did not provide benefits to workers who were unemployed more than one year prior to its effective date. In order to provide benefits to these individuals, this act extends the benefits of the timber retraining benefits program to any eligible worker who filed an unemployment claim beginning on or after January 1, 1989." [1992 c 47 § 1.]

Severability—1992 c 47: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 47 § 3.]

Conflict with federal requirements—1992 c 47: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act 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 act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1992 c 47 § 4.]

Intent—1991 c 315: See note following RCW 50.12.270.

Severability—Conflict with federal requirements—Effective date—1991 c 315: See RCW 50.70.900 through 50.70.902.

Chapter 50.29

EMPLOYER EXPERIENCE RATING

Sections

50.29.020	Experience rating accounts—Enumeration of benefits not charged.
50.29.025	Contribution rate. (<i>Effective until January 1, 1998.</i>)
50.29.025	Contribution rate. (<i>Effective January 1, 1998.</i>)
50.29.026	Modification of contribution rate.
50.29.062	Contribution rates for predecessor and successor employers.

50.29.020 Experience rating accounts—Enumeration of benefits not charged. (1) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department. Benefits paid to any eligible individuals shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(2) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individuals later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable under chapter 50.22 RCW shall not be

charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) In the case of individuals identified under RCW 50.20.015, benefits paid with respect to a calendar quarter, which exceed the total amount of wages earned in the state of Washington in the higher of two corresponding calendar quarters included within the individual's determination period, as defined in RCW 50.20.015, shall not be charged to the experience rating account of any contribution paying employer.

(3)(a) Beginning July 1, 1985, a contribution-paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted. [1995 c 57 § 3; 1993 c 483 § 19; 1991 c 129 § 1; 1988 c 27 § 1. Prior: 1987 c 213 § 3; 1987 c 2 § 2; prior: 1985 c 299 § 1; 1985 c 270 § 2; 1985 c 42 § 1; 1984 c 205 § 7; 1975 1st ex.s. c 228 § 6; 1970 ex.s. c 2 § 11.]

Application—Effective date—1995 c 57: See notes following RCW 50.16.094.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—1988 c 27: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act 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 act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1988 c 27 § 2.]

Construction—1987 c 213: See note following RCW 50.29.010.

Applicability—Effective date—Severability—1987 c 2: See notes following RCW 50.20.090.

Conflict with federal requirements—1985 c 42: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act 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 act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 42 § 2.]

Severability—1985 c 42: "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 42 § 3.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020. "Determination period" defined for purposes of RCW 50.29.020: RCW 50.20.015.

50.29.025 Contribution rate. (Effective until January 1, 1998.) The contribution rate for each employer shall be determined under this section.

(1) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the June 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(2) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in subsection (5) of this section shall be in effect for assigning tax rates for the rate year except that during rate year 1995 tax schedule AA shall be in effect. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
2.90 and above	AA
2.50 to 2.89	A
2.10 to 2.49	B
1.70 to 2.09	C
1.30 to 1.69	D
1.00 to 1.29	E
Less than 1.00	F

(3) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (a) Identification number; (b) benefit ratio; (c) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (d) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (e) the percentage equivalent of the cumulative total of taxable payrolls.

(4) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in subsection (5) of this section: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(5) The contribution rate for each employer in the array shall be the rate specified in the following table for the rate class to which he or she has been assigned, as determined under subsection (4) of this section, within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls			Schedule of Contribution Rates for Effective Tax Schedule						
From	To	Rate Class	AA	A	B	C	D	E	F
0.00	5.00	1	0.36	0.36	0.46	0.86	1.36	1.76	2.36
5.01	10.00	2	0.36	0.36	0.66	1.06	1.56	1.96	2.56
10.01	15.00	3	0.46	0.46	0.86	1.26	1.66	2.16	2.76
15.01	20.00	4	0.46	0.66	1.06	1.46	1.86	2.36	2.96
20.01	25.00	5	0.66	0.86	1.26	1.66	2.06	2.56	3.06
25.01	30.00	6	0.86	1.06	1.46	1.86	2.26	2.66	3.16
30.01	35.00	7	0.96	1.26	1.66	2.06	2.46	2.86	3.26
35.01	40.00	8	1.16	1.46	1.86	2.26	2.66	3.06	3.46
40.01	45.00	9	1.36	1.66	2.06	2.46	2.86	3.26	3.66
45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86
50.01	55.00	11	1.86	2.16	2.46	2.86	3.26	3.66	3.96
55.01	60.00	12	2.06	2.36	2.66	3.06	3.46	3.86	4.16
60.01	65.00	13	2.26	2.56	2.86	3.26	3.66	4.06	4.36
65.01	70.00	14	2.46	2.76	3.06	3.46	3.86	4.26	4.56
70.01	75.00	15	2.76	2.96	3.26	3.66	4.06	4.46	4.66
75.01	80.00	16	2.96	3.16	3.46	3.86	4.26	4.56	4.76
80.01	85.00	17	3.16	3.36	3.66	4.06	4.46	4.76	4.86
85.01	90.00	18	3.56	3.76	4.06	4.46	4.76	4.86	5.06
90.01	95.00	19	3.96	4.16	4.46	4.86	4.96	5.06	5.26
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40

(6) The contribution rate for each employer not qualified to be in the array shall be as follows:

(a) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned the contribution rate of five and six-tenths percent, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to five and six-tenths percent for the current rate year;

(b) The contribution rate for employers exempt as of December 31, 1989, who are newly covered under the section 78, chapter 380, Laws of 1989 amendment to RCW 50.04.150 and not yet qualified to be in the array shall be 2.5 percent for employers whose standard industrial code is "013", "016", "017", "018", "019", "021", or "081"; and

(c) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, shall be in accordance with established classification practices found in

the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the Standard Industrial Classification code. [1995 c 4 § 1. Prior: 1993 c 483 § 21; 1993 c 226 § 13; 1990 c 245 § 7; 1989 c 380 § 79; 1987 c 171 § 3; 1985 ex.s. c 5 § 7; 1984 c 205 § 5.]

Effective dates—1995 c 4: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 16, 1995].

(2) Section 2 of this act shall take effect January 1, 1998." [1995 c 4 § 4.]

Expiration date—1995 c 4 § 1: "Section 1 of this act shall expire January 1, 1998." [1995 c 4 § 5.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Elevation of employer contribution rates—Report by commissioner—1993 c 226: "Prior to any increase in the employer tax schedule as provided in section 13, chapter 226, Laws of 1993, the commissioner shall provide a report to the appropriate committees of the legislature specifying to what extent the work force training expenditures in chapter 226, Laws of 1993 elevated employer contribution rates for the effective tax schedule." [1993 c 226 § 16.]

Findings—Purpose, intent—Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.24.018.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Effective date—1989 c 380 §§ 78 through 81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.025 Contribution rate. (Effective January 1, 1998.) The contribution rate for each employer shall be determined under this section.

(1) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the June 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(2) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in subsection (5) of this section shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
2.90 and above	AA
2.50 to 2.89	A
2.10 to 2.49	B
1.70 to 2.09	C

1.30 to 1.69	D
1.00 to 1.29	E
Less than 1.00	F

(3) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (a) Identification number; (b) benefit ratio; (c) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (d) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (e) the percentage equivalent of the cumulative total of taxable payrolls.

(4) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in subsection (5) of this section: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(5) The contribution rate for each employer in the array shall be the rate specified in the following tables for the rate class to which he or she has been assigned, as determined under subsection (4) of this section, within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls		Schedules of Contributions Rates for Effective Tax Schedule								
From	To	Rate Class	AA	A	B	C	D	E	F	
0.00	5.00	1	0.48	0.48	0.58	0.98	1.48	1.88	2.48	
5.01	10.00	2	0.48	0.48	0.78	1.18	1.68	2.08	2.68	
10.01	15.00	3	0.58	0.58	0.98	1.38	1.78	2.28	2.88	
15.01	20.00	4	0.58	0.78	1.18	1.58	1.98	2.48	3.08	
20.01	25.00	5	0.78	0.98	1.38	1.78	2.18	2.68	3.18	
25.01	30.00	6	0.98	1.18	1.58	1.98	2.38	2.78	3.28	
30.01	35.00	7	1.08	1.38	1.78	2.18	2.58	2.98	3.38	
35.01	40.00	8	1.28	1.58	1.98	2.38	2.78	3.18	3.58	
40.01	45.00	9	1.48	1.78	2.18	2.58	2.98	3.38	3.78	
45.01	50.00	10	1.68	1.98	2.38	2.78	3.18	3.58	3.98	
50.01	55.00	11	1.98	2.28	2.58	2.98	3.38	3.78	4.08	
55.01	60.00	12	2.18	2.48	2.78	3.18	3.58	3.98	4.28	
60.01	65.00	13	2.38	2.68	2.98	3.38	3.78	4.18	4.48	
65.01	70.00	14	2.58	2.88	3.18	3.58	3.98	4.38	4.68	
70.01	75.00	15	2.88	3.08	3.38	3.78	4.18	4.58	4.78	
75.01	80.00	16	3.08	3.28	3.58	3.98	4.38	4.68	4.88	
80.01	85.00	17	3.28	3.48	3.78	4.18	4.58	4.88	4.98	
85.01	90.00	18	3.68	3.88	4.18	4.58	4.88	4.98	5.18	
90.01	95.00	19	4.08	4.28	4.58	4.98	5.08	5.18	5.38	
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40	

(6) The contribution rate for each employer not qualified to be in the array shall be as follows:

(a) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned the contribution rate of five and six-tenths percent, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the

employer's tax rate shall immediately revert to five and six-tenths percent for the current rate year;

(b) The contribution rate for employers exempt as of December 31, 1989, who are newly covered under the section 78, chapter 380, Laws of 1989 amendment to RCW 50.04.150 and not yet qualified to be in the array shall be 2.5 percent for employers whose standard industrial code is "013", "016", "017", "018", "019", "021", or "081"; and

(c) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, shall be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the Standard Industrial Classification code. [1995 c 4 § 2. Prior: 1993 c 483 § 21; 1993 c 226 § 14; 1993 c 226 § 13; 1990 c 245 § 7; 1989 c 380 § 79; 1987 c 171 § 3; 1985 ex.s. c 5 § 7; 1984 c 205 § 5.]

Effective dates—1995 c 4: See note following RCW 50.29.025.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Elevation of employer contribution rates—Report by commissioner—1993 c 226: "Prior to any increase in the employer tax schedule as provided in section 13, chapter 226, Laws of 1993, the commissioner shall provide a report to the appropriate committees of the legislature specifying to what extent the work force training expenditures in chapter 226, Laws of 1993 elevated employer contribution rates for the effective tax schedule." [1993 c 226 § 16.]

Effective dates—1993 c 226 §§ 10, 12, and 14: See note following RCW 50.16.010.

Findings—Purpose, intent—Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.24.018.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Effective date—1989 c 380 §§ 78 through 81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.026 Modification of contribution rate. (1)

Beginning with contributions assessed for rate year 1996, a qualified employer's contribution rate determined under RCW 50.29.025 may be modified as follows:

(a) Subject to the limitations of this subsection, an employer may make a voluntary contribution of an amount equal to part or all of the benefits charged to the employer's account during the two years most recently ended on June 30th that were used for the purpose of computing the employer's contribution rate. On receiving timely payment of a voluntary contribution, plus a surcharge of ten percent of the amount of the voluntary contribution, the commissioner shall cancel the benefits equal to the amount of the voluntary contribution, excluding the surcharge, and compute

a new benefit ratio for the employer. The employer shall then be assigned the contribution rate applicable to the rate class within which the recomputed benefit ratio is included. The minimum amount of a voluntary contribution, excluding the surcharge, must be an amount that will result in a recomputed benefit ratio that is in a rate class at least two rate classes lower than the rate class that included the employer's original benefit ratio.

(b) Payment of a voluntary contribution is considered timely if received by the department during the period beginning on the date of mailing to the employer the notice of contribution rate required under this title for the rate year for which the employer is seeking a modification of his or her contribution rate and ending on February 15th of that rate year.

(c) A benefit ratio may not be recomputed nor a contribution rate be reduced under this section as a result of a voluntary contribution received after the payment period prescribed in (b) of this subsection.

(2) This section does not apply to any employer who has not had an increase of at least six rate classes from the previous tax rate year. [1995 c 322 § 1.]

Conflict with federal requirements—1995 c 322: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act 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 act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 322 § 2.]

50.29.062 Contribution rates for predecessor and successor employers. Predecessor and successor employer contribution rates shall be computed in the following manner:

(1) If the successor is an employer, as defined in RCW 50.04.080, at the time of the transfer, its contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs. From and after January 1 following the transfer, the successor's contribution rate for each rate year shall be based on its experience with payrolls and benefits including the experience of the acquired business or portion of a business from the date of transfer, as of the regular computation date for that rate year.

(2) If the successor is not an employer at the time of the transfer, it shall pay contributions at the lowest rate determined under either of the following:

(a) The contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year and continuing until the successor qualifies for a different rate in its own right. Any experience relating to the assignment of that rate class attributable to the predecessor is transferred to the successor; or

(b) The contribution rate equal to the average industry rate as determined by the commissioner, but not less than one percent, and continuing until the successor qualifies for a different rate in its own right. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, must be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of

management and budget to the third digit provided in the standard industrial classification code.

(3) If the successor is not an employer at the time of the transfer and simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, its rate from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the highest rate class applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition.

(4) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

(5) In all cases, from and after January 1 following the transfer, the predecessor's contribution rate for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year including the experience of the acquired business or portion of business up to the date of transfer: PROVIDED, That if all of the predecessor's business is transferred to a successor or successors, the predecessor shall not be a qualified employer until it satisfies the requirements of a "qualified employer" as set forth in RCW 50.29.010. [1995 c 56 § 1; 1989 c 380 § 81; 1984 c 205 § 6.]

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Chapter 50.38

LABOR MARKET INFORMATION AND ECONOMIC ANALYSIS

(Formerly: Occupational information service—Forecast)

Sections

50.38.030 State occupational forecast—Consultation with other agencies.

50.38.030 State occupational forecast—Consultation with other agencies. The employment security department shall consult with the following agencies prior to the issuance of the state occupational forecast:

- (1) Office of financial management;
- (2) Department of community, trade, and economic development;
- (3) Department of labor and industries;
- (4) State board for community and technical colleges;
- (5) Superintendent of public instruction;
- (6) Department of social and health services;
- (7) Work force training and education coordinating board; and
- (8) Other state and local agencies as deemed appropriate by the commissioner of the employment security department.

These agencies shall cooperate with the employment security department, submitting information relevant to the generation of occupational forecasts. [1995 c 399 § 142;

1993 c 62 § 3; 1985 c 466 § 66; 1985 c 6 § 18; 1982 c 43 § 3.]

Effective date—Severability—1985 c 466: See notes following RCW 43.31.085.

Chapter 50.44

SPECIAL COVERAGE PROVISIONS

Sections

- 50.44.050 Benefits payable, terms and conditions—"Academic year" defined.
50.44.053 Definition of "reasonable assurance" as used in RCW 50.44.050.

50.44.050 Benefits payable, terms and conditions—"Academic year" defined. Except as otherwise provided in subsections (1) through (4) of this section, benefits based on services in employment covered by or pursuant to this chapter shall be payable on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this title.

(1) Benefits based on service in an instructional, research or principal administrative capacity for an educational institution shall not be paid to an individual for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year (or, when an agreement provides instead for a similar period between two regular but not successive terms within an academic year, during such period) if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. Any employee of a common school district who is presumed to be reemployed pursuant to RCW 28A.405.210 shall be deemed to have a contract for the ensuing term.

(2) Benefits shall not be paid based on services in any other capacity for an educational institution for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms: PROVIDED, That if benefits are denied to any individual under this subsection and that individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual is entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

(3) Benefits shall not be paid based on any services described in subsections (1) and (2) of this section for any week of unemployment which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform

such services in the period immediately following such vacation period or holiday recess.

(4) Benefits shall not be paid (as specified in subsections (1), (2), or (3) of this section) based on any services described in subsections (1) or (2) of this section to any individual who performed such services in an educational institution while in the employ of an educational service district which is established pursuant to chapter 28A.310 RCW and exists to provide services to local school districts.

(5) As used in subsection (1) of this section, "academic year" means, with respect to services described in subsection (1) of this section performed by part-time faculty at community colleges and technical colleges: Fall, winter, spring, and summer quarters or comparable semesters unless, based upon objective criteria including enrollment and staffing, the quarter or comparable semester is not in fact a part of the academic year for the particular institution. [1995 c 296 § 2; 1990 c 33 § 587; 1984 c 140 § 2; 1983 1st ex.s. c 23 § 23; 1981 c 35 § 12; 1980 c 74 § 2; 1977 ex.s. c 292 § 18; 1975 1st ex.s. c 288 § 17; 1973 c 73 § 10; 1971 c 3 § 22.]

Finding and intent—1995 c 296 § 2: "The legislature finds that, as a general rule with limited exceptions, employees of educational institutions expect to be employed for no more than a nine or ten-month school year with a break between school years for the traditional summer vacation.

Because of the decision in *Evans v. Employment Security Department*, 72 Wn. App. 862 (1994), the legislature finds it necessary to clarify legislative intent with regard to unemployment compensation for employees of educational institutions. The 1995 c 296 § 2 amendment to RCW 50.44.050 is intended to clarify that for the part-time faculty at two-year institutions of higher education, summer quarter may be expected to be a time of employment, unless otherwise shown. However, the 1995 c 296 § 2 amendment to RCW 50.44.050 is not intended to change the general rules used by the employment security department prior to the *Evans* decision regarding unemployment compensation for other employees of educational institutions." [1995 c 296 § 4.]

Severability—Conflict with federal requirements—Effective date—1995 c 296: See notes following RCW 50.04.320.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Effective date—Applicability—1984 c 140: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 7, 1984]. This act shall apply to weeks of unemployment beginning on or after April 1, 1984." [1984 c 140 § 3.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—Effective dates—1980 c 74: See notes following RCW 50.04.323.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.44.053 Definition of "reasonable assurance" as used in RCW 50.44.050. The term "reasonable assurance," as used in RCW 50.44.050, means a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term as in the first academic year or term. However, with respect to services described in RCW 50.44.050(1) performed by part-time faculty for community colleges and technical colleges, the term "reasonable assurance" does not include an agreement that is contingent on enrollment,

funding, or program changes. A person shall not be deemed to be performing services "in the same capacity" unless those services are rendered under the same terms or conditions of employment in the ensuing year as in the first academic year or term. [1995 c 296 § 3; 1985 ex.s. c 5 § 9.]

Severability—Conflict with federal requirements—Effective date—1995 c 296: See notes following RCW 50.04.320.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Chapter 50.62

SPECIAL EMPLOYMENT ASSISTANCE

Sections

50.62.030 Job service program or activity.

50.62.030 Job service program or activity. Job service resources shall be used to assist with the reemployment of unemployed workers using the most efficient and effective means of service delivery. The job service program of the employment security department may undertake any program or activity for which funds are available and which furthers the goals of this chapter. These programs and activities shall include, but are not limited to:

(1) Giving older unemployed workers and the long-term unemployed the highest priority for all services made available under this section. The employment security department shall make the services provided under this chapter available to the older unemployed workers and the long-term unemployed as soon as they register under the employment assistance program;

(2) Supplementing basic employment services, with special job search and claimant placement assistance designed to assist unemployment insurance claimants to obtain employment;

(3) Providing employment services, such as recruitment, screening, and referral of qualified workers, to agricultural areas where these services have in the past contributed to positive economic conditions for the agricultural industry; and

(4) Providing otherwise unobtainable information and analysis to the legislature and program managers about issues related to employment and unemployment. [1995 c 135 § 4. Prior: 1987 c 284 § 3; 1987 c 171 § 2; 1985 ex.s. c 5 § 3.]

Intent—1995 c 135: See note following RCW 29.04.160.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Chapter 50.70

PROGRAMS FOR DISLOCATED FOREST PRODUCTS WORKERS

Sections

50.70.010 Definitions.

50.70.020 Purpose—Displacement of employed workers prohibited.

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

(1) "Department" means the employment security department.

(2) "Dislocated forest products worker" means a forest products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(3) "Forest products worker" means a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries assigned the major group standard industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment. The commissioner may adopt rules further interpreting these definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(6)(c).

(4) "Dislocated salmon fishing worker" means a salmon products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(5) "Salmon fishing worker" means a worker in the salmon industry affected by 1994 or future salmon disasters. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries involved in the commercial and recreational harvesting of salmon including buying and processing salmon. The commissioner may adopt rules further interpreting these definitions.

(6) "Program" means the employment and career orientation program for dislocated forest products workers administered by the employment security department in conjunction with the department of natural resources.

(7) "Enrollee" means any person enrolled in the program.

(8) "Project" means the natural resource worker project.

(9) "Rural natural resources impact area" means:

(a) A nonmetropolitan county, as defined by the 1990 decennial census, that meets two of the five criteria set forth in subsection (10) of this section; or

(b) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets two of the five criteria set forth in subsection (10) of this section.

(10) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area that is located wholly or partially in an urbanized area or within two miles of an urbanized area is considered urbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter. [1995 c 226 § 31; 1992 c 21 § 1; 1991 c 315 § 5.]

Sunset Act application: See note following RCW 43.31.601.

Severability—Conflict with federal requirements—Effective date—1995 c 226: See notes following RCW 43.31.601.

Intent—1991 c 315: See note following RCW 50.12.270.

50.70.020 Purpose—Displacement of employed workers prohibited. It is the purpose of this chapter to establish programs that offer dislocated forest and salmon products workers, in rural natural resources impact areas, opportunities for forest-related employment that utilizes their unique skills. Employment under the program shall not result in the displacement or partial displacement of currently employed workers. This includes, but is not limited to, state employees or currently or normally contracted service employees. [1995 c 226 § 32; 1991 c 315 § 6.]

Sunset Act application: See note following RCW 43.31.601.

Severability—Conflict with federal requirements—Effective date—1995 c 226: See notes following RCW 43.31.601.

Intent—1991 c 315: See note following RCW 50.12.270.

Title 51

INDUSTRIAL INSURANCE

Chapters

- 51.08** Definitions.
51.12 Employments and occupations covered.
51.14 Self-insurers.
51.16 Assessment and collection of premiums—Payrolls and records.

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- 51.24** Actions at law for injury or death.
51.32 Compensation—Right to and amount.
51.48 Penalties.
51.52 Appeals.

Chapter 51.08

DEFINITIONS

Sections

51.08.013 "Acting in the course of employment."

51.08.013 "Acting in the course of employment."

(1) "Acting in the course of employment" means the worker acting at his or her employer's direction or in the furtherance of his or her employer's business which shall include time spent going to and from work on the jobsite, as defined in RCW 51.32.015 and 51.36.040, insofar as such time is immediate to the actual time that the worker is engaged in the work process in areas controlled by his or her employer, except parking area. It is not necessary that at the time an injury is sustained by a worker he or she is doing the work on which his or her compensation is based or that the event is within the time limits on which industrial insurance or medical aid premiums or assessments are paid.

(2) "Acting in the course of employment" does not include:

(a) Time spent going to or coming from the employer's place of business: (i) In commuter ride sharing, as defined in RCW 46.74.010(1), notwithstanding any participation by the employer in the ride-sharing arrangement; or (ii) on a public transport system using a pass provided in whole or part by the employer.

(b) An employee's participation in social activities, recreational or athletic activities, events or competitions, and parties or picnics, whether or not the employer pays some or all of the costs thereof, unless: (i) The participation is during the employee's working hours, not including paid leave; (ii) the employee was paid monetary compensation by the employer to participate; or (iii) the employee was ordered or directed by the employer to participate or reasonably believed the employee was ordered or directed to participate. [1995 c 179 § 1; 1993 c 138 § 1; 1979 c 111 § 15; 1977 ex.s. c 350 § 8; 1961 c 107 § 3.]

Severability—1979 c 111: See note following RCW 46.74.010.

Chapter 51.12

EMPLOYMENTS AND OCCUPATIONS COVERED

Sections

51.12.120 Extra territorial coverage—Injuries incurred outside state—Injuries incurred in employ of nondomiciled employer—Conflicts of jurisdiction—Agreements.

51.12.120 Extra territorial coverage—Injuries incurred outside state—Injuries incurred in employ of nondomiciled employer—Conflicts of jurisdiction—Agreements. (1) If a worker, while working outside the territorial limits of this state, suffers an injury on account of which he or she, or his or her beneficiaries, would have been entitled to compensation under this title had such injury

occurred within this state, such worker, or his or her beneficiaries, shall be entitled to compensation under this title: PROVIDED, That if at the time of such injury:

(a) His or her employment is principally localized in this state; or

(b) He or she is working under a contract of hire made in this state for employment not principally localized in any state; or

(c) He or she is working under a contract of hire made in this state for employment principally localized in another state whose workers' compensation law is not applicable to his or her employer; or

(d) He or she is working under a contract of hire made in this state for employment outside the United States and Canada.

(2) The payment or award of compensation or other recoveries, including settlement proceeds, under the workers' compensation law of another state, territory, province, or foreign nation to a worker or his or her beneficiaries otherwise entitled on account of such injury to compensation under this title shall not be a bar to a claim for compensation under this title: PROVIDED, That claim under this title is timely filed. If compensation is paid or awarded under this title, the total amount of compensation or other recoveries, including settlement proceeds, paid or awarded the worker or beneficiary under such other workers' compensation law shall be credited against the compensation due the worker or beneficiary under this title.

(3) If a worker or beneficiary is entitled to compensation under this title by reason of an injury sustained in this state while in the employ of an employer who is domiciled in another state and who has neither opened an account with the department nor qualified as a self-insurer under this title, such an employer or his or her insurance carrier shall file with the director a certificate issued by the agency which administers the workers' compensation law in the state of the employer's domicile, certifying that such employer has secured the payment of compensation under the workers' compensation law of such other state and that with respect to said injury such worker or beneficiary is entitled to the benefits provided under such law. In such event:

(a) The filing of such certificate shall constitute appointment by the employer or his or her insurance carrier of the director as its agent for acceptance of the service of process in any proceeding brought by any claimant to enforce rights under this title;

(b) The director shall send to such employer or his or her insurance carrier, by registered or certified mail to the address shown on such certificate, a true copy of any notice of claim or other process served on the director by the claimant in any proceeding brought to enforce rights under this title;

(c)(i) If such employer is a self-insurer under the workers' compensation law of such other state, such employer shall, upon submission of evidence or security, satisfactory to the director, of his or her ability to meet his or her liability to such claimant under this title, be deemed to be a qualified self-insurer under this title;

(ii) If such employer's liability under the workers' compensation law of such other state is insured, such employer's carrier, as to such claimant only, shall be deemed

to be subject to this title: PROVIDED, That unless its contract with said employer requires it to pay an amount equivalent to the compensation benefits provided by this title, the insurer's liability for compensation shall not exceed its liability under the workers' compensation law of such other state;

(d) If the total amount for which such employer's insurer is liable under (c)(ii) above is less than the total of the compensation to which such claimant is entitled under this title, the director may require the employer to file security satisfactory to the director to secure the payment of compensation under this title;

(e) If such employer has neither qualified as a self-insurer nor secured insurance coverage under the workers' compensation law of another state, such claimant shall be paid compensation by the department; and

(f) Any such employer shall have the same rights and obligations as other employers subject to this title and where he or she has not provided coverage or sufficient coverage to secure the compensation provided by this title to such claimant, the director may impose a penalty payable to the department of a sum not to exceed fifty percent of the cost to the department of any deficiency between the compensation provided by this title and that afforded such claimant by such employer or his or her insurance carrier if any.

(4) As used in this section:

(a) A person's employment is principally localized in this or another state when (i) his or her employer has a place of business in this or such other state and he or she regularly works at or from such place of business, or (ii) if clause (i) foregoing is not applicable, he or she is domiciled in and spends a substantial part of his or her working time in the service of his or her employer in this or such other state;

(b) "Workers' compensation law" includes "occupational disease law" for the purposes of this section.

(5) A worker whose duties require him or her to travel regularly in the service of his or her employer in this and one or more other states may agree in writing with his or her employer that his or her employment is principally localized in this or another state, and, unless such other state refuses jurisdiction, such agreement shall govern as to any injury occurring after the effective date of the agreement.

(6) The director shall be authorized to enter into agreements with the appropriate agencies of other states and provinces of Canada which administer their workers' compensation law with respect to conflicts of jurisdiction and the assumption of jurisdiction in cases where the contract of employment arises in one state or province and the injury occurs in another, and when any such agreement has been executed and promulgated as a regulation of the department under chapter 34.05 RCW, it shall bind all employers and workers subject to this title and the jurisdiction of this title shall be governed by this regulation. [1995 c 199 § 1; 1977 ex.s. c 350 § 23; 1972 ex.s. c 43 § 12; 1971 ex.s. c 289 § 82.]

Severability—1995 c 199: "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." [1995 c 199 § 8.]

Chapter 51.14
SELF-INSURERS

Sections

51.14.020 Qualification as self-insurer—Application for certification—Security deposit or letter of credit—Reinsurance—Rules.

51.14.020 Qualification as self-insurer—Application for certification—Security deposit or letter of credit—Reinsurance—Rules. (1) An employer may qualify as a self-insurer by establishing to the director's satisfaction that he or she has sufficient financial ability to make certain the prompt payment of all compensation under this title and all assessments which may become due from such employer. Each application for certification as a self-insurer submitted by an employer shall be accompanied by payment of a fee of one hundred fifty dollars or such larger sum as the director shall find necessary for the administrative costs of evaluation of the applicant's qualifications. Any employer who has formerly been certified as a self-insurer and thereafter ceases to be so certified may not apply for certification within three years of ceasing to have been so certified.

(2)(a) A self-insurer may be required by the director to supplement existing financial ability by depositing in an escrow account in a depository designated by the director, money and/or corporate or governmental securities approved by the director, or a surety bond written by any company admitted to transact surety business in this state, or provide an irrevocable letter of credit issued by a federally or state chartered commercial banking institution authorized to conduct business in the state of Washington filed with the department. The money, securities, bond, or letter of credit shall be in an amount reasonably sufficient in the director's discretion to insure payment of reasonably foreseeable compensation and assessments but not less than the employer's normal expected annual claim liabilities and in no event less than one hundred thousand dollars. In arriving at the amount of money, securities, bond, or letter of credit required under this subsection, the director shall take into consideration the financial ability of the employer to pay compensation and assessments and his or her probable continuity of operation. However, a letter of credit shall be acceptable only if the self-insurer has a net worth of not less than five hundred million dollars as evidenced in an annual financial statement prepared by a qualified, independent auditor using generally accepted accounting principles. The money, securities, bond, or letter of credit so deposited shall be held by the director solely for the payment of compensation by the self-insurer and his or her assessments. In the event of default the self-insurer loses all right and title to, any interest in, and any right to control the surety. The amount of surety may be increased or decreased from time to time by the director. The income from any securities deposited may be distributed currently to the self-insurer.

(b) The letter of credit option authorized in (a) of this subsection shall not apply to self-insurers authorized under RCW 51.14.150 or to self-insurers who are counties, cities, or municipal corporations.

(3) Securities or money deposited by an employer pursuant to subsection (2) of this section shall be returned to

him or her upon his or her written request provided the employer files the bond required by such subsection.

(4) If the employer seeking to qualify as a self-insurer has previously insured with the state fund, the director shall require the employer to make up his or her proper share of any deficit or insufficiency in the state fund as a condition to certification as a self-insurer.

(5) A self-insurer may reinsure a portion of his or her liability under this title with any reinsurer authorized to transact such reinsurance in this state: PROVIDED, That the reinsurer may not participate in the administration of the responsibilities of the self-insurer under this title. Such reinsurance may not exceed eighty percent of the liabilities under this title.

(6) For purposes of the application of this section, the department may adopt separate rules establishing the security requirements applicable to units of local government. In setting such requirements, the department shall take into consideration the ability of the governmental unit to meet its self-insured obligations, such as but not limited to source of funds, permanency, and right of default.

(7) The director shall adopt rules to carry out the purposes of this section including, but not limited to, rules respecting the terms and conditions of letters of credit and the establishment of the appropriate level of net worth of the self-insurer to qualify for use of the letter of credit. Only letters of credit issued in strict compliance with the rules shall be deemed acceptable. [1995 c 31 § 1; 1990 c 209 § 1; 1986 c 57 § 1; 1977 ex.s. c 323 § 9; 1972 ex.s. c 43 § 16; 1971 ex.s. c 289 § 27.]

Effective date—1990 c 209 § 1: "Section 1 of this act shall take effect January 1, 1991." [1990 c 209 § 3.]

Intent—1986 c 57: See note following RCW 51.14.077.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Chapter 51.16

**ASSESSMENT AND COLLECTION OF
PREMIUMS—PAYROLLS AND RECORDS**

Sections

51.16.200 Payment of tax by employer quitting or disposing of business—Liability of successor.

51.16.200 Payment of tax by employer quitting or disposing of business—Liability of successor. Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any tax payable hereunder shall become immediately due and payable, and the employer shall, within ten days thereafter, make a return and pay the tax due; and any person who becomes a successor to such business shall become liable for the full amount of the tax and withhold from the purchase price a sum sufficient to pay any tax due from the employer until such time as the employer shall produce a receipt from the department showing payment in full of any tax due or a certificate that no tax is due and, if such tax is not paid by the employer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax, and the payment thereof by such successor shall, to the

extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer.

No successor may be liable for any tax due from the person from whom the successor has acquired a business or stock of goods if the successor gives written notice to the department of such acquisition and no assessment is issued by the department within one hundred eighty days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor. [1995 c 160 § 1; 1986 c 9 § 6.]

Chapter 51.24

ACTIONS AT LAW FOR INJURY OR DEATH

Sections

- 51.24.030 Action against third person—Election by injured person or beneficiary authorized—Statutory interest in recovery—"Injury" and "recovery" defined—Applicability of chapter to underinsured motorist insurance coverage.
- 51.24.050 Action against third person—Assignment of cause of action to department or self-insurer—Disposition of award or settlement.
- 51.24.060 Action against third person—Distribution of award or settlement recovered by injured worker or beneficiary—Lien—Enforcement.
- 51.24.090 Action against third person—Compromise or settlement less than benefits—Approval by department or self-insurer—"Entitlement" defined—Assignment of action.

51.24.030 Action against third person—Election by injured person or beneficiary authorized—Statutory interest in recovery—"Injury" and "recovery" defined—Applicability of chapter to underinsured motorist insurance coverage. (1) If a third person, not in a worker's same employ, is or may become liable to pay damages on account of a worker's injury for which benefits and compensation are provided under this title, the injured worker or beneficiary may elect to seek damages from the third person.

(2) In every action brought under this section, the plaintiff shall give notice to the department or self-insurer when the action is filed. The department or self-insurer may file a notice of statutory interest in recovery. When such notice has been filed by the department or self-insurer, the parties shall thereafter serve copies of all notices, motions, pleadings, and other process on the department or self-insurer. The department or self-insurer may then intervene as a party in the action to protect its statutory interest in recovery.

(3) For the purposes of this chapter, "injury" shall include any physical or mental condition, disease, ailment or loss, including death, for which compensation and benefits are paid or payable under this title.

(4) Damages recoverable by a worker or beneficiary pursuant to the underinsured motorist coverage of an insurance policy shall be subject to this chapter only if the owner of the policy is the employer of the injured worker.

(5) For the purposes of this chapter, "recovery" includes all damages except loss of consortium. [1995 c 199 § 2; 1987 c 212 § 1701; 1986 c 58 § 1; 1984 c 218 § 3; 1977 ex.s. c 85 § 1.]

Severability—1995 c 199: See note following RCW 51.12.120.

51.24.050 Action against third person—Assignment of cause of action to department or self-insurer—Disposition of award or settlement. (1) An election not to proceed against the third person operates as an assignment of the cause of action to the department or self-insurer, which may prosecute or compromise the action in its discretion in the name of the injured worker, beneficiary or legal representative.

(2) If an injury to a worker results in the worker's death, the department or self-insurer to which the cause of action has been assigned may petition a court for the appointment of a special personal representative for the limited purpose of maintaining an action under this chapter and chapter 4.20 RCW.

(3) If a beneficiary is a minor child, an election not to proceed against a third person on such beneficiary's cause of action may be exercised by the beneficiary's legal custodian or guardian.

(4) Any recovery made by the department or self-insurer shall be distributed as follows:

(a) The department or self-insurer shall be paid the expenses incurred in making the recovery including reasonable costs of legal services;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the recovery made, which shall not be subject to subsection (5) of this section: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the compensation and benefits paid to or on behalf of the injured worker or beneficiary by the department and/or self-insurer; and

(d) The injured worker or beneficiary shall be paid any remaining balance.

(5) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(6) When the cause of action has been assigned to the self-insurer and compensation and benefits have been paid and/or are payable from state funds for the same injury:

(a) The prosecution of such cause of action shall also be for the benefit of the department to the extent of compensation and benefits paid and payable from state funds;

(b) Any compromise or settlement of such cause of action which results in less than the entitlement under this title is void unless made with the written approval of the department;

(c) The department shall be reimbursed for compensation and benefits paid from state funds;

(d) The department shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the self-insurer in obtaining the award or settlement; and

(e) Any remaining balance under subsection (4)(d) of this section shall be applied, under subsection (5) of this section, to reduce the obligations of the department and self-

insurer to pay further compensation and benefits in proportion to which the obligations of each bear to the remaining entitlement of the worker or beneficiary. [1995 c 199 § 3; 1984 c 218 § 4; 1983 c 211 § 1; 1977 ex.s. c 85 § 3.]

Severability—1995 c 199: See note following RCW 51.12.120.

Applicability—1983 c 211: "Sections 1 and 2 of this act apply to all actions against third persons in which judgment or settlement of the underlying action has not taken place prior to July 24, 1983." [1983 c 211 § 3.] "Sections 1 and 2 of this act" consist of the 1983 amendments of RCW 51.24.050 and 51.24.060.

Severability—1983 c 211: "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 211 § 4.]

51.24.060 Action against third person—Distribution of award or settlement recovered by injured worker or beneficiary—Lien—Enforcement. (1) If the injured worker or beneficiary elects to seek damages from the third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid proportionately by the injured worker or beneficiary and the department and/or self-insurer: PROVIDED, That the department and/or self-insurer may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the award: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department and/or self-insurer for benefits paid;

(i) The department and/or self-insurer shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the worker or beneficiary to the extent of the benefits paid under this title: PROVIDED, That the department's and/or self-insurer's proportionate share shall not exceed one hundred percent of the costs and reasonable attorneys' fees;

(ii) The department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees shall be determined by dividing the gross recovery amount into the benefits paid amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary;

(iii) The department's and/or self-insurer's reimbursement share shall be determined by subtracting their proportionate share of the costs and reasonable attorneys' fees from the benefits paid amount;

(d) Any remaining balance shall be paid to the injured worker or beneficiary; and

(e) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance minus the department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees in regards to the remaining balance. This proportionate share shall be determined by dividing the gross recovery amount into the remaining balance amount and multiplying this

percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(2) The recovery made shall be subject to a lien by the department and/or self-insurer for its share under this section.

(3) The department or self-insurer has sole discretion to compromise the amount of its lien. In deciding whether or to what extent to compromise its lien, the department or self-insurer shall consider at least the following:

(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the injured worker or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

(4) In an action under this section, the self-insurer may act on behalf and for the benefit of the department to the extent of any compensation and benefits paid or payable from state funds.

(5) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department or self-insurer of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

(6) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by registered or certified mail, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such worker or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the injured worker or beneficiary against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant. A copy of such

warrant shall be mailed to the injured worker or beneficiary within three days of filing with the clerk.

(7) The director, or the director's designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property of any kind if he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property which is due, owing, or belonging to any worker or beneficiary upon whom a warrant has been served by the department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy; by certified mail, return receipt requested; or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled. [1995 c 199 § 4; 1993 c 496 § 2; 1987 c 442 § 1118; 1986 c 305 § 403; 1984 c 218 § 5; 1983 c 211 § 2; 1977 ex.s. c 85 § 4.]

Severability—1995 c 199: See note following RCW 51.12.120.

Effective date—Application—1993 c 496: See notes following RCW 4.22.070.

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Applicability—Severability—1983 c 211: See notes following RCW 51.24.050.

51.24.090 Action against third person—Compromise or settlement less than benefits—Approval by department or self-insurer—"Entitlement" defined—Assignment of action. (1) Any compromise or settlement of the third party cause of action by the injured worker or beneficiary which results in less than the entitlement under this title is void unless made with the written approval of the department or self-insurer: **PROVIDED**, That for the purposes of this chapter, "entitlement" means benefits and compensation paid and estimated by the department to be paid in the future.

(2) If a compromise or settlement is void because of subsection (1) of this section, the department or self-insurer may petition the court in which the action was filed for an

order assigning the cause of action to the department or self-insurer. If an action has not been filed, the department or self-insurer may proceed as provided in chapter 7.24 RCW. [1995 c 199 § 5; 1984 c 218 § 7; 1977 ex.s. c 85 § 7.]

Severability—1995 c 199: See note following RCW 51.12.120.

Chapter 51.32

COMPENSATION—RIGHT TO AND AMOUNT

Sections

- 51.32.020 Who not entitled to compensation.
- 51.32.040 Exemption of awards—Payment of awards after death—Time limitations for filing—Confinement in institution under conviction and sentence.
- 51.32.050 Death benefits.
- 51.32.160 Aggravation, diminution, or termination.
- 51.32.215 Payment of compensation after appeal—Proceedings for enforcement of order—Penalty.

51.32.020 Who not entitled to compensation. If injury or death results to a worker from the deliberate intention of the worker himself or herself to produce such injury or death, or while the worker is engaged in the attempt to commit, or the commission of, a felony, neither the worker nor the widow, widower, child, or dependent of the worker shall receive any payment under this title.

If injury or death results to a worker from the deliberate intention of a beneficiary of that worker to produce the injury or death, or if injury or death results to a worker as a consequence of a beneficiary of that worker engaging in the attempt to commit, or the commission of, a felony, the beneficiary shall not receive any payment under this title.

An invalid child, while being supported and cared for in a state institution, shall not receive compensation under this chapter.

No payment shall be made to or for a natural child of a deceased worker and, at the same time, as the stepchild of a deceased worker. [1995 c 160 § 2; 1977 ex.s. c 350 § 39; 1971 ex.s. c 289 § 42; 1961 c 23 § 51.32.020. Prior: 1957 c 70 § 27; prior: (i) 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Application—1995 c 160 §§ 2 and 3: "Sections 2 and 3 of this act shall apply from July 23, 1995, without regard to the date of injury or the date of filing a claim." [1995 c 160 § 8.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.040 Exemption of awards—Payment of awards after death—Time limitations for filing—Confinement in institution under conviction and sentence.

(1) Except as provided in RCW 43.20B.720 and 74.20A.260, no money paid or payable under this title shall, before the issuance and delivery of the check or warrant, be assigned, charged, or taken in execution, attached, garnished, or pass or be paid to any other person by operation of law, any form of voluntary assignment, or power of attorney. Any such assignment or charge is void unless the transfer is to a

financial institution at the request of a worker or other beneficiary and made in accordance with RCW 51.32.045.

(2)(a) If any worker suffers (i) a permanent partial injury and dies from some other cause than the accident which produced the injury before he or she receives payment of the award for the permanent partial injury or (ii) any other injury before he or she receives payment of any monthly installment covering any period of time before his or her death, the amount of the permanent partial disability award or the monthly payment, or both, shall be paid to the surviving spouse or the child or children if there is no surviving spouse.

(b) If any worker suffers an injury and dies from it before he or she receives payment of any monthly installment covering time loss for any period of time before his or her death, the amount of the monthly payment shall be paid to the surviving spouse or the child or children if there is no surviving spouse.

(c) Any application for compensation under this subsection (2) shall be filed with the department or self-insuring employer within one year of the date of death. However, if the injured worker resided in the United States as long as three years before the date of injury, payment under this subsection (2) shall not be made to any surviving spouse or child who was at the time of the injury a nonresident of the United States.

(3)(a) Any worker or beneficiary receiving benefits under this title who is subsequently confined in, or who subsequently becomes eligible for benefits under this title while confined in, any institution under conviction and sentence shall have all payments of the compensation canceled during the period of confinement. After discharge from the institution, payment of benefits due afterward shall be paid if the worker or beneficiary would, except for the provisions of this subsection (3), otherwise be entitled to them.

(b) If any prisoner is injured in the course of his or her employment while participating in a work or training release program authorized by chapter 72.65 RCW and is subject to the provisions of this title, he or she is entitled to payments under this title, subject to the requirements of chapter 72.65 RCW, unless his or her participation in the program has been canceled, or unless he or she is returned to a state correctional institution, as defined in RCW 72.65.010(3), as a result of revocation of parole or new sentence.

(c) If the confined worker has any beneficiaries during the confinement period during which benefits are canceled under (a) or (b) of this subsection, they shall be paid directly the monthly benefits which would have been paid to the worker for himself or herself and the worker's beneficiaries had the worker not been confined.

(4) Any lump sum benefits to which a worker would otherwise be entitled but for the provisions of this section shall be paid on a monthly basis to his or her beneficiaries. [1995 c 160 § 3; 1987 c 75 § 7; 1983 c 2 § 13. Prior: 1982 c 201 § 8; 1982 c 109 § 10; 1979 ex.s. c 171 § 11; 1977 ex.s. c 350 § 41; 1975 1st ex.s. c 224 § 8; 1974 ex.s. c 30 § 1; prior: 1973 1st ex.s. c 154 § 95; 1972 ex.s. c 43 § 18; 1971 ex.s. c 289 § 43; 1965 ex.s. c 165 § 2; 1961 c 23 § 51.32.040; prior: 1957 c 70 § 29; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182

§ 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Application—1995 c 160 §§ 2 and 3: See note following RCW 51.32.020.

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

Severability—1983 c 2: See note following RCW 18.71.030.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

51.32.050 Death benefits. (1) Where death results from the injury the expenses of burial not to exceed two hundred percent of the average monthly wage in the state as defined in RCW 51.08.018 shall be paid.

(2)(a) Where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule:

(i) If there are no children of the deceased worker, sixty percent of the wages of the deceased worker but not less than one hundred eighty-five dollars;

(ii) If there is one child of the deceased worker and in the legal custody of such spouse, sixty-two percent of the wages of the deceased worker but not less than two hundred twenty-two dollars;

(iii) If there are two children of the deceased worker and in the legal custody of such spouse, sixty-four percent of the wages of the deceased worker but not less than two hundred fifty-three dollars;

(iv) If there are three children of the deceased worker and in the legal custody of such spouse, sixty-six percent of the wages of the deceased worker but not less than two hundred seventy-six dollars;

(v) If there are four children of the deceased worker and in the legal custody of such spouse, sixty-eight percent of the wages of the deceased worker but not less than two hundred ninety-nine dollars; or

(vi) If there are five or more children of the deceased worker and in the legal custody of such spouse, seventy percent of the wages of the deceased worker but not less than three hundred twenty-two dollars.

(b) Where the surviving spouse does not have legal custody of any child or children of the deceased worker or where after the death of the worker legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children. The amount of such payments shall be five percent of the monthly benefits payable as a result of the worker's death for each such child but such payments shall not exceed twenty-five percent. Such payments on account of such child or children shall be subtracted from the amount to which such surviving spouse would have been entitled had such surviving spouse had legal custody of all of the children and the surviving spouse shall receive the remainder after such payments on account of such child or children have been subtracted. Such payments on account of a child or children not in the legal custody of such

surviving spouse shall be apportioned equally among such children.

(c) Payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: PROVIDED, That a monthly payment shall be made to the child or children of the deceased worker from the month following such remarriage in a sum equal to five percent of the wages of the deceased worker for one child and a sum equal to five percent for each additional child up to a maximum of five such children. Payments to such child or children shall be apportioned equally among such children. Such sum shall be in place of any payments theretofore made for the benefit of or on account of any such child or children. If the surviving spouse does not have legal custody of any child or children of the deceased worker, or if after the death of the worker, legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children.

(d) In no event shall the monthly payments provided in subsection (2) of this section exceed the applicable percentage of the average monthly wage in the state as computed under RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(e) In addition to the monthly payments provided for in subsection (2) (a) through (c) of this section, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be forthwith paid a sum equal to one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, any such children, or parents to share and share alike in said sum.

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i) Receiving, once and for all, a lump sum of twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i) of this section and subject to any modifications specified under subsection (2)(d) of this section and RCW 51.32.075(3) or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect; or

(ii) If a surviving spouse does not choose the option specified in subsection (2)(f)(i) of this section to accept the

lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in subsection (2)(f)(i) of this section during the life of the remarriage, or shall not prevent subsequent monthly payments to him or to her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment.

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in subsection (2)(f)(i) of this section, his or her estate shall be entitled to receive the sum specified under subsection (2)(f)(i) of this section or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

(h) The effective date of resumption of payments under subsection (2)(f)(ii) of this section to a surviving spouse based upon termination of a remarriage by death, annulment, or dissolution shall be the date of the death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received.

(i) If it should be necessary to increase the reserves in the reserve fund or to create a new pension reserve fund as a result of the amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund.

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: PROVIDED, That benefits under this subsection or subsection (4) of this section shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018, as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(4) In the event a surviving spouse receiving monthly payments dies, the child or children of the deceased worker shall receive the same payment as provided in subsection (3) of this section.

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

(7) For claims filed on or after July 1, 1986, every worker who becomes eligible for permanent total disability benefits shall elect an option as provided in RCW 51.32.067. [1995 c 199 § 6; 1993 c 521 § 1; 1991 c 88 § 2; 1988 c 161 § 2; 1986 c 58 § 3; 1982 c 63 § 18; 1977 ex.s. c 350 § 42; 1975-'76 2nd ex.s. c 45 § 2; 1975 1st ex.s. c 179 § 1; 1973 1st ex.s. c 154 § 96; 1972 ex.s. c 43 § 19; 1971 ex.s. c 289 § 7; 1965 ex.s. c 122 § 1; 1961 c 274 § 1; 1961 c 23 § 51.32.050. Prior: 1957 c 70 § 30; 1951 c 115 § 1; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Severability—1995 c 199: See note following RCW 51.12.120.

Effective date—1993 c 521: "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, 1993." [1993 c 521 § 4.]

Benefit increases—Application to certain retrospective rating agreements—1988 c 161: "The increases in benefits in RCW 51.32.050, 51.32.060, 51.32.090, and 51.32.180, contained in chapter 161, Laws of 1988 do not affect a retrospective rating agreement entered into by any employer with the department before July 1, 1988." [1988 c 161 § 15.]

Effective dates—1988 c 161 §§ 1, 2, 3, 4, and 6: "Section 4 of this act shall take effect on June 30, 1989. Sections 1, 2, 3, and 6 of this act shall take effect on July 1, 1988." [1988 c 161 § 17.]

Effective date—1986 c 58 §§ 2, 3: See note following RCW 51.32.080.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Legislative intent—1975 1st ex.s. c 179: "The legislative intent of chapter 179, Laws of 1975 1st ex. sess. (2nd SSB No. 2241) was in part to offer surviving spouses of eligible workmen two options upon remarriage; such options to be available to any otherwise eligible surviving spouse regardless of the date of death of the injured workman. Accordingly this 1976 amendatory act is required to clarify that intent." [1975-'76 2nd ex.s. c 45 § 1.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

51.32.160 Aggravation, diminution, or termination.

(1)(a) If aggravation, diminution, or termination of disability takes place, the director may, upon the application of the beneficiary, made within seven years from the date the first closing order becomes final, or at any time upon his or her own motion, readjust the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: PROVIDED, That the director may, upon application of the worker made at any time, provide proper and necessary medical and surgical services as authorized under RCW 51.36.010. The department shall promptly mail a copy of the application to the employer at the employer's last known address as shown by the records of the department.

(b) "Closing order" as used in this section means an order based on factors which include medical recommendation, advice, or examination.

(c) Applications for benefits where the claim has been closed without medical recommendation, advice, or examination are not subject to the seven year limitation of this section. The preceding sentence shall not apply to any closing order issued prior to July 1, 1981. First closing orders issued between July 1, 1981, and July 1, 1985, shall, for the purposes of this section only, be deemed issued on July 1, 1985. The time limitation of this section shall be ten years in claims involving loss of vision or function of the eyes.

(d) If an order denying an application to reopen filed on or after July 1, 1988, is not issued within ninety days of receipt of such application by the self-insured employer or the department, such application shall be deemed granted. However, for good cause, the department may extend the time for making the final determination on the application for an additional sixty days.

(2) If a worker receiving a pension for total disability returns to gainful employment for wages, the director may suspend or terminate the rate of compensation established for the disability without producing medical evidence that shows that a diminution of the disability has occurred.

(3) No act done or ordered to be done by the director, or the department prior to the signing and filing in the matter of a written order for such readjustment shall be grounds for such readjustment. [1995 c 253 § 2; 1988 c 161 § 11; 1986 c 59 § 4; 1973 1st ex.s. c 192 § 1; 1961 c 23 § 51.32.160. Prior: 1957 c 70 § 38; prior: 1951 c 115 § 5; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.32.215 Payment of compensation after appeal—Proceedings for enforcement of order—Penalty. (1)(a) If the worker or beneficiary in a state fund claim prevails in an appeal by any party to the board or the court, the department shall comply with the board or court's order with respect to the payment of compensation within the later of the following time periods:

(i) Sixty days after the compensation order has become final and is not subject to review or appeal; or

(ii) If the order has become final and is not subject to review or appeal and the department has, within the period

specified in (a)(i) of this subsection, requested the filing by the worker or beneficiary of documents necessary to make payment of compensation, sixty days after all requested documents are filed with the department.

The department may extend the sixty-day time period for an additional thirty days for good cause.

(b) If the department fails to comply with (a) of this subsection, any person entitled to compensation under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for Thurston county.

(2) In a proceeding under this section, the court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders and may award a penalty of up to one thousand dollars to the person entitled to compensation under the order.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this title. [1995 c 276 § 1.]

Application—1995 c 276: "This act applies to all appeals in state fund claims determined under Title 51 RCW on or after July 23, 1995, regardless of the date of filing of the claim." [1995 c 276 § 2.]

**Chapter 51.48
PENALTIES**

Sections

- 51.48.020 Employer's misrepresentation—False information by person claiming benefits—Penalties.
- 51.48.120 Notice of assessment for default in payments by employer—Issuance—Service—Contents.
- 51.48.150 Notice of assessment for default in payments by employer—Notice to withhold and deliver property due employer.

51.48.020 Employer's misrepresentation—False information by person claiming benefits—Penalties. (1) Any employer, who misrepresents to the department the amount of his or her payroll or employee hours upon which the premium under this title is based, shall be liable to the state in ten times the amount of the difference in premiums paid and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department. If such misrepresentations are made knowingly, an employer shall also be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW.

(2) Any person claiming benefits under this title, who knowingly gives false information required in any claim or application under this title shall be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. [1995 c 160 § 4; 1987 c 221 § 1; 1977 ex.s. c 323 § 22; 1971 ex.s. c 289 § 63; 1961 c 23 § 51.48.020. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.120 Notice of assessment for default in payments by employer—Issuance—Service—Contents. If any employer should default in any payment due to the state fund the director or the director's designee may issue a notice of assessment certifying the amount due, which notice shall be served upon the employer by mailing such notice to the employer by certified mail to the employer's last known address or served in the manner prescribed for the service of a summons in a civil action. Such notice shall contain the information that an appeal must be filed with the board of industrial insurance appeals and the director by mail or personally within thirty days of the date of service of the notice of assessment in order to appeal the assessment unless a written request for reconsideration is filed with the department of labor and industries. [1995 c 160 § 5; 1986 c 9 § 10; 1985 c 315 § 6; 1972 ex.s. c 43 § 32.]

51.48.150 Notice of assessment for default in payments by employer—Notice to withhold and deliver property due employer. The director or the director's designee is hereby authorized to issue to any person, firm, corporation, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or any agency of the state, property which is or shall become due, owing, or belonging to any employer upon whom a notice of assessment has been served by the department for payments due to the state fund. The effect of a notice and order to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability out of which such notice and order to withhold and deliver arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order to withhold and deliver when the liability out of which the notice and order to withhold and deliver arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order to withhold and deliver was made that such notice and order to withhold and deliver has been released.

The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy, by certified mail, return receipt requested, or by any duly authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation or any agency of the state upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's duly authorized representative

upon service of the notice to withhold and deliver which will be held in trust by the director for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review, or in the alternative such party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. Should any party served and named in the notice to withhold and deliver fail to make answer to such notice and order to withhold and deliver, within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against the party named in the notice to withhold and deliver for the full amount claimed by the director in the notice to withhold and deliver together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, then the employer shall be entitled to assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled. [1995 c 160 § 6; 1987 c 442 § 1119; 1986 c 9 § 11; 1972 ex.s. c 43 § 35.]

Chapter 51.52 APPEALS

Sections

51.52.060 Notice of appeal—Time—Cross-appeal—Department may modify, reverse, change, or hold in abeyance—Denial of appeal without prejudice—Exception.

51.52.060 Notice of appeal—Time—Cross-appeal—Department may modify, reverse, change, or hold in abeyance—Denial of appeal without prejudice—Exception. (1)(a) Except as otherwise specifically provided in this section, any worker, beneficiary, employer, health services provider, or other person aggrieved by an order, decision, or award of the department must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within sixty days from the day on which a copy of the order, decision, or award was communicated to such person, a notice of appeal to the board. However, a health services provider or other person aggrieved by a department order or decision making demand, whether with or without penalty, solely for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within twenty days from the day on which a copy of the order or decision was communicated to the health services provider upon whom the department order or decision was served, a notice of appeal to the board.

(b) Failure to file a notice of appeal with both the board and the department shall not be grounds for denying the appeal if the notice of appeal is filed with either the board or the department.

(2) Within ten days of the date on which an appeal has been granted by the board, the board shall notify the other interested parties to the appeal of the receipt of the appeal and shall forward a copy of the notice of appeal to the other interested parties. Within twenty days of the receipt of such

notice of the board, the worker or the employer may file with the board a cross-appeal from the order of the department from which the original appeal was taken.

(3) If within the time limited for filing a notice of appeal to the board from an order, decision, or award of the department, the department directs the submission of further evidence or the investigation of any further fact, the time for filing the notice of appeal shall not commence to run until the person has been advised in writing of the final decision of the department in the matter. In the event the department directs the submission of further evidence or the investigation of any further fact, as provided in this section, the department shall render a final order, decision, or award within ninety days from the date further submission of evidence or investigation of further fact is ordered which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days.

(4) The department, either within the time limited for appeal, or within thirty days after receiving a notice of appeal, may:

(a) Modify, reverse, or change any order, decision, or award; or

(b)(i) Except as provided in (b)(ii) of this subsection, hold an order, decision, or award in abeyance for a period of ninety days which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days pending further investigation in light of the allegations of the notice of appeal; or

(ii) Hold an order, decision, or award issued under RCW 51.32.160 in abeyance for a period not to exceed ninety days from the date of receipt of an application under RCW 51.32.160. The department may extend the ninety-day time period for an additional sixty days for good cause.

For purposes of this subsection, good cause includes delay that results from conduct of the claimant that is subject to sanction under RCW 51.32.110.

The board shall deny the appeal upon the issuance of an order under (b) (i) or (ii) of this subsection holding an earlier order, decision, or award in abeyance, without prejudice to the appellant's right to appeal from any subsequent determinative order issued by the department.

This subsection (4)(b) does not apply to applications deemed granted under RCW 51.32.160.

(5) An employer shall have the right to appeal an application deemed granted under RCW 51.32.160 on the same basis as any other application adjudicated pursuant to that section.

(6) A provision of this section shall not be deemed to change, alter, or modify the practice or procedure of the department for the payment of awards pending appeal. [1995 c 253 § 1; 1995 c 199 § 7; 1986 c 200 § 11; 1977 ex.s. c 350 § 76; 1975 1st ex.s. c 58 § 2; 1963 c 148 § 1; 1961 c 274 § 8; 1961 c 23 § 51.52.060. Prior: 1957 c 70 § 56; 1951 c 225 § 6; prior: 1949 c 219 §§ 1, part, 6, part; 1947 c 246 § 1, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 §§ 2, part, 6, part; 1927 c 310 §§ 4, part, 8, part; 1923 c 136 § 2, part; 1919 c 134 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 §§ 5, part, 20, part; Rem Supp. 1949 §§ 7679, part, 7697, part.]

Reviser's note: This section was amended by 1995 c 199 § 7 and by 1995 c 253 § 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).

Severability—1995 c 199: See note following RCW 51.12.120.

Title 52

FIRE PROTECTION DISTRICTS

Chapters

- 52.06** Merger.
52.12 Powers—Burning permits.

Chapter 52.06

MERGER

Sections

- 52.06.050** Vote required—Status after favorable vote.

52.06.050 **Vote required—Status after favorable vote.** The board of the merging district shall notify the board of the merger district of the results of the election. If a majority of the votes cast at the election favor the merger, the respective district boards shall adopt concurrent resolutions, declaring the districts merged, under the name of the merger district. Thereupon the districts are merged into one district, under the name of the merger district; the merging district is dissolved without further proceedings; and the boundaries of the merger district are thereby extended to include all the area of the merging district. Thereafter the legal existence cannot be questioned by any person by reason of any defect in the proceedings had for the merger. [1995 c 79 § 1; 1947 c 254 § 16; Rem. Supp. 1947 § 5654-151e. Formerly RCW 52.24.050.]

Chapter 52.12

POWERS—BURNING PERMITS

Sections

- 52.12.031** Specific powers—Acquisition or lease of property or equipment—Contracts—Association of districts—Group life insurance—Building inspections—Fire investigations.

52.12.031 **Specific powers—Acquisition or lease of property or equipment—Contracts—Association of districts—Group life insurance—Building inspections—Fire investigations.** Any fire protection district organized under this title may:

(1) Lease, acquire, own, maintain, operate, and provide fire and emergency medical apparatus and all other necessary or proper facilities, machinery, and equipment for the prevention and suppression of fires, the providing of emergency medical services and the protection of life and property;

(2) Lease, acquire, own, maintain, and operate real property, improvements, and fixtures for housing, repairing, and maintaining the apparatus, facilities, machinery, and equipment described in subsection (1) of this section;

(3) Contract with any governmental entity under chapter 39.34 RCW or private person or entity to consolidate,

provide, or cooperate for fire prevention protection, fire suppression, investigation, and emergency medical purposes. In so contracting, the district or governmental entity is deemed for all purposes to be acting within its governmental capacity. This contracting authority includes the furnishing of fire prevention, fire suppression, investigation, emergency medical services, facilities, and equipment to or by the district, governmental entity, or private person or entity;

(4) Encourage uniformity and coordination of fire protection district operations. The fire commissioners of fire protection districts may form an association to secure information of value in suppressing and preventing fires and other district purposes, to hold and attend meetings, and to promote more economical and efficient operation of the associated fire protection districts. The commissioners of fire protection districts in the association shall adopt articles of association or articles of incorporation for a nonprofit corporation, select a chairman, secretary, and other officers as they may determine, and may employ and discharge agents and employees as the officers deem convenient to carry out the purposes of the association. The expenses of the association may be paid from funds paid into the association by fire protection districts: **PROVIDED**, That the aggregate contributions made to the association by a district in a calendar year shall not exceed two and one-half cents per thousand dollars of assessed valuation;

(5) Enter into contracts to provide group life insurance for the benefit of the personnel of the fire districts;

(6) Perform building and property inspections that the district deems necessary to provide fire prevention services and pre-fire planning within the district and any area that the district serves by contract in accordance with RCW 19.27.110: **PROVIDED**, That codes used by the district for building and property inspections shall be limited to the applicable codes adopted by the state, county, city, or town that has jurisdiction over the area in which the property is located. A copy of inspection reports prepared by the district shall be furnished by the district to the appropriate state, county, city, or town that has jurisdiction over the area in which the property is located: **PROVIDED**, That nothing in this subsection shall be construed to grant code enforcement authority to a district. This subsection shall not be construed as imposing liability on any governmental jurisdiction;

(7) Determine the origin and cause of fires occurring within the district and any area the district serves by contract. In exercising the authority conferred by this subsection, the fire protection district and its authorized representatives shall comply with the provisions of RCW 48.48.060;

(8) Perform acts consistent with this title and not otherwise prohibited by law. [1995 c 369 § 65; 1986 c 311 § 1; 1984 c 238 § 1; 1973 1st ex.s. c 195 § 48; 1963 c 101 § 1; 1959 c 237 § 2; 1947 c 254 § 6; 1941 c 70 § 4; 1939 c 34 § 20; Rem. Supp. 1947 § 5654-120. Formerly RCW 52.08.030.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Hospitalization and medical insurance authorized: RCW 41.04.180.

Use of city fire apparatus beyond city limits: RCW 35.84.040.

Title 53 PORT DISTRICTS

Chapters

- 53.06** Coordination of administrative programs and operations.
53.08 Powers.
53.36 Finances.

Chapter 53.06

COORDINATION OF ADMINISTRATIVE PROGRAMS AND OPERATIONS

Sections

- 53.06.060 Financial records of association subject to audit by state auditor.

53.06.060 Financial records of association subject to audit by state auditor. The financial records of the Washington public ports association shall be subject to audit by the state auditor. [1995 c 301 § 74; 1961 c 31 § 6.]

Chapter 53.08

POWERS

Sections

- 53.08.070 Rates and charges—Government contracts.

53.08.070 Rates and charges—Government contracts. A district may fix, without right of appeal therefrom the rates of wharfage, dockage, warehousing, and port and terminal charges upon all improvements owned and operated by it, and the charges of ferries operated by it.

It may fix, subject to state regulation, rates of wharfage, dockage, warehousing, and all necessary port and terminal charges upon all docks, wharves, warehouses, quays, and piers owned by it and operated under lease from it.

Notwithstanding any provision of this section, a port district may enter into any contract for wharfage, dockage, warehousing, or port or terminal charges, with the United States or any governmental agency thereof or with the state of Washington or any political subdivision thereof under such terms as the commission may, in its discretion, negotiate. [1995 c 146 § 1; 1955 c 65 § 8. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Utilities and transportation commission: Chapter 80.01 RCW.

Chapter 53.36

FINANCES

Sections

- 53.36.030 Indebtedness—Limitation.

53.36.030 Indebtedness—Limitation. (1)(a) Except as provided in (b) of this subsection, a port district may at any time contract indebtedness or borrow money for district purposes and may issue general obligation bonds therefor not exceeding an amount, together with any existing indebtedness of the district not authorized by the voters, of one-fourth of one percent of the value of the taxable property in the district.

(b) Port districts having less than eight hundred million dollars in value of taxable property during 1991 may at any time contract indebtedness or borrow money for port district purposes and may issue general obligation bonds therefor not exceeding an amount, combined with existing indebtedness of the district not authorized by the voters, of three-eighths of one percent of the value of the taxable property in the district. Prior to contracting for any indebtedness authorized by this subsection (1)(b), the port district must have a comprehensive plan for harbor improvements or industrial development and a long-term financial plan approved by the department of community, trade, and economic development. The department of community, trade, and economic development is immune from any liability for its part in reviewing or approving port district's improvement or development plans, or financial plans. Any indebtedness authorized by this subsection (1)(b) may be used only to acquire or construct a facility, and, prior to contracting for such indebtedness, the port district must have a lease contract for a minimum of five years for the facility to be acquired or constructed by the debt.

(2) With the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, a port district may contract indebtedness or borrow money for district purposes and may issue general obligation bonds therefor provided the total indebtedness of the district at any such time shall not exceed three-fourths of one percent of the value of the taxable property in the district.

(3) In addition to the indebtedness authorized under subsections (1) and (2) of this section, port districts having less than two hundred million dollars in value of taxable property and operating a municipal airport may at any time contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor not exceeding an additional one-eighth of one percent of the value of the taxable property in the district without authorization by the voters; and, with the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, may contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor for an additional three-eighths of one percent provided the total indebtedness of the district for all port purposes at any such time shall not exceed one and one-fourth percent of the value of the taxable property in the district.

(4) Any port district may issue general district bonds evidencing any indebtedness, payable at any time not exceeding fifty years from the date of the bonds. Any contract for indebtedness or borrowed money authorized by RCW 53.36.030(1)(b) shall not exceed twenty-five years. The bonds shall be issued and sold in accordance with chapter 39.46 RCW.

(5) Elections required under this section shall be held as provided in RCW 39.36.050.

(6) For the purpose of this section, "indebtedness of the district" shall not include any debt of a county-wide district with a population less than twenty-five hundred people when the debt is secured by a mortgage on property leased to the federal government; and the term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015. [1995 c 102 § 1; 1991 c 314 § 29; 1990 c 254 § 1; 1984 c 186 § 41; 1970 ex.s. c 42 § 32; 1965 ex.s. c 54 § 1; 1959 c 52 § 1; 1955 c 65 § 12. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Findings—1991 c 314: See note following RCW 43.31.601.

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

Elections to authorize port district bonds: Chapter 39.40 RCW.

General provisions applicable to district bonds: Chapter 39.44 RCW.

Limitation upon indebtedness: State Constitution Art. 8 § 6 (Amendment 27); chapter 39.36 RCW.

Port district indebtedness authorized, emergency public works: RCW 39.28.030.

Title 54

PUBLIC UTILITY DISTRICTS

Chapters

- 54.04** General provisions.
- 54.16** Powers.
- 54.24** Finances.
- 54.52** Voluntary contributions to assist low-income customers.

Chapter 54.04

GENERAL PROVISIONS

Sections

- 54.04.082 Alternative bid procedure.

54.04.082 Alternative bid procedure. For the awarding of a contract to purchase any item, or items of the same kind of materials, equipment, or supplies in an amount exceeding five thousand dollars, but less than thirty-five thousand dollars, exclusive of sales tax, the commission may, in lieu of the procedure described in RCW 54.04.070 and 54.04.080 requiring public notice to invite sealed proposals for such materials, equipment, or supplies, pursuant to commission resolution use the process provided in RCW 39.04.190. Waiver of the deposit or bid bond required under RCW 54.04.080 may be authorized by the commission in securing such bid quotations. [1995 c 354 § 1; 1993 c 198 § 15; 1977 ex.s. c 116 § 1.]

Chapter 54.16 POWERS

Sections

- 54.16.285 Limitations on termination of utility service for residential heating.

54.16.285 Limitations on termination of utility service for residential heating. (1) A district providing utility service for residential space heating shall not terminate such utility service between November 15 through March 15 if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

(b) Provides self-certification of household income for the prior twelve months to a grantee of the department of community, trade, and economic development which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

(c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

(d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15 and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer shall not be eligible for protections under this chapter until the past due bill is paid. The plan shall not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

(f) Agrees to pay the moneys owed even if he or she moves.

(2) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

(b) Assist the customer in fulfilling the requirements under this section;

(c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area;

(d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this section. Customers who qualify for payment plans under this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected; and

(e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer contacts the utility and fulfills the other requirements of this section.

(3) All districts providing utility service for residential space heating shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(4) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter. [1995 c 399 § 144; 1991 c 165 § 3; 1990 1st ex.s. c 1 § 3; 1986 c 245 § 3; 1985 c 6 § 19; 1984 c 251 § 2.]

Findings—1991 c 165: See note following RCW 35.21.300.

Chapter 54.24 FINANCES

Sections

54.24.080 Rates and charges—Waiver of connection charges for low-income persons.

54.24.080 Rates and charges—Waiver of connection charges for low-income persons. (1) The commission of each district which shall have revenue obligations outstanding shall have the power and shall be required to establish, maintain, and collect rates or charges for electric energy and water and other services, facilities, and commodities sold, furnished, or supplied by the district. The rates and charges shall be fair and, except as authorized by RCW 74.38.070 and by subsections (2) and (3) of this section, nondiscriminatory, and shall be adequate to provide revenues sufficient for the payment of the principal of and interest on such revenue obligations for which the payment has not otherwise been provided and all payments which the district is obligated to set aside in any special fund or funds created for such purpose, and for the proper operation and maintenance of the

public utility and all necessary repairs, replacements, and renewals thereof.

(2) The commission of a district may waive connection charges for properties purchased by low-income persons from organizations exempt from tax under section 501(c)(3) of the federal internal revenue code as amended prior to the July 23, 1995. Waivers of connection charges for the same class of electric or gas utility service must be uniformly applied to all qualified property. Nothing in this subsection (2) authorizes the impairment of a contract.

(3) In establishing rates or charges for water service, commissioners may in their discretion consider the achievement of water conservation goals and the discouragement of wasteful water use practices. [1995 c 140 § 3; 1991 c 347 § 21; 1959 c 218 § 9; 1941 c 182 § 7; Rem. Supp. 1941 § 11611-7.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Chapter 54.52

VOLUNTARY CONTRIBUTIONS TO ASSIST LOW-INCOME CUSTOMERS

Sections

54.52.010 Voluntary contributions to assist low-income residential customers—Administration.
54.52.020 Disbursal of contributions—Quarterly report.

54.52.010 Voluntary contributions to assist low-income residential customers—Administration. A public utility district may include along with, or as part of its regular customer billings, a request for voluntary contributions to assist qualified low-income residential customers of the district in paying their electricity bills. All funds received by the district in response to such requests shall be transmitted to the grantee of the department of community, trade, and economic development which administers federally funded energy assistance programs for the state in the district's service area or to a charitable organization within the district's service area. All such funds shall be used solely to supplement assistance to low-income residential customers of the district in paying their electricity bills. The grantee or charitable organization shall be responsible to determine which of the district's customers are qualified for low-income assistance and the amount of assistance to be provided to those who are qualified. [1995 c 399 § 145; 1985 c 6 § 20; 1984 c 59 § 1.]

54.52.020 Disbursal of contributions—Quarterly report. All assistance provided under this chapter shall be disbursed by the grantee or charitable organization. Where possible the public utility district will be paid on behalf of the customer by the grantee or the charitable organization. When direct vendor payment is not feasible, a check will be issued jointly payable to the customer and the public utility district. The availability of funds for assistance to a district's low-income customers as a result of voluntary contributions shall not reduce the amount of assistance for which the district's customers are eligible under the federally funded energy assistance programs administered by the grantee of the department of community, trade, and econom-

ic development within the district's service area. The grantee or charitable organization shall provide the district with a quarterly report on January 15th, April 15th, July 15th, and October 15th which includes information concerning the total amount of funds received from the district, the names of all recipients of assistance from these funds, the amount received by each recipient, and the amount of funds received from the district currently on hand and available for future low-income assistance. [1995 c 399 § 146; 1985 c 6 § 21; 1984 c 59 § 2.]

Title 56

SEWER DISTRICTS

Chapters

- 56.08 Powers—Comprehensive plan.**
- 56.24 Annexation of territory.**
- 56.40 Voluntary contributions to assist low-income customers.**

Chapter 56.08

POWERS—COMPREHENSIVE PLAN

Sections

- 56.08.110 Association of district commissioners—Purpose—Expenses—Personnel—Limitation on district's contribution—Audit by state auditor.
- 56.08.200 Sewer and water connections without district permission—Penalties.

56.08.110 Association of district commissioners—Purpose—Expenses—Personnel—Limitation on district's contribution—Audit by state auditor. To improve the organization and operation of sewer districts, the commissioners of two or more such districts may form an association thereof, for the purpose of securing and disseminating information of value to the members of the association and for the purpose of promoting the more economical and efficient operation of the comprehensive plans of sewer systems in their respective districts. The commissioners of sewer districts so associated shall adopt articles of association, select such officers as they may determine, and employ and discharge such agents and employees as shall be deemed convenient to carry out the purposes of the association. Sewer district commissioners and their employees are authorized to attend meetings of the association. The expense of the association may be paid from the maintenance or general funds of the associated districts in such manner as shall be provided in the articles of association: **PROVIDED**, That the aggregate contributions made to the association by the district in any calendar year shall not exceed the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property of the district. The financial records of such association shall be subject to audit by the state auditor. [1995 c 301 § 75; 1973 1st ex.s. c 195 § 62; 1970 ex.s. c 47 § 4; 1961 c 267 § 1.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

56.08.200 Sewer and water connections without district permission—Penalties. It is unlawful and a misdemeanor to make, or cause to be made, or to maintain any connection with any sewer or water system of any sewer district, or with any sewer or water system which is connected directly or indirectly with any sewer or water system of any sewer district without having permission from the sewer district. [1995 c 376 § 14; 1991 c 190 § 1.]

Findings—1995 c 376: See note following RCW 70.116.060.

Chapter 56.24

ANNEXATION OF TERRITORY

Sections

- 56.24.205 Annexation of certain unincorporated territory with boundaries contiguous to two municipal corporations providing sewer service—Procedure.

56.24.205 Annexation of certain unincorporated territory with boundaries contiguous to two municipal corporations providing sewer service—Procedure. When there is unincorporated territory containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to two municipal corporations providing sewer service, one of which is either a sewer or water district, the legislative authority of either of the contiguous municipal corporations may resolve to annex such territory to that municipal corporation, provided a majority of the legislative authority of the other contiguous municipal corporation concurs. The municipal corporation resolving to annex such territory may proceed to effect the annexation by complying with RCW 56.24.180 through 56.24.200. For purposes of this section, "municipal corporation" means a water district, sewer district, city, or town. [1995 c 279 § 1; 1987 c 449 § 8.]

Chapter 56.40

VOLUNTARY CONTRIBUTIONS TO ASSIST LOW-INCOME CUSTOMERS

Sections

- 56.40.010 Voluntary contributions to assist low-income residential customers—Administration.
- 56.40.020 Disbursement of contributions—Quarterly report.

56.40.010 Voluntary contributions to assist low-income residential customers—Administration. A sewer district may include along with, or as part of its regular customer billings, a request for voluntary contributions to assist qualified low-income residential customers of the district in paying their sewer district bills. All funds received by the district in response to such requests shall be transmitted to the grantee of the department of community, trade, and economic development which administers federally funded energy assistance programs for the state in the district's service area or to a charitable organization within the district's service area. All such funds shall be used solely to supplement assistance to low-income residential customers of the district in paying their sewer district bills. The grantee or charitable organization shall be responsible to

determine which of the district's customers are qualified for low-income assistance and the amount of assistance to be provided to those who are qualified. [1995 c 399 § 147; 1993 c 45 § 1.]

56.40.020 Disbursement of contributions—Quarterly report. All assistance provided under this chapter shall be disbursed by the grantee or charitable organization. Where possible the sewer district will be paid on behalf of the customer by the grantee or the charitable organization. When direct vendor payment is not feasible, a check will be issued jointly payable to the customer and the sewer district. The availability of funds for assistance to a district's low-income customers as a result of voluntary contributions shall not reduce the amount of assistance for which the district's customers are eligible under the federally funded energy assistance programs administered by the grantee of the department of community, trade, and economic development within the district's service area. The grantee or charitable organization shall provide the district with a quarterly report on January 15th, April 15th, July 15th, and October 15th which includes information concerning the total amount of funds received from the district, the names of all recipients of assistance from these funds, the amount received by each recipient, and the amount of funds received from the district currently on hand and available for future low-income assistance. [1995 c 399 § 148; 1993 c 45 § 2.]

Title 57

WATER DISTRICTS

Chapters

- 57.08 Powers.**
57.24 Annexation of territory.
57.46 Voluntary contributions to assist low-income customers.

Chapter 57.08

POWERS

Sections

- 57.08.110 Association of commissioners—Purposes—Powers—Expenses—Records audited by state auditor.
 57.08.180 Sewer and water connections without district permission—Penalties.

57.08.110 Association of commissioners—Purposes—Powers—Expenses—Records audited by state auditor. To improve the organization and operation of water districts, the commissioners of two or more such districts may form an association thereof, for the purpose of securing and disseminating information of value to the members of the association and for the purpose of promoting the more economical and efficient operation of the comprehensive plans of water supply in their respective districts. The commissioners of water districts so associated shall adopt articles of association, select such officers as they may determine, and employ and discharge such agents and

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employees as shall be deemed convenient to carry out the purposes of the association. Water district commissioners and employees are authorized to attend meetings of the association. The expense of the association may be paid from the maintenance or general funds of the associated districts in such manner as shall be provided in the articles of association: PROVIDED, That the aggregate contributions made to the association by the district in any calendar year shall not exceed the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property of the district. The financial records of such association shall be subject to audit by the state auditor. [1995 c 301 § 76; 1973 1st ex.s. c 195 § 68; 1970 ex.s. c 47 § 5; 1961 c 242 § 1.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

57.08.180 Sewer and water connections without district permission—Penalties. It is unlawful and a misdemeanor to make, or cause to be made, or to maintain any connection with any sewer or water system of any water district, or with any sewer or water system which is connected directly or indirectly with any sewer or water system of any water district without having permission from the water district. [1995 c 376 § 15; 1991 c 190 § 5.]

Findings—1995 c 376: See note following RCW 70.116.060.

Chapter 57.24

ANNEXATION OF TERRITORY

Sections

- 57.24.210 Annexation of certain unincorporated territory with boundaries contiguous to two municipal corporations providing water service—Procedure.

57.24.210 Annexation of certain unincorporated territory with boundaries contiguous to two municipal corporations providing water service—Procedure. When there is unincorporated territory containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to two municipal corporations providing water service, one of which is either a water or sewer district, the legislative authority of either of the contiguous municipal corporations may resolve to annex such territory to that municipal corporation, provided a majority of the legislative authority of the other contiguous municipal corporation concurs. In such event, the municipal corporation resolving to annex such territory may proceed to effect the annexation by complying with RCW 57.24.170 through 57.24.190. For purposes of this section, "municipal corporation" means a water district, sewer district, city, or town. [1995 c 279 § 2; 1987 c 449 § 17.]

Chapter 57.46

VOLUNTARY CONTRIBUTIONS TO ASSIST LOW-INCOME CUSTOMERS

Sections

- 57.46.010 Voluntary contributions to assist low-income residential customers—Administration.
 57.46.020 Disbursement of contributions—Quarterly report.

57.46.010 Voluntary contributions to assist low-income residential customers—Administration. A water district may include along with, or as part of its regular customer billings, a request for voluntary contributions to assist qualified low-income residential customers of the district in paying their water district bills. All funds received by the district in response to such requests shall be transmitted to the grantee of the department of community, trade, and economic development which administers federally funded energy assistance programs for the state in the district's service area or to a charitable organization within the district's service area. All such funds shall be used solely to supplement assistance to low-income residential customers of the district in paying their water district bills. The grantee or charitable organization shall be responsible to determine which of the district's customers are qualified for low-income assistance and the amount of assistance to be provided to those who are qualified. [1995 c 399 § 149; 1993 c 45 § 5.]

57.46.020 Disbursement of contributions—Quarterly report. All assistance provided under this chapter shall be disbursed by the grantee or charitable organization. Where possible the water district will be paid on behalf of the customer by the grantee or the charitable organization. When direct vendor payment is not feasible, a check will be issued jointly payable to the customer and the water district. The availability of funds for assistance to a district's low-income customers as a result of voluntary contributions shall not reduce the amount of assistance for which the district's customers are eligible under the federally funded energy assistance programs administered by the grantee of the department of community, trade, and economic development within the district's service area. The grantee or charitable organization shall provide the district with a quarterly report on January 15th, April 15th, July 15th, and October 15th which includes information concerning the total amount of funds received from the district, the names of all recipients of assistance from these funds, the amount received by each recipient, and the amount of funds received from the district currently on hand and available for future low-income assistance. [1995 c 399 § 150; 1993 c 45 § 6.]

Title 58

BOUNDARIES AND PLATS

Chapters

58.17 Plats—Subdivisions—Dedications.

Chapter 58.17

PLATS—SUBDIVISIONS—DEDICATIONS

Sections

- 58.17.020 Definitions.
- 58.17.090 Notice of public hearing.
- 58.17.092 Public notice—Identification of affected property.

- 58.17.100 Review of preliminary plats by planning commission or agency—Recommendation—Change by legislative body—Procedure—Approval.
- 58.17.110 Approval or disapproval of subdivision and dedication—Factors to be considered—Conditions for approval—Finding—Release from damages.
- 58.17.140 Time limitation for approval or disapproval of plats—Extensions.
- 58.17.180 Review of decision.
- 58.17.225 Easement over public open space—May be exempt from RCW 58.17.215—Hearing—Notice.
- 58.17.330 Hearing examiner system—Adoption authorized—Procedures—Decisions.

58.17.020 Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(1) "Subdivision" is the division or redivision of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in subsection (6) of this section.

(2) "Plat" is a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.

(3) "Dedication" is the deliberate appropriation of land by an owner for any general and public uses, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or short plat showing the dedication thereon; and, the acceptance by the public shall be evidenced by the approval of such plat for filing by the appropriate governmental unit.

A dedication of an area of less than two acres for use as a public park may include a designation of a name for the park, in honor of a deceased individual of good character.

(4) "Preliminary plat" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

(5) "Final plat" is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and in local regulations adopted under this chapter.

(6) "Short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership: PROVIDED, That the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine.

(7) "Binding site plan" means a drawing to a scale specified by local ordinance which: (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local govern-

ment body having authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.

(8) "Short plat" is the map or representation of a short subdivision.

(9) "Lot" is a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts or parcels.

(10) "Block" is a group of lots, tracts, or parcels within well defined and fixed boundaries.

(11) "County treasurer" shall be as defined in chapter 36.29 RCW or the office or person assigned such duties under a county charter.

(12) "County auditor" shall be as defined in chapter 36.22 RCW or the office or person assigned such duties under a county charter.

(13) "County road engineer" shall be as defined in chapter 36.40 RCW or the office or person assigned such duties under a county charter.

(14) "Planning commission" means that body as defined in chapters 36.70, 35.63, or 35A.63 RCW as designated by the legislative body to perform a planning function or that body assigned such duties and responsibilities under a city or county charter.

(15) "County commissioner" shall be as defined in chapter 36.32 RCW or the body assigned such duties under a county charter. [1995 c 32 § 2; 1983 c 121 § 1. Prior: 1981 c 293 § 2; 1981 c 292 § 1; 1969 ex.s. c 271 § 2.]

Severability—1981 c 293: See note following RCW 58.17.010.

Camping resort contracts—Nonapplicability of certain laws to—Resort not subdivision except under city, county powers: RCW 19.105.510.

58.17.090 Notice of public hearing. (1) Upon receipt of an application for preliminary plat approval the administrative officer charged by ordinance with responsibility for administration of regulations pertaining to platting and subdivisions shall provide public notice and set a date for a public hearing. Except as provided in RCW 36.70B.110, at a minimum, notice of the hearing shall be given in the following manner:

(a) Notice shall be published not less than ten days prior to the hearing in a newspaper of general circulation within the county and a newspaper of general circulation in the area where the real property which is proposed to be subdivided is located; and

(b) Special notice of the hearing shall be given to adjacent landowners by any other reasonable method local authorities deem necessary. Adjacent landowners are the owners of real property, as shown by the records of the county assessor, located within three hundred feet of any portion of the boundary of the proposed subdivision. If the owner of the real property which is proposed to be subdivided owns another parcel or parcels of real property which lie adjacent to the real property proposed to be subdivided, notice under this subsection (1)(b) shall be given to owners of real property located within three hundred feet of any portion of the boundaries of such adjacently located parcels of real property owned by the owner of the real property proposed to be subdivided.

(2) All hearings shall be public. All hearing notices shall include a description of the location of the proposed subdivision. The description may be in the form of either a vicinity location sketch or a written description other than a legal description. [1995 c 347 § 426; 1981 c 293 § 5; 1974 ex.s. c 134 § 4; 1969 ex.s. c 271 § 9.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.092 Public notice—Identification of affected property. Any notice made under chapter 58.17 or 36.70B RCW that identifies affected property may identify this affected property without using a legal description of the property including, but not limited to, identification by an address, written description, vicinity sketch, or other reasonable means. [1995 c 347 § 427; 1988 c 168 § 12.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

58.17.100 Review of preliminary plats by planning commission or agency—Recommendation—Change by legislative body—Procedure—Approval. If a city, town or county has established a planning commission or planning agency in accordance with state law or local charter, such commission or agency shall review all preliminary plats and make recommendations thereon to the city, town or county legislative body to assure conformance of the proposed subdivision to the general purposes of the comprehensive plan and to planning standards and specifications as adopted by the city, town or county. Reports of the planning commission or agency shall be advisory only: PROVIDED, That the legislative body of the city, town or county may, by ordinance, assign to such commission or agency, or any department official or group of officials, such administrative functions, powers and duties as may be appropriate, including the holding of hearings, and recommendations for approval or disapproval of preliminary plats of proposed subdivisions.

Such recommendation shall be submitted to the legislative body not later than fourteen days following action by the hearing body. Upon receipt of the recommendation on any preliminary plat the legislative body shall at its next public meeting set the date for the public meeting where it shall consider the recommendations of the hearing body and may adopt or reject the recommendations of such hearing body based on the record established at the public hearing. If, after considering the matter at a public meeting, the legislative body deems a change in the planning commission's or planning agency's recommendation approving or disapproving any preliminary plat is necessary, the legislative body shall adopt its own recommendations and approve or disapprove the preliminary plat.

Every decision or recommendation made under this section shall be in writing and shall include findings of fact and conclusions to support the decision or recommendation.

A record of all public meetings and public hearings shall be kept by the appropriate city, town or county authority and shall be open to public inspection.

Sole authority to approve final plats, and to adopt or amend platting ordinances shall reside in the legislative

bodies. [1995 c 347 § 428; 1981 c 293 § 6; 1969 ex.s. c 271 § 10.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.110 Approval or disapproval of subdivision and dedication—Factors to be considered—Conditions for approval—Finding—Release from damages. (1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

(3) If the preliminary plat includes a dedication of a public park with an area of less than two acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city, town, or county legislative body must adopt the designated name. [1995 c 32 § 3; 1990 1st ex.s. c 17 § 52; 1989 c 330 § 3; 1974 ex.s. c 134 § 5; 1969 ex.s. c 271 § 11.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

58.17.140 Time limitation for approval or disapproval of plats—Extensions. Preliminary plats of any

proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period or the ninety day limitation is extended to include up to twenty-one days as specified under RCW 58.17.095(3): PROVIDED, That if an environmental impact statement is required as provided in RCW 43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency. Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period. A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within five years of the date of preliminary plat approval. Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements. [1995 c 68 § 1; 1986 c 233 § 2; 1983 c 121 § 3; 1981 c 293 § 7; 1974 ex.s. c 134 § 8; 1969 ex.s. c 271 § 14.]

Applicability—1986 c 233: See note following RCW 58.17.095.

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.180 Review of decision. Any decision approving or disapproving any plat shall be reviewable under chapter 36.70C RCW. [1995 c 347 § 717; 1983 c 121 § 5; 1969 ex.s. c 271 § 18.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

58.17.225 Easement over public open space—May be exempt from RCW 58.17.215—Hearing—Notice. The granting of an easement for ingress and egress or utilities over public property that is held as open space pursuant to a subdivision or plat, where the open space is already used as a utility right of way or corridor, where other access is not feasible, and where the granting of the easement will not impair public access or authorize construction of physical barriers of any type, may be authorized and exempted from the requirements of RCW 58.17.215 by the county, city, or town legislative authority following a public hearing with notice to the property owners in the affected plat. [1995 c 32 § 1.]

58.17.330 Hearing examiner system—Adoption authorized—Procedures—Decisions. (1) As an alternative to those provisions of this chapter requiring a planning commission to hear and issue recommendations for plat approval, the county or city legislative body may adopt a hearing examiner system and shall specify by ordinance the legal effect of the decisions made by the examiner. The legal effect of such decisions shall include one of the following:

(a) The decision may be given the effect of a recommendation to the legislative body;

(b) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body; or

(c) The decision may be given the effect of a final decision of the legislative body.

The legislative authority shall prescribe procedures to be followed by a hearing examiner.

(2) Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Each final decision of a hearing examiner, unless a longer period is mutually agreed to by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings. [1995 c 347 § 429; 1994 c 257 § 6; 1977 ex.s. c 213 § 4.]

Finding—Severability—Part headings and table of contents table—1995 c 347: See notes following RCW 36.70A.470.

Severability—1994 c 257: See note following RCW 36.70A.270.

Severability—1977 ex.s. c 213: See note following RCW 35.63.130.

Title 59

LANDLORD AND TENANT

Chapters

- 59.18 Residential landlord-tenant act.
- 59.21 Mobile home relocation assistance.
- 59.22 Office of mobile home affairs—Resident-owned mobile home parks.
- 59.24 Rental security deposit guarantee program.
- 59.28 Federally assisted housing.

Chapter 59.18

RESIDENTIAL LANDLORD-TENANT ACT

Sections

- 59.18.440 Relocation assistance for low-income tenants—Certain cities, towns, counties, municipal corporations authorized to require.

59.18.440 Relocation assistance for low-income tenants—Certain cities, towns, counties, municipal corporations authorized to require. (1) Any city, town, county, or municipal corporation that is required to develop a comprehensive plan under RCW 36.70A.040(1) is authorized to require, after reasonable notice to the public and a public hearing, property owners to provide their portion of reasonable relocation assistance to low-income tenants upon the demolition, substantial rehabilitation whether due to code enforcement or any other reason, or change of use of residential property, or upon the removal of use restrictions in an assisted-housing development. No city, town, county, or municipal corporation may require property owners to provide relocation assistance to low-income tenants, as defined in this chapter, upon the demolition, substantial rehabilitation, upon the change of use of residential property, or upon the removal of use restrictions in an assisted-housing development, except as expressly authorized herein or when authorized or required by state or federal law. As used in this section, "assisted housing development" means a

multifamily rental housing development that either receives government assistance and is defined as federally assisted housing in RCW 59.28.020, or that receives other federal, state, or local government assistance and is subject to use restrictions.

(2) As used in this section, "low-income tenants" means tenants whose combined total income per dwelling unit is at or below fifty percent of the median income, adjusted for family size, in the county where the tenants reside.

The department of community, trade, and economic development shall adopt rules defining county median income in accordance with the definitions promulgated by the federal department of housing and urban development.

(3) A requirement that property owners provide relocation assistance shall include the amounts of such assistance to be provided to low-income tenants. In determining such amounts, the jurisdiction imposing the requirement shall evaluate, and receive public testimony on, what relocation expenses displaced tenants would reasonably incur in that jurisdiction including:

- (a) Actual physical moving costs and expenses;
- (b) Advance payments required for moving into a new residence such as the cost of first and last month's rent and security and damage deposits;
- (c) Utility connection fees and deposits; and
- (d) Anticipated additional rent and utility costs in the residence for one year after relocation.

(4)(a) Relocation assistance provided to low-income tenants under this section shall not exceed two thousand dollars for each dwelling unit displaced by actions of the property owner under subsection (1) of this section. A city, town, county, or municipal corporation may make future annual adjustments to the maximum amount of relocation assistance required under this subsection in order to reflect any changes in the housing component of the consumer price index as published by the United States department of labor, bureau of labor statistics.

(b) The property owner's portion of any relocation assistance provided to low-income tenants under this section shall not exceed one-half of the required relocation assistance under (a) of this subsection in cash or services.

(c) The portion of relocation assistance not covered by the property owner under (b) of this subsection shall be paid by the city, town, county, or municipal corporation authorized to require relocation assistance under subsection (1) of this section. The relocation assistance may be paid from proceeds collected from the excise tax imposed under RCW 82.46.010.

(5) A city, town, county, or municipal corporation requiring the provision of relocation assistance under this section shall adopt policies, procedures, or regulations to implement such requirement. Such policies, procedures, or regulations shall include provisions for administrative hearings to resolve disputes between tenants and property owners relating to relocation assistance or unlawful detainer actions during relocation, and shall require a decision within thirty days of a request for a hearing by either a tenant or property owner.

Judicial review of an administrative hearing decision relating to relocation assistance may be had by filing a petition, within ten days of the decision, in the superior court in the county where the residential property is located.

Judicial review shall be confined to the record of the administrative hearing and the court may reverse the decision only if the administrative findings, inferences, conclusions, or decision is:

- (a) In violation of constitutional provisions;
- (b) In excess of the authority or jurisdiction of the administrative hearing officer;
- (c) Made upon unlawful procedure or otherwise is contrary to law; or
- (d) Arbitrary and capricious.

(6) Any city, town, county, or municipal corporation may require relocation assistance, under the terms of this section, for otherwise eligible tenants whose living arrangements are exempted from the provisions of this chapter under RCW 59.18.040(3) and if the living arrangement is considered to be a rental or lease pursuant to RCW 67.28.180(1).

(7)(a) Persons who move from a dwelling unit prior to the application by the owner of the dwelling unit for any governmental permit necessary for the demolition, substantial rehabilitation, or change of use of residential property or prior to any notification or filing required for condominium conversion shall not be entitled to the assistance authorized by this section.

(b) Persons who move into a dwelling unit after the application for any necessary governmental permit or after any required condominium conversion notification or filing shall not be entitled to the assistance authorized by this section if such persons receive written notice from the property owner prior to taking possession of the dwelling unit that specifically describes the activity or condition that may result in their temporary or permanent displacement and advises them of their ineligibility for relocation assistance. [1995 c 399 § 151; 1990 1st ex.s. c 17 § 49.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Chapter 59.21

MOBILE HOME RELOCATION ASSISTANCE

Sections

59.21.005	Declaration—Purpose.
59.21.006	Declaration—Intent—Purpose—1995 c 122.
59.21.010	Definitions.
59.21.015	Relocation assistance—Eligibility before January 1, 1996—Applications—Disbursement.
59.21.020	Repealed.
59.21.021	Relocation assistance—Eligibility after December 31, 1995—First-come, first-serve basis.
59.21.025	Relocation assistance—Sources other than fund—Reductions.
59.21.030	Notice—Requirements.
59.21.035	Repealed.
59.21.040	Relocation assistance—Exemptions.
59.21.050	Relocation fund—Administration—Tenant's application—Form.
59.21.070	Rental agreement—Covenants.
59.21.080	Repealed.
59.21.085	Repealed.
59.21.095	Repealed.
59.21.105	Existing older mobile homes—Forced relocation—Code waiver.
59.21.900	Repealed.
59.21.901	Repealed.
59.21.902	Repealed.

59.21.903	Repealed.
59.21.904	Severability—1995 c 122.
59.21.905	Effective date—1995 c 122.

59.21.005 Declaration—Purpose. The legislature recognizes that it is quite costly to move a mobile home. Many mobile home tenants need financial assistance in order to move their mobile homes from a mobile home park. The purpose of this chapter is to provide a mechanism for assisting mobile home tenants to relocate to suitable alternative sites when the mobile home park in which they reside is closed or converted to another use. [1995 c 122 § 2; 1991 c 327 § 8.]

59.21.006 Declaration—Intent—Purpose—1995 c 122. The legislature recognizes that, in the decision of *Guimont et al. v. Clarke*, 121 Wn.2d (1993), the Washington supreme court held the mobile home relocation assistance program of chapter 59.21 RCW invalid for its monetary burden on mobile home park-owners. However, during the program's operation, substantial funds were validly collected from mobile home owners and accumulated in the mobile home park relocation fund, created under the program. The legislature intends to utilize those funds for the purposes for which they were collected. The legislature also recognizes that, for a period of almost three years since this state's courts invalidated the program, no such assistance was available. The most needy tenants may have been forced to sell or abandon rather than relocate their homes in the face of park closures. Because the purpose of the program was to assist relocation, those persons should be compensated in a like manner to those who could afford to pay for relocation without assistance. To that end, the legislature has: (1) Repealed RCW 59.21.020, 59.21.035, 59.21.080, 59.21.085, 59.21.095, 59.21.900, 59.21.901, 59.21.902, and 59.21.903; (2) amended RCW 59.21.010, 59.21.030, 59.21.040, 59.21.050, 59.21.070, *59.21.100, 59.21.110, and 43.84.092; (3) reenacted without amendment RCW 59.21.005 and **59.21.105; and (4) added new sections to chapter 59.21 RCW. [1995 c 122 § 1.]

Reviser's note: *(1) RCW 59.21.100 and 59.21.110 were not amended by 1995 c 122.

***(2) RCW 59.21.105 was reenacted and amended by 1995 c 122.

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

(1) "Director" means the director of the department of community, trade, and economic development.

(2) "Department" means the department of community, trade, and economic development.

(3) "Fund" means the mobile home park relocation fund established under RCW 59.21.050.

(4) "Mobile home park" or "park" means real property that is rented or held out for rent to others for the placement of two or more mobile homes for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.

(5) "Landlord" or "park-owner" means the owner of the mobile home park that is being closed at the time relocation assistance is provided.

(6) "Relocate" means to remove the mobile home from the mobile home park being closed.

(7) "Relocation assistance" means the monetary assistance provided under *RCW 59.21.020. [1995 c 122 § 3; 1991 c 327 § 10; 1990 c 171 § 1; 1989 c 201 § 1.]

*Reviser's note: RCW 59.21.020 was repealed by 1995 c 122 § 13.

59.21.015 Relocation assistance—Eligibility before January 1, 1996—Applications—Disbursement. (1) If a mobile home park is closed or converted to another use after June 30, 1991, and before January 1, 1996, each tenant therein owning their mobile home at the time of closure or conversion is entitled to relocation assistance from the fund as follows, upon sufficient proof of eligibility.

(2) Persons who maintained ownership of and relocated their mobile homes are entitled to their actual costs of relocation, up to a maximum of six thousand five hundred dollars for a double-wide mobile home and three thousand five hundred dollars for a single-wide mobile home.

(3) Persons who sold or abandoned their mobile homes without incurring relocation expenses are entitled to a flat reimbursement of three thousand five hundred dollars for a double-wide mobile home and one thousand five hundred dollars for a single-wide mobile home.

(4) The department will accept applications for this assistance from April 20, 1995, until December 31, 1995. At the end of that period, the department shall determine the validity of all claims.

(5) Upon determination of the number and amount of valid claims, the department shall disburse the funds in the mobile home park relocation fund as follows: (a) If sufficient funds exist to pay all the claims, the department shall pay each claim fully; and (b) if sufficient funds do not exist, the department shall pay each claim on a pro rata basis. [1995 c 122 § 4.]

59.21.020 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

59.21.021 Relocation assistance—Eligibility after December 31, 1995—First-come, first-serve basis. (1) If a mobile home park is closed or converted to another use after December 31, 1995, eligible tenants shall be entitled to assistance on a first-come, first-serve basis. Payments shall be made upon the department's verification of eligibility, subject to the availability of funds remaining after the distribution under RCW 59.21.015.

(2) Assistance for closures occurring after December 31, 1995, is limited to persons who maintain ownership of and relocate their mobile home.

(3) Except under subsection (4) of this section, assistance shall be subject to the levels set forth in RCW 59.21.015(2).

(4) Any organization may apply to receive funds from the mobile home park relocation fund, for use in combination with funds from public or private sources, toward relocation of tenants eligible under this section. Funds received from the mobile home park relocation fund shall only be used for relocation assistance. [1995 c 122 § 5.]

59.21.025 Relocation assistance—Sources other than fund—Reductions. If financial assistance for relocation is obtained from sources other than the mobile home park relocation fund established under this chapter, then the relocation assistance provided to any person under this chapter shall be reduced as necessary to ensure that no person receives more than: (1) That person's actual cost of relocation; or (2) the amounts provided under RCW 59.21.015(3), whichever applies. [1995 c 122 § 6.]

59.21.030 Notice—Requirements. Notice required by RCW 59.20.080 before park closure or conversion of the park, whether twelve months or longer, shall be given to the director and all tenants in writing, and posted at all park entrances. A copy of the closure notice must be provided with all month-to-month rental agreements signed after the original closure notice date. Notice to the director must include a good faith estimate of the timetable for removal of the mobile homes and the reason for closure. Notice must also be recorded in the office of the county auditor for the county where the mobile home park is located. [1995 c 122 § 7; 1990 c 171 § 3; 1989 c 201 § 3.]

59.21.035 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

59.21.040 Relocation assistance—Exemptions. A tenant is not entitled to relocation assistance under this chapter if: (1) The tenant has given notice to the landlord of his or her intent to vacate the park and terminate the tenancy before any written notice of closure pursuant to RCW 59.20.080(1)(e) has been given, or (2) the tenant purchased a mobile home already situated in the park or moved a mobile home into the park after a written notice of closure pursuant to RCW 59.20.090 has been given and the person received actual prior notice of the change or closure. However, no tenant may be denied relocation assistance under subsection (1) of this section if the tenant has remained on the premises and continued paying rent for a period of as [at] least six months after giving notice of intent to vacate and before receiving formal notice of a closure or change of use. [1995 c 122 § 8; 1989 c 201 § 4.]

59.21.050 Relocation fund—Administration—Tenant's application—Form. (1) The existence of the mobile home park relocation fund in the custody of the state treasurer is affirmed. Expenditures from the fund may be used only for relocation assistance under RCW 59.21.015 through 59.21.025. Only the director or the director's designee may authorize expenditures from the fund. All relocation payments to tenants shall be made from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(2) A park tenant is eligible for assistance under RCW 59.21.015 only after an application is submitted by that tenant or an organization acting on the tenant's account under RCW 59.21.021(4) on a form approved by the director which shall include:

(a) For those persons who maintained ownership of and relocated their homes: (i) A copy of the notice from the

park-owner, or other adequate proof, that the tenancy is terminated due to closure of the park or its conversion to another use; (ii) a copy of the rental agreement then in force, or other proof that the applicant was a tenant at the time of notice of closure; (iii) a copy of the contract for relocating the home which includes the date of relocation, or other proof of actual relocation expenses incurred on a date certain; and (iv) a statement of any other available assistance;

(b) For those persons who sold their homes and incurred no relocation expenses: (i) A copy of the notice from the park-owner, or other adequate proof, that the tenancy is terminated due to closure of the park or its conversion to another use; (ii) a copy of the rental agreement then in force, or other proof that the applicant was a tenant at the time of notice of closure; and (iii) a copy of the record of title transfer issued by the department of licensing when the tenant sold the home rather than relocate it due to park closure or conversion. [1995 c 122 § 9; 1991 sp.s. c 13 § 74; 1991 c 327 § 12; 1990 c 171 § 5; 1989 c 201 § 5.]

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

59.21.070 Rental agreement—Covenants. If the rental agreement includes a covenant by the landlord as described in RCW 59.20.060(1)(g)(i), the covenant runs with the land and is binding upon the purchasers, successors, and assigns of the landlord. [1995 c 122 § 10; 1989 c 201 § 10.]

59.21.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

59.21.085 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

59.21.095 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

59.21.105 Existing older mobile homes—Forced relocation—Code waiver. (1) The legislature finds that existing older mobile homes provide affordable housing to many persons, and that requiring these homes that are legally located in mobile home parks to meet new fire, safety, and construction codes because they are relocating due to the closure or conversion of the mobile home park, compounds the economic burden facing these tenants.

(2) Mobile homes that are relocated due to either the closure or conversion of a mobile home park, may not be required by any city or county to comply with the requirements of any applicable fire, safety, or construction code for the sole reason of its relocation. This section shall only apply if the original occupancy classification of the building is not changed as a result of the move.

(3) This section shall not apply to mobile homes that are substantially remodeled or rehabilitated, nor to any work performed in compliance with installation requirements. For the purpose of determining whether a moved mobile home has been substantially remodeled or rebuilt, any cost relating to preparation for relocation or installation shall not be considered. [1995 c 122 § 11; 1991 c 327 § 16.]

59.21.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

59.21.901 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

59.21.902 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

59.21.903 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

59.21.904 Severability—1995 c 122. 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. [1995 c 122 § 14.]

59.21.905 Effective date—1995 c 122. 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 immediately [April 20, 1995]. [1995 c 122 § 15.]

Chapter 59.22

OFFICE OF MOBILE HOME AFFAIRS— RESIDENT-OWNED MOBILE HOME PARKS

Sections

59.22.010	Legislative findings.
59.22.020	Definitions.
59.22.070	Mobile home affairs account.

59.22.010 Legislative findings. (1) The legislature finds:

(a) That manufactured housing and mobile home parks provide a source of low-cost housing to the low income, elderly, poor and infirmed, without which they could not afford private housing; but rising costs of mobile home park development and operation, as well as turnover in ownership, has resulted in mobile home park living becoming unaffordable to the low income, elderly, poor and infirmed, resulting in increased numbers of homeless persons, and persons who must look to public housing and public programs, increasing the burden on the state to meet the housing needs of its residents;

(b) That state government can play a vital role in addressing the problems confronted by mobile home park residents by providing assistance which makes it possible for mobile home park residents to acquire the mobile home parks in which they reside and convert them to resident ownership; and

(c) That to accomplish this purpose, information and technical support shall be made available through the department.

(2) Therefore, it is the intent of the legislature, in order to maintain low-cost housing in mobile home parks to benefit the low income, elderly, poor and infirmed, to encourage and facilitate the conversion of mobile home parks to resident ownership, to protect low-income mobile

home park residents from both physical and economic displacement, to obtain a high level of private financing for mobile home park conversions, and to help establish acceptance for resident-owned mobile home parks in the private market. [1995 c 399 § 154; 1987 c 482 § 1.]

59.22.020 Definitions. The following definitions shall apply throughout this chapter unless the context clearly requires otherwise:

(1) "Account" means the mobile home affairs account created under RCW 59.22.070.

(2) "Affordable" means that, where feasible, low-income residents should not pay more than thirty percent of their monthly income for housing costs.

(3) "Conversion costs" includes the cost of acquiring the mobile home park, the costs of planning and processing the conversion, the costs of any needed repairs or rehabilitation, and any expenditures required by a government agency or lender for the project.

(4) "Department" means the department of community, trade, and economic development.

(5) "Fee" means the mobile home title transfer fee imposed under RCW 59.22.080.

(6) "Fund" or "park purchase account" means the mobile home park purchase account created pursuant to RCW 59.22.030.

(7) "Housing costs" means the total cost of owning, occupying, and maintaining a mobile home and a lot or space in a mobile home park.

(8) "Individual interest in a mobile home park" means any interest which is fee ownership or a lesser interest which entitles the holder to occupy a lot or space in a mobile home park for a period of not less than either fifteen years or the life of the holder. Individual interests in a mobile home park include, but are not limited to, the following:

(a) Ownership of a lot or space in a mobile home park or subdivision;

(b) A membership or shares in a stock cooperative, or a limited equity housing cooperative; or

(c) Membership in a nonprofit mutual benefit corporation which owns, operates, or owns and operates the mobile home park.

(9) "Low-income resident" means an individual or household who resided in the mobile home park prior to application for a loan pursuant to this chapter and with an annual income at or below eighty percent of the median income for the county of standard metropolitan statistical area of residence. Net worth shall be considered in the calculation of income with the exception of the resident's mobile/manufactured home which is used as their primary residence.

(10) "Low-income spaces" means those spaces in a mobile home park operated by a resident organization which are occupied by low-income residents.

(11) "Mobile home park" means a mobile home park, as defined in RCW 59.20.030(4), or a manufactured home park subdivision as defined by RCW 59.20.030(6) created by the conversion to resident ownership of a mobile home park.

(12) "Resident organization" means a group of mobile home park residents who have formed a nonprofit corporation, cooperative corporation, or other entity or organization

for the purpose of acquiring the mobile home park in which they reside and converting the mobile home park to resident ownership. The membership of a resident organization shall include at least two-thirds of the households residing in the mobile home park at the time of application for assistance from the department.

(13) "Resident ownership" means, depending on the context, either the ownership, by a resident organization, as defined in this section, of an interest in a mobile home park which entitles the resident organization to control the operations of the mobile home park for a term of no less than fifteen years, or the ownership of individual interests in a mobile home park, or both.

(14) "Landlord" shall have the same meaning as it does in RCW 59.20.030.

(15) "Manufactured housing" means residences constructed on one or more chassis for transportation, and which bear an insignia issued by a state or federal regulatory agency indication compliance with all applicable construction standards of the United States department of housing and urban development.

(16) "Mobile home" shall have the same meaning as it does in RCW 46.04.302.

(17) "Mobile home lot" shall have the same meaning as it does in RCW 59.20.030.

(18) "Tenant" means a person who rents a mobile home lot for a term of one month or longer and owns the mobile home on the lot. [1995 c 399 § 155; 1993 c 66 § 9; 1991 c 327 § 2; 1988 c 280 § 3; 1987 c 482 § 2.]

Construction—Severability—Effective date—1991 c 327: See RCW 59.21.901 through 59.21.903.

59.22.070 Mobile home affairs account. There is created in the custody of the state treasurer a special account known as the mobile home affairs account.

Disbursements from this special account shall be as follows:

(1) For the two-year period beginning July 1, 1988, forty thousand dollars, or so much thereof as may be necessary for costs incurred in registering landlords and collecting fees, and thereafter five thousand dollars per year for that purpose.

(2) All remaining amounts shall be remitted to the department for the purpose of implementing RCW 59.22.050 and 59.22.060. [1995 c 399 § 156; 1989 c 201 § 8; 1988 c 280 § 5.]

Severability—1989 c 201: See RCW 59.21.900.

Chapter 59.24

RENTAL SECURITY DEPOSIT GUARANTEE PROGRAM

Sections

59.24.020	Program established—Grants—Eligible participants.
59.24.050	Rules.
59.24.060	Sources of funds.

59.24.020 Program established—Grants—Eligible participants. (1) The department of community, trade, and economic development shall establish the rental security deposit guarantee program. Through this program the

department of community, trade, and economic development shall provide grants and technical assistance to local governments or nonprofit corporations, including local housing authorities as defined in RCW 35.82.030, who operate emergency housing shelters or transitional housing programs. The grants are to be used for the payment of residential rental security deposits under this chapter. The technical assistance is to help the local government or nonprofit corporation apply for grants and carry out the program. In order to be eligible for grants under this program, the recipient local government or nonprofit corporation shall provide fifteen percent of the total amount needed for the security deposit. The security deposit may include last month's rent where such rent is required as a normal practice by the landlord.

(2) The grants and matching funds shall be placed by the recipient local government or nonprofit corporation in a revolving loan fund and deposited in a bank or savings institution in an account that is separate from all other funds of the recipient. The funds and interest earned on these funds shall be utilized only as collateral to guarantee the payment of a security deposit required by a residential rental property owner as a condition for entering into a rental agreement with a prospective tenant.

(3) Prospective tenants who are eligible to participate in the rental security deposit guarantee program shall be limited to homeless persons or families who are residing in an emergency shelter or transitional housing operated by a local government or a nonprofit corporation, or to families who are temporarily residing in a park, car, or are otherwise without adequate shelter. The local government or nonprofit corporation shall make a determination regarding the person's or family's eligibility to participate in this program and a determination that a local rental unit is available for occupation. A determination of eligibility shall include, but is not limited to: (a) A determination that the person or family is homeless or is in transitional housing; (b) a verification of income and that the person or family can reasonably make the monthly rental payment; and (c) a determination that the person or family does not have the financial resources to make the rental security deposit. [1995 c 399 § 157; 1988 c 237 § 2.]

59.24.050 Rules. The department of community, trade, and economic development may adopt rules to implement this chapter, including but not limited to: (1) The eligibility of and the application process for local governments and nonprofit corporations; (2) the criteria by which grants and technical assistance shall be provided to local governments and nonprofit corporations; and (3) the criteria local governments and nonprofit corporations shall use in entering into contracts with tenants and rental property owners. [1995 c 399 § 158; 1988 c 237 § 5.]

59.24.060 Sources of funds. The department of community, trade, and economic development may receive such gifts, grants, or endowments from public or private sources, as may be made from time to time, in trust or otherwise, to be used by the department of community, trade, and economic development for its programs, including the rental security deposit guarantee program. Funds from

the housing trust fund, chapter 43.185 RCW, up to one hundred thousand dollars, may be used for the rental security deposit guarantee program by the department of community, trade, and economic development, local governments, and nonprofit organizations, provided all the requirements of this chapter and chapter 43.185 RCW are met. [1995 c 399 § 159; 1988 c 237 § 6.]

Chapter 59.28

FEDERALLY ASSISTED HOUSING

Sections

59.28.040	Notice of expiration or prepayment—Owner's duty.
59.28.050	Owner's rights—Public regulatory powers—Applicability.
59.28.060	Notice of expiration or prepayment—Contents.
59.28.110	Annual report—Contents—Distribution.

59.28.040 Notice of expiration or prepayment—Owner's duty. All owners of federally assisted housing shall, at least twelve months before the expiration of the rental assistance contract or prepayment of a mortgage or loan, serve a written notice of the anticipated expiration or prepayment date on each tenant household residing in the housing, on the clerk of the city, or county if in an unincorporated area, in which the property is located, and on the department of community, trade, and economic development, by regular and certified mail. [1995 c 399 § 160; 1989 c 188 § 4.]

59.28.050 Owner's rights—Public regulatory powers—Applicability. This chapter shall not in any way prohibit an owner of federally assisted housing from terminating a rental assistance contract or prepaying a mortgage or loan. The requirement in this chapter for notice shall not be construed as conferring any new or additional regulatory power upon the city or county clerk or upon the department of community, trade, and economic development. [1995 c 399 § 161; 1989 c 188 § 5.]

59.28.060 Notice of expiration or prepayment—Contents. The notice to tenants required by RCW 59.28.040 shall state the date of expiration or prepayment and the effect, if any, that the expiration or prepayment will have upon the tenants' rent and other terms of their rental agreement.

The notice to the city or county clerk and to the department of community, trade, and economic development required by RCW 59.28.040 shall state: (1) The name, location, and project number of the federally assisted housing and the type of assistance received from the federal government; (2) the number and size of units; (3) the age, race, family size, and estimated incomes of the tenants who will be affected by the prepayment of the loan or mortgage or expiration of the federal assistance contract; (4) the projected rent increases for each affected tenant; and (5) the anticipated date of prepayment of the loan or mortgage or expiration of the federal assistance contract. [1995 c 399 § 162; 1989 c 188 § 6.]

59.28.110 Annual report—Contents—Distribution.

The director of the department of community, trade, and economic development shall prepare an annual report on the preservation and loss of federally assisted housing in the state of Washington. The director shall include in this report recommendations for preserving federally assisted housing and for minimizing the involuntary displacement of tenants residing in such housing. The director shall provide a copy of this report to the house of representatives committee on housing and the senate committee on trade, technology, and economic development. [1995 c 399 § 163; 1989 c 188 § 11.]

Title 60 LIENS

Chapters

- 60.08 Chattel liens.**
- 60.10 Personal property liens—Summary foreclosure.**
- 60.34 Lien of restaurant, hotel, tavern, etc., employees.**
- 60.36 Lien on vessels and equipment for labor, material, damages, and handling cargo.**
- 60.52 Lien for services of sires.**
- 60.70 Limitations on nonconsensual common law liens.**
- 60.72 Landlord's lien for rent.**

Chapter 60.08 CHATTEL LIENS

Sections

- 60.08.040 Enforcement of lien—Limitation of action.

60.08.040 Enforcement of lien—Limitation of action. The lien herein provided for may be enforced against all persons having a junior or subsequent interest in any such chattel, by judicial procedure or by summary procedure as set forth in chapter 60.10 RCW within nine months after the filing of such lien notice, and if no such action shall be commenced within such time such lien shall cease. [1995 c 62 § 4; 1969 c 82 § 11; 1917 c 68 § 4; 1905 c 72 § 4; RRS § 1157.]

Secured transactions: Article 62A.9 RCW.

Chapter 60.10 PERSONAL PROPERTY LIENS—SUMMARY FORECLOSURE

Sections

- 60.10.020 Methods of foreclosure.
- 60.10.023 Judicial foreclosure of personal property liens.
- 60.10.027 Judicial foreclosure of a security interest.
- 60.10.040 Rights and interest of purchaser for value.
- 60.10.050 Redemption.

60.10.020 Methods of foreclosure. Any lien upon personal property, excluded by RCW 62A.9-104 from the provisions of the Uniform Commercial Code (Title 62A RCW), may be foreclosed by: (1) An action in the district court having jurisdiction in the district in which the property is situated in accordance with RCW 60.10.023, if the value of the claim does not exceed the jurisdictional limit of the district court provided in RCW 3.66.020; or (2) an action in the superior court having jurisdiction in the county in which the property is situated in accordance with RCW 60.10.023, if the value of the claim exceeds the jurisdictional limit of the district court provided in RCW 3.66.020; or (3) summary procedure as provided in this chapter. [1995 c 62 § 5; 1991 c 33 § 3; 1969 c 82 § 3.]

Effective date—1991 c 33: See note following RCW 3.66.020.

60.10.023 Judicial foreclosure of personal property liens. The provisions of chapter 61.12 RCW, so far as they are applicable, govern in actions for the judicial foreclosure of liens on personal property excluded by RCW 62A.9-104 from the provisions of the Uniform Commercial Code, Title 62A RCW. The lien holder may proceed on the lien; and if there is a separate obligation secured by the lien, the lienholder may bring suit on the obligation. If the lienor proceeds on the obligation, the court shall, in addition to entering a decree foreclosing the lien, render judgment for the amount due on the obligation. The decree shall direct the sale of the lien property, and if there is a judgment on an obligation and the proceeds of the sale are insufficient to satisfy the judgment, the sheriff is authorized to proceed under the same execution and levy on and sell other property of the lien debtor, not exempt from execution, for the sum remaining unsatisfied.

Redemption rights and the rights and interest of a purchaser for value under this section are governed by RCW 60.10.040 and 60.10.050. [1995 c 62 § 1; 1969 c 82 § 1. Formerly RCW 61.12.162.]

Judicial foreclosure of personal property liens: RCW 61.12.162.

60.10.027 Judicial foreclosure of a security interest. The provisions of chapter 61.12 RCW, so far as they are applicable, shall also be available to a secured party seeking to enforce a security interest by judicial proceedings as authorized by RCW 62A.9-501(1). In such a proceeding, the court shall enter a judgment foreclosing the security interest and shall render judgment for the amount due on the secured obligation. The decree shall direct the sale of property that is subject to the foreclosed security interest and is within the court's jurisdiction, and if the proceeds of sale are insufficient to satisfy the judgment, the sheriff is authorized to proceed under the same execution and levy on other property of the judgment debtor, not exempt from execution, for the sum remaining unsatisfied.

The rights and interest of a purchaser for value are governed by RCW 60.10.040 except as otherwise provided in Title 62A RCW. [1995 c 62 § 2.]

60.10.040 Rights and interest of purchaser for value. When a lien is foreclosed in accordance with the provisions of this chapter, the disposition transfers to a purchaser for value all of the lien debtor's rights therein,

discharges the lien under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the lien holder fails to comply with the requirements of this chapter:

(1) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the lien holder, other bidders or the person conducting the sale; or

(2) In any other case, if the purchaser acts in good faith. [1995 c 62 § 6; 1969 c 82 § 5.]

60.10.050 Redemption. At any time before the lien holder has disposed of collateral or entered into a contract for its disposition under this chapter, the lien debtor or any other secured party may redeem the collateral by tendering fulfillment of all obligations to the holder that are secured by the collateral as well as the expenses reasonably incurred by the lien holder in holding and preparing the collateral for disposition, in arranging for the sale, and for reasonable attorneys' fees and legal expenses. [1995 c 62 § 7; 1969 c 82 § 6.]

Chapter 60.34

LIEN OF RESTAURANT, HOTEL, TAVERN, ETC., EMPLOYEES

Sections

60.34.040 Manner of enforcing liens—Costs.

60.34.040 Manner of enforcing liens—Costs. The lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed, when said lien is upon real property, or in the same manner as provided in chapter 60.10 RCW when the lien is upon personal property. The court may allow as part of the costs of the action the money paid for filing or recording the claim and a reasonable attorney fee. [1995 c 62 § 8; 1969 c 82 § 12; 1959 c 173 § 1; 1953 c 205 § 4.]

Chapter 60.36

LIEN ON VESSELS AND EQUIPMENT

Sections

60.36.020 Actions to enforce liens.

60.36.050 Liens for handling cargo—Foreclosure.

60.36.020 Actions to enforce liens. Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any superior court of this state as provided in RCW 60.10.023. [1995 c 62 § 9; 1969 c 82 § 19; Code 1881 § 1940; 1877 p 216 § 2; RRS § 1183.]

60.36.050 Liens for handling cargo—Foreclosure. The liens hereby created may be foreclosed as provided in RCW 60.10.023. [1995 c 62 § 10; 1969 c 82 § 13; 1901 c 75 § 3; RRS § 1186.]

Chapter 60.52

LIEN FOR SERVICES OF SIRES

Sections

60.52.040 Foreclosure of lien.

60.52.040 Foreclosure of lien. Liens under this chapter may be foreclosed as provided in chapter 60.10 RCW. [1995 c 62 § 11; 1969 c 82 § 14; 1890 p 452 § 4; RRS § 3059.]

Chapter 60.70

LIMITATIONS ON NONCONSENSUAL COMMON LAW LIENS

Sections

60.70.010 Intent—Definitions.

60.70.030 No duty to accept filing of common law lien—Filing of a notice of invalid lien.

60.70.060 Petition for order directing common law lien claimant to appear before court—Service of process—Filing fee—Costs and attorneys' fees.

60.70.070 Claim of lien against a federal, state, or local official or employee—Performance of duties—Validity.

60.70.010 Intent—Definitions. (1) It is the intent of this chapter to limit the circumstances in which nonconsensual common law liens shall be recognized in this state.

(2) For the purposes of this chapter:

(a) "Lien" means an encumbrance on property as security for the payment of a debt;

(b) "Nonconsensual common law lien" is a lien that:

(i) Is not provided for by a specific statute;

(ii) Does not depend upon the consent of the owner of the property affected for its existence; and

(iii) Is not a court-imposed equitable or constructive lien;

(c) "State or local official or employee" means an appointed or elected official or any employee of a state agency, board, commission, department in any branch of state government, or institution of higher education; or of a school district, political subdivision, or unit of local government of this state; and

(d) "Federal official or employee" means an employee of the government and federal agency as defined for purposes of the federal tort claims act, 28 U.S.C. Sec. 2671.

(3) Nothing in this chapter is intended to affect:

(a) Any lien provided for by statute;

(b) Any consensual liens now or hereafter recognized under the common law of this state; or

(c) The ability of courts to impose equitable or constructive liens. [1995 c 19 § 1; 1986 c 181 § 1.]

60.70.030 No duty to accept filing of common law lien—Filing of a notice of invalid lien. (1) No person has a duty to accept for filing or recording any claim of lien unless the lien is authorized by statute or imposed by a court having jurisdiction over property affected by the lien, nor does any person have a duty to reject for filing or recording any claim of lien, except as provided in subsection (2) of this section.

(2) No person shall be obligated to accept for filing any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien.

(3) If a claim of lien as described in subsection (2) of this section has been accepted for filing, the recording officer shall accept for filing a notice of invalid lien signed and submitted by the assistant United States attorney representing the federal agency of which the individual is an official or employee; the assistant attorney general representing the state agency, board, commission, department, or institution of higher education of which the individual is an official or employee; or the attorney representing the school district, political subdivision, or unit of local government of this state of which the individual is an official or employee. A copy of the notice of invalid lien shall be mailed by the attorney to the person who filed the claim of lien at his or her last known address. No recording officer or county shall be liable for the acceptance for filing of a claim of lien as described in subsection (2) of this section, nor for the acceptance for filing of a notice of invalid lien pursuant to this subsection. [1995 c 19 § 4; 1986 c 181 § 3.]

60.70.060 Petition for order directing common law lien claimant to appear before court—Service of process—Filing fee—Costs and attorneys' fees. (1) Any person whose real or personal property is subject to a recorded claim of common law lien who believes the claim of lien is invalid, may petition the superior court of the county in which the claim of lien has been recorded for an order, which may be granted *ex parte*, directing the lien claimant to appear before the court at a time no earlier than six nor later than twenty-one days following the date of service of the petition and order on the lien claimant, and show cause, if any, why the claim of lien should not be stricken and other relief provided for by this section should not be granted. The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or his or her attorney setting forth a concise statement of the facts upon which the motion is based. The order shall be served upon the lien claimant by personal service, or, where the court determines that service by mail is likely to give actual notice, the court may order that service be made by any person over eighteen years of age, who is competent to be a witness, other than a party, by mailing copies of the petition and order to the lien claimant at his or her last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted, the claim of lien shall be stricken and released and that the lien claimant shall be ordered to pay the costs incurred by the petitioner, including reasonable attorneys' fees.

(3) The clerk of the court shall assign a cause number to the petition and obtain from the petitioner a filing fee of thirty-five dollars.

(4) If, following a hearing on the matter, the court determines that the claim of lien is invalid, the court shall issue an order striking and releasing the claim of lien and awarding costs and reasonable attorneys' fees to the petitioner to be paid by the lien claimant. If the court determines that the claim of lien is valid, the court shall issue an order so stating and may award costs and reasonable attorneys' fees to the lien claimant to be paid by the petitioner. [1995 c 19 § 2.]

60.70.070 Claim of lien against a federal, state, or local official or employee—Performance of duties—Validity. Any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties shall be invalid unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien or unless a specific statute authorizes the filing of such lien. [1995 c 19 § 3.]

Chapter 60.72

LANDLORD'S LIEN FOR RENT

Sections

60.72.040 Foreclosure of lien.

60.72.040 Foreclosure of lien. Said lien may be foreclosed as provided in chapter 60.10 RCW. [1995 c 62 § 12; 1969 c 82 § 15; 1917 c 165 § 2; RRS § 1203-2.]

Foreclosure of chattel mortgages: Article 62A.9 RCW.

Title 61

MORTGAGES, DEEDS OF TRUST, AND REAL ESTATE CONTRACTS

Chapters

61.12 Foreclosure of real estate mortgages and personal property liens.

61.16 Assignment and satisfaction of real estate and chattel mortgages.

Chapter 61.12

FORECLOSURE OF REAL ESTATE MORTGAGES AND PERSONAL PROPERTY LIENS

Sections

61.12.162 Recodified as RCW 60.10.023.

61.12.164 Decodified.

61.12.165 Decodified.

61.12.162 Recodified as RCW 60.10.023. See Supplementary Table of Disposition of Former RCW Sections, this volume.

61.12.164 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

61.12.165 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 61.16

ASSIGNMENT AND SATISFACTION OF REAL ESTATE AND CHATTEL MORTGAGES

Sections

- 61.16.010 Assignments, how made—Satisfaction by assignee.
- 61.16.020 Mortgages, how satisfied of record.
- 61.16.030 Failure to satisfy—Damages—Order.
- 61.16.060 Repealed.

61.16.010 Assignments, how made—Satisfaction by assignee. Any person to whom any real estate mortgage is given, or the assignee of any such mortgage, may, by an instrument in writing, signed and acknowledged in the manner provided by law entitling mortgages to be recorded, assign the same to the person therein named as assignee, and any person to whom any such mortgage has been so assigned, may, after the assignment has been recorded in the office of the auditor of the county wherein such mortgage is of record, acknowledge satisfaction of the mortgage, and discharge the same of record. [1995 c 62 § 13; 1897 c 23 § 1; RRS § 10616.]

Validating—1897 c 23: "All satisfactions of mortgages heretofore made by the assignees thereof, where the assignment was in writing, signed by the mortgagee or assignee, and where the same was recorded in the office of the auditor of the county wherein the mortgage was recorded, are hereby validated, and such satisfactions of mortgages so made shall have the same effect as if made by the mortgagees in such mortgages." [1897 c 23 § 2.]

61.16.020 Mortgages, how satisfied of record. Whenever the amount due on any mortgage is paid, the mortgagee or the mortgagee's legal representatives or assigns shall, at the request of any person interested in the property mortgaged, execute an instrument in writing referring to the mortgage by the volume and page of the record or otherwise sufficiently describing it and acknowledging satisfaction in full thereof. Said instrument shall be duly acknowledged, and upon request shall be recorded in the county wherein the mortgaged property is situated. Every instrument of writing heretofore recorded and purporting to be a satisfaction of mortgage, which sufficiently describes the mortgage which it purports to satisfy so that the same may be readily identified, and which has been duly acknowledged before an officer authorized by law to take acknowledgments or oaths, is hereby declared legal and valid, and a certified copy of the record thereof is hereby constituted prima facie evidence of such satisfaction. [1995 c 62 § 14; 1985 c 44 § 13; 1901 c 52 § 1; 1886 p 116 § 1; RRS § 10614.]

61.16.030 Failure to satisfy—Damages—Order. If the mortgagee fails to acknowledge satisfaction of the mortgage as provided in RCW 61.16.020 sixty days from the date of such request or demand, the mortgagee shall forfeit and pay to the mortgagor damages and a reasonable attorneys' fee, to be recovered in any court having compe-

tent jurisdiction, and said court, when convinced that said mortgage has been fully satisfied, shall issue an order in writing, directing the auditor to cancel said mortgage, and the auditor shall immediately record the order and cancel the mortgage as directed by the court, upon the margin of the page upon which the mortgage is recorded, making reference thereupon to the order of the court and to the page where the order is recorded. [1995 c 62 § 15; 1984 c 14 § 1; 1886 p 117 § 2; RRS § 10615.]

61.16.060 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 62A

UNIFORM COMMERCIAL CODE

Articles

- 1 General provisions.**
- 3 Negotiable instruments.**
- 4 Bank deposits and collections.**
- 5 Letters of credit.**
- 8 Investment securities.**
- 9 Secured transactions; sales of accounts, contract rights and chattel paper.**
- 10 Effective date and repealer.**
- 11 Effective date and transition provisions.**

Article 1

GENERAL PROVISIONS

Sections

- 62A.1-105 Territorial application of the title; parties' power to choose applicable law.
- 62A.1-206 Statute of frauds for kinds of personal property not otherwise covered.

62A.1-105 Territorial application of the title; parties' power to choose applicable law. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified: Rights of creditors against sold goods. RCW 62A.2-402.

Applicability of the Article on Leases. RCW 62A.2A-105 and 62A.2A-106.

Applicability of the Article on Bank Deposits and Collections. RCW 62A.4-102.

Applicability of the Article on Investment Securities. RCW 62A.8-110.

Perfection provisions of the Article on Secured Transactions. RCW 62A.9-103. [1995 c 48 § 54. Prior: 1993 c

395 § 6-102; 1993 c 230 § 2A-601; 1981 c 41 § 1; 1965 ex.s. c 157 § 1-105.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1993 c 230: See RCW 62A.11-110.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.1-206 Statute of frauds for kinds of personal property not otherwise covered. (1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (RCW 62A.2-201) nor of securities (RCW 62A.8-113) nor to security agreements (RCW 62A.9-203). [1995 c 48 § 55; 1965 ex.s. c 157 § 1-206. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Statute of frauds: Chapter 19.36 RCW.

Article 3

NEGOTIABLE INSTRUMENTS

(Formerly: Commercial paper)

Sections

62A.3-118 Statute of limitations.

62A.3-515 Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys' fees; satisfaction of claim.

62A.3-118 Statute of limitations. (a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within six years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this Article and not governed by this section must be commenced within three years after the cause of action accrues. [1995 c 74 § 1; 1993 c 229 § 20; 1965 ex.s. c 157 § 3-118. Cf. former RCW sections: (i) RCW 62.01.017; 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408. (ii) RCW 62.01.068; 1955 c 35 § 62.01.068; prior: 1899 c 149 § 68; RRS § 3459. (iii) RCW 62.01.130; 1955 c 35 § 62.01.130; prior: 1899 c 149 § 130; RRS § 3520.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

62A.3-515 Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys' fees; satisfaction of claim. (a) If a check as defined in RCW 62A.3-104 is dishonored by nonacceptance or nonpayment, the payee or holder of the check is entitled to collect a reasonable handling fee for each instrument. If the check is not paid within fifteen days and after the holder of the check sends a notice of dishonor as provided by RCW 62A.3-520 to the drawer at the drawer's last known address, and if the instrument does not provide for the payment of interest or collection costs and attorneys' fees, the drawer of the instrument is liable for payment of interest at the rate of twelve percent per annum from the date of dishonor, and cost of collection not to exceed forty dollars or the face amount of the check, whichever is less. In addition, in the event of court action on the check, the court, after notice and the expiration of the fifteen days, shall award reasonable attorneys' fees, and three times the face amount of the check or three hundred dollars, whichever is less, as part of the damages payable to the holder of the check. This section does not apply to an instrument that is dishonored by reason of a justifiable stop payment order.

(b)(1) Subsequent to the commencement of an action on the check (subsection (a)) but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the face amount of the check, a reasonable handling fee, accrued interest, collection costs equal to the face amount of the check not to exceed forty dollars, and the incurred court costs, service costs, and statutory attorneys' fees.

(2) Nothing in this section precludes the right to commence action in a court under chapter 12.40 RCW for

small claims. [1995 c 187 § 1; 1993 c 229 § 67; 1991 c 168 § 1; 1986 c 128 § 1; 1981 c 254 § 1; 1969 c 62 § 1; 1967 ex.s. c 23 § 1.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Savings—Severability—1967 ex.s. c 23: See notes following RCW 19.52.005.

Article 4

BANK DEPOSITS AND COLLECTIONS

Sections

62A.4-104 Definitions and index of definitions.
62A.4-406 Customer's duty to discover and report unauthorized signature or alteration.

62A.4-104 Definitions and index of definitions. (a)

In this Article, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions, except that it shall not include a Saturday, Sunday, or legal holiday;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (RCW 62A.8-102) or instructions for uncertificated securities (RCW 62A.8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in RCW 62A.3-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over

or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this Article and the sections in which they appear are:

"Agreement for electronic presentment"	RCW 62A.4-110.
"Bank"	RCW 62A.4-105.
"Collecting bank"	RCW 62A.4-105.
"Depository bank"	RCW 62A.4-105.
"Intermediary bank"	RCW 62A.4-105.
"Payor bank"	RCW 62A.4-105.
"Presenting bank"	RCW 62A.4-105.
"Presentment notice"	RCW 62A.4-110.

(c) The following definitions in other Articles apply to this Article:

"Acceptance"	RCW 62A.3-409.
"Alteration"	RCW 62A.3-407.
"Cashier's check"	RCW 62A.3-104.
"Certificate of deposit"	RCW 62A.3-104.
"Certified check"	RCW 62A.3-409.
"Check"	RCW 62A.3-104.
"Draft"	RCW 62A.3-104.
"Good faith"	RCW 62A.3-103.
"Holder in due course"	RCW 62A.3-302.
"Instrument"	RCW 62A.3-104.
"Notice of dishonor"	RCW 62A.3-503.
"Order"	RCW 62A.3-103.
"Ordinary care"	RCW 62A.3-103.
"Person entitled to enforce"	RCW 62A.3-301.
"Presentment"	RCW 62A.3-501.
"Promise"	RCW 62A.3-103.
"Prove"	RCW 62A.3-103.
"Teller's check"	RCW 62A.3-104.
"Unauthorized signature"	RCW 62A.3-403.

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1995 c 48 § 56; 1993 c 229 § 80; 1981 c 122 § 1; 1965 ex.s. c 157 § 4-104. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Construction—1981 c 122: "Nothing in this 1981 amendatory act shall be construed to preclude any bank from being open to the public for carrying on its banking functions on Saturdays or Sundays." [1981 c 122 § 2.] "this 1981 amendatory act" consists of the 1981 amendment to RCW 62A.4-104.

62A.4-406 Customer's duty to discover and report unauthorized signature or alteration. (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid, copies of the items paid, or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. Until January 1, 1998, the statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items paid or copies of the items paid, it shall provide in the statement of

account the telephone number that the customer may call to request an item or copy of an item pursuant to subsection (b) of this section.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least two items or copies of items with respect to each statement of account sent to the customer. A bank may charge fees for additional items or copies of items in accordance with RCW 30.22.230. Requests for ten items or less shall be processed and completed within ten business days.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer, failed with respect to an item, to comply with the duties imposed on the customer by subsection (c) the customer is precluded from asserting against the bank:

(1) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) The customer's unauthorized signature or alteration by the same wrong-doer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a natural person whose account is primarily for personal, family, or household purposes who does not within one year, and any other customer who does not within sixty days, from the time the statement and items are made available to the customer (subsection (a)) discover and report the customer's unauthorized signature or any alteration on the face or back of the item or does not within one year from that time discover and report any unauthorized

indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under RCW 62A.4-208 with respect to the unauthorized signature or alteration to which the preclusion applies. [1995 c 107 § 1; 1993 c 229 § 111; 1991 sp.s. c 19 § 1; 1967 c 114 § 1; 1965 ex.s. c 157 § 4-406. Cf. former RCW 30.16.020; 1955 c 33 § 30.16.020; prior: 1917 c 80 § 45; RRS § 3252.]

Effective date—1995 c 107: "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, 1995." [1995 c 107 § 2.]

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Emergency—Effective date—1967 c 114. "This 1967 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 sections 1 through 11 and 13 through 16 shall take effect on June 30, 1967, and section 12 shall take effect immediately." [1967 c 114 § 17.]

Reviser's note: Sections 1 through 11 and 13 through 16 are codified as RCW 15.48.270, 15.48.280, 15.48.290, 62A.2-403, 62A.2-706, 62A.4-406, 62A.6-102, 62A.6-109, 62A.9-302, 62A.9-403, 62A.9-404, 62A.9-405, 62A.9-406, 62A.9-407, and 62A.9-408. Section 12 is codified as RCW 62A.9-409.

Article 5

LETTERS OF CREDIT

Sections

62A.5-114 Issuer's duty and privilege to honor; right to reimbursement.

62A.5-114 Issuer's duty and privilege to honor; right to reimbursement. (1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (RCW 62A.7-507) or of a certificated security (RCW 62A.8-108) or is forged or fraudulent or there is fraud in the transaction:

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (RCW 62A.3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (RCW 62A.7-502) or a bona fide purchaser of a certificated security (RCW 62A.8-302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the

documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(4) When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer

(a) any payment made on receipt of such notice is conditional; and

(b) the issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

(c) in the event of such rejection, the issuer is entitled by charge back or otherwise to return of the payment made.

(5) In the case covered by subsection (4) failure to reject documents within the time specified in sub-paragraph (b) constitutes acceptance of the documents and makes the payment final in favor of the beneficiary. [1995 c 48 § 57; 1986 c 35 § 54; 1965 ex.s. c 157 § 5-114.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Article 8

INVESTMENT SECURITIES

Sections

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SHORT TITLE AND GENERAL MATTERS

- 62A.8-101 Short title.
- 62A.8-102 Definitions.
- 62A.8-103 Rules for determining whether certain obligations and interests are securities or financial assets.
- 62A.8-104 Acquisition of security or financial asset or interest therein.
- 62A.8-105 Notice of adverse claim.
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PART 2

ISSUE AND ISSUER

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- 62A.8-203 Staleness as notice of defect or defense.
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- 62A.8-208 Effect of signature of authenticating trustee, registrar, or transfer agent.
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- 62A.8-407 Authenticating trustee, transfer agent, and registrar.
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SECURITY ENTITLEMENTS**

- 62A.8-501 Securities account; acquisition of security entitlement from securities intermediary.
- 62A.8-502 Assertion of adverse claim against entitlement holder.
- 62A.8-503 Property interest of entitlement holder in financial asset held by securities intermediary.
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- 62A.8-507 Duty of securities intermediary to comply with entitlement order.
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- 62A.8-510 Rights of purchaser of security entitlement from entitlement holder.
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PART 6

**TRANSITION PROVISIONS FOR REVISED ARTICLE 8 AND
CONFORMING AMENDMENTS TO ARTICLES 1, 5, 9, AND 10**

- 62A.8-601 Savings clause.

**PART 1
SHORT TITLE AND GENERAL MATTERS**

62A.8-101 Short title. This Article may be cited as Uniform Commercial Code—Investment Securities. [1995 c 48 § 1; 1965 ex.s. c 157 § 8-101.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-102 Definitions. (1) In this Article:
(a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(b) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer

of the security certificate according to its terms but not by reason of an indorsement.

(c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(d) "Certificated security" means a security that is represented by a certificate.

(e) "Clearing corporation" means:

(i) A person that is registered as a "clearing agency" under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including adoption of rules, are subject to regulation by a federal or state governmental authority.

(f) "Communicate" means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of RCW 62A.8-501(2) (b) or (c), that person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) "Financial asset," except as otherwise provided in RCW 62A.8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this Article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the

transfer of the security be registered or that the security be redeemed.

(m) "Registered form," as applied to a certificated security, means a form in which:

(i) The security certificate specifies a person entitled to the security; and

(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(n) "Securities intermediary" means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) "Security," except as otherwise provided in RCW 62A.8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(p) "Security certificate" means a certificate representing a security.

(q) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this Article.

(r) "Uncertificated security" means a security that is not represented by a certificate.

(2) Other definitions applying to this Article and the sections in which they appear are:

Appropriate person	RCW 62A.8-107
Control	RCW 62A.8-106
Delivery	RCW 62A.8-301
Investment company security	RCW 62A.8-103
Issuer	RCW 62A.8-201
Overissue	RCW 62A.8-210
Protected purchaser	RCW 62A.8-303
Securities account	RCW 62A.8-501

(3) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

(4) The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule. [1995 c 48 § 2; 1986 c 35 § 1; 1973 c 98 § 1; 1965 ex.s. c 157 § 8-102. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-103 Rules for determining whether certain obligations and interests are securities or financial assets.

(1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in RCW 62A.9-115, is not a security or a financial asset. [1995 c 48 § 3; 1986 c 35 § 2; 1965 ex.s. c 157 § 8-103. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.140.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-104 Acquisition of security or financial asset or interest therein. (1) A person acquires a security or an interest therein, under this Article, if:

(a) The person is a purchaser to whom a security is delivered pursuant to RCW 62A.8-301; or

(b) The person acquires a security entitlement to the security pursuant to RCW 62A.8-501.

(2) A person acquires a financial asset, other than a security, or an interest therein, under this Article, if the person acquires a security entitlement to the financial asset.

(3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5 of this Article, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in RCW 62A.8-503.

(4) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (1) or (2)

of this section. [1995 c 48 § 4; 1986 c 35 § 3; 1965 ex.s. c 157 § 8-104.]

Effective date—1995 c 48: See RCW 62A.11-113.

Corporations—Purchase of own shares: RCW 23B.06.030 and 23B.06.310.

62A.8-105 Notice of adverse claim. (1) A person has notice of an adverse claim if:

(a) The person knows of the adverse claim;

(b) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(c) The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(2) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(3) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(a) One year after a date set for presentation or surrender for redemption or exchange; or

(b) Six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(4) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(a) Whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(5) Filing of a financing statement under Article 9 is not notice of an adverse claim to a financial asset. [1995 c 48 § 5; 1986 c 35 § 4; 1965 ex.s. c 157 § 8-105. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-106 Control. (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(a) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) A purchaser has "control" of an uncertificated security if:

(a) The uncertificated security is delivered to the purchaser; or

(b) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has "control" of a security entitlement if:

(a) The purchaser becomes the entitlement holder; or

(b) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3)(b) or (4)(b) of this section has control even if the registered owner in the case of subsection (3)(b) of this section or the entitlement holder in the case of subsection (4)(b) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (3)(b) or (4)(b) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder. [1995 c 48 § 6; 1986 c 35 § 5; 1965 ex.s. c 157 § 8-106.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-107 Whether indorsement, instruction, or entitlement is effective. (1) "Appropriate person" means:

(a) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(b) With respect to an instruction, the registered owner of an uncertificated security;

(c) With respect to an entitlement order, the entitlement holder;

(d) If the person designated in (a), (b), or (c) of this subsection is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(e) If the person designated in (a), (b), or (c) of this subsection lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(2) An indorsement, instruction, or entitlement order is effective if:

(a) It is made by the appropriate person;

(b) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under RCW 62A.8-106 (3)(b) or (4)(b); or

(c) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(3) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(a) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(b) The representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(4) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances. [1995 c 48 § 7; 1986 c 35 § 6; 1965 ex.s. c 157 § 8-107.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-108 Warranties in direct holding. (1) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(a) The certificate is genuine and has not been materially altered;

(b) The transferor or indorser does not know of any fact that might impair the validity of the security;

(c) There is no adverse claim to the security;

(d) The transfer does not violate any restriction on transfer;

(e) If the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(f) The transfer is otherwise effective and rightful.

(2) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(a) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(b) The security is valid;

(c) There is no adverse claim to the security; and

(d) At the time the instruction is presented to the issuer:

(i) The purchaser will be entitled to the registration of transfer;

(ii) The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(iii) The transfer will not violate any restriction on transfer; and

(iv) The requested transfer will otherwise be effective and rightful.

(3) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(a) The uncertificated security is valid;

(b) There is no adverse claim to the security;

(c) The transfer does not violate any restriction on transfer; and

(d) The transfer is otherwise effective and rightful.

(4) A person who indorses a security certificate warrants to the issuer that:

(a) There is no adverse claim to the security; and

(b) The indorsement is effective.

(5) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(a) The instruction is effective; and

(b) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(6) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(7) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(8) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (7) of this section.

(9) Except as otherwise provided in subsection (7) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (1) through (6) of this section. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (1) or (2) of this section, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer. [1995 c 48 § 8; 1986 c 35 § 7.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-109 Warranties in indirect holding. (1) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(a) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(b) There is no adverse claim to the security entitlement.

(2) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in RCW 62A.8-108 (1) or (2).

(3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in RCW 62A.8-108 (1) or (2). [1995 c 48 § 9.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-110 Applicability; choice of law. (1) The local law of the issuer's jurisdiction, as specified in subsection (4) of this section, governs:

(a) The validity of a security;

(b) The rights and duties of the issuer with respect to registration of transfer;

(c) The effectiveness of registration of transfer by the issuer;

(d) Whether the issuer owes any duties to an adverse claimant to a security; and

(e) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5) of this section, governs:

(a) Acquisition of a security entitlement from the securities intermediary;

(b) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(c) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(d) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as

the law governing the matters specified in subsection (1) (b) through (e) of this section.

(5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(b) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in (a) of this subsection, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(c) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in (a) or (b) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

(d) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in (a) or (b) of this subsection and an account statement does not identify an office serving the entitlement holder's account as provided in (c) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account. [1995 c 48 § 10.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-111 Clearing corporation rules. A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this Title and affects another party who does not consent to the rule. [1995 c 48 § 11.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-112 Creditor's legal process. (1) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (4) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(2) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (4) of this section.

(3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities

account is maintained, except as otherwise provided in subsection (4) of this section.

(4) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process. [1995 c 48 § 12.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-113 Statute of frauds inapplicable. A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making. [1995 c 48 § 13.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-114 Evidentiary rules concerning certificated securities. The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted. [1995 c 48 § 14.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-115 Securities intermediary and others not liable to adverse claimant. A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) In the case of a security certificate that has been stolen, acted with notice of the adverse claim. [1995 c 48 § 15.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-116 Securities intermediary as purchaser for value. A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder. [1995 c 48 § 16.]

Effective date—1995 c 48: See RCW 62A.11-113.

PART 2 ISSUE AND ISSUER

62A.8-201 Issuer. (1) With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

(a) Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(b) Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(c) Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(d) Becomes responsible for, or in place of, another person described as an issuer in this section.

(2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(3) With respect to registration of a transfer, issuer means a person on whose behalf transfer books are maintained. [1995 c 48 § 17; 1986 c 35 § 8; 1965 ex.s. c 157 § 8-201. Cf. former RCW sections: RCW 62.01.029, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.029, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 29, and 60 through 62; RRS §§ 3420, and 3451 through 3453.]

Effective date—1995 c 48: See RCW 62A.11-113.

Corporations, effect of merger or consolidation: RCW 23B.11.060.

Securities Act, issuer: RCW 21.20.005(7).

62A.8-202 Issuer's responsibility and defenses; notice of defect or defense. (1) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to

another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(2) The following rules apply if an issuer asserts that a security is not valid:

(a) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(b) Subsection (2)(a) of this section applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in RCW 62A.8-205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(5) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(6) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly. [1995 c 48 § 18; 1986 c 35 § 9; 1965 ex.s. c 157 § 8-202. Cf. former RCW sections: RCW 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 16, 23, 28, 56, 57, and 60 through 62; RRS §§ 3407, 3414, 3419, 3447, 3448, and 3451 through 3453.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-203 Staleness as notice of defect or defense. After an act or event, other than a call that has been revoked, creating a right to immediate performance of the

principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) Is not covered by subsection (1) of this section and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due. [1995 c 48 § 19; 1986 c 35 § 10; 1965 ex.s. c 157 § 8-203. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and 62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-204 Effect of issuer's restrictions on transfer.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) The security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) The security is uncertificated and the registered owner has been notified by the restriction. [1995 c 48 § 20; 1986 c 35 § 11; 1965 ex.s. c 157 § 8-204. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.160.]

Effective date—1995 c 48: See RCW 62A.11-113.

Corporations—Stock certificates—Limitations: RCW 23B.06.250.

62A.8-205 Effect of unauthorized signature on security certificate. An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar certificates, or the immediate preparation for signing of any of them; or

(2) An employee of the issuer, or of any of the persons listed in subsection (1) of this section, entrusted with responsible handling of the security certificate. [1995 c 48 § 21; 1986 c 35 § 12; 1965 ex.s. c 157 § 8-205. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-206 Completion or alteration of security certificate. (1) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) Any person may complete it by filling in the blanks as authorized; and

(b) Even though the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(2) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms. [1995 c 48 § 22; 1986 c 35 § 13; 1965 ex.s. c 157 § 8-206. Cf. former RCW sections: (i) RCW 23.80.160; 1939 c 100 § 16; RRS § 3803-116; formerly RCW 23.20.170. (ii) RCW 62.01.014, 62.01.015, and 62.01.124; 1955 c 35 §§ 62.01.014, 62.01.015, and 62.01.124; prior: 1899 c 149 §§ 14, 15, and 124; RRS §§ 3405, 3406, and 3514.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-207 Rights and duties of issuer with respect to registered owners. (1) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(2) This Article does not affect the liability of the registered owner of a security for a call, assessment, or the like. [1995 c 48 § 23; 1986 c 35 § 14; 1965 ex.s. c 157 § 8-207. Cf. former RCW 23.80.020 and 23.80.030; 1939 c 100 §§ 2 and 3; RRS §§ 3803-102 and 3803-103; formerly RCW 23.20.030 and 23.20.040.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-208 Effect of signature of authenticating trustee, registrar, or transfer agent. (1) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(a) The certificate is genuine;

(b) The person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(c) The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person signing under subsection (1) of this section does not assume responsibility for the validity of the security in other respects. [1995 c 48 § 24; 1986 c 35 § 15; 1965 ex.s. c 157 § 8-208.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-209 Issuer's lien. A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate. [1995 c 48 § 25.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-210 Overissue. (1) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(2) Except as otherwise provided in subsections (3) and (4) of this section, the provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(3) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(4) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand. [1995 c 48 § 26.]

Effective date—1995 c 48: See RCW 62A.11-113.

PART 3 TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

62A.8-301 Delivery. (1) Delivery of a certificated security to a purchaser occurs when:

(a) The purchaser acquires possession of the security certificate;

(b) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(c) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement.

(2) Delivery of an uncertificated security to a purchaser occurs when:

(a) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(b) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser. [1995 c 48 § 27; 1986 c 35 § 16; 1965 ex.s. c 157 § 8-301. Cf. former RCW sections: (i) RCW 23.80.070; 1939 c 100 § 7; RRS § 3803-107; formerly RCW 23.20.080. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443. (iii) RCW 62.01.057 through 62.01.059; 1955 c 35 §§ 62.01.057 through 62.01.059; prior: 1899 c 149 §§ 57 through 59; RRS §§ 3448 through 3450.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-302 Rights of purchaser. (1) Except as otherwise provided in subsections (2) and (3) of this section, upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser. [1995 c 48 § 28; 1986 c 35 § 17; 1965 ex.s. c 157 § 8-302. Cf. former RCW sections: (i) RCW 23.80.230(2); 1939 c 100 § 23; RRS § 3803-123. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-303 Protected purchaser. (1) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(a) Gives value;

(b) Does not have notice of any adverse claim to the security; and

(c) Obtains control of the certificated or uncertificated security.

(2) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim. [1995 c 48 § 29; 1986 c 35 § 18; 1965 ex.s. c 157 § 8-303.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-304 Indorsement. (1) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(2) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(3) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(4) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(5) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(6) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in RCW 62A.8-108 and not an obligation that the security will be honored by the issuer. [1995 c 48 § 30; 1986 c 35 § 19; 1965 ex.s. c 157 § 8-304. Cf. former RCW sections: RCW 62.01.037 and 62.01.056; 1955 c 35 §§ 62.01.037 and 62.01.056; prior: 1899 c 149 §§ 37 and 56; RRS §§ 3428 and 3447.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-305 Instruction. (1) If an instruction has been originated by an appropriate person but is incomplete in any

other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(2) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by RCW 62A.8-108 and not an obligation that the security will be honored by the issuer. [1995 c 48 § 31; 1986 c 35 § 20; 1965 ex.s. c 157 § 8-305. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and 62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-306 Effect of guaranteeing signature, indorsement, or instruction. (1) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(a) The signature was genuine;

(b) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(c) The signer had legal capacity to sign.

(2) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(a) The signature was genuine;

(b) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(c) The signer had legal capacity to sign.

(3) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (2) of this section and also warrants that at the time the instruction is presented to the issuer:

(a) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(b) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) A guarantor under subsections (1) and (2) of this section or a special guarantor under subsection (3) of this section does not otherwise warrant the rightfulness of the transfer.

(5) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (1) of this section and also warrants the rightfulness of the transfer in all respects.

(6) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (3) of this section and also warrants the rightfulness of the transfer in all respects.

(7) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(8) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor. [1995 c 48 § 32; 1986 c 35 § 21; 1965 ex.s. c 157 § 8-306. Cf. former RCW sections: (i) RCW 23.80.110 and 23.80.120; 1939 c 100 §§ 11 and 12; RRS §§ 3803-111 and 3803-112; formerly RCW 23.20.120 and 23.20.130. (ii) RCW 62.01.065 through 62.01.067, and 62.01.069; 1955 c 35 §§ 62.01.065 through 62.01.067, and 62.01.069; prior: 1899 c 149 §§ 65 through 67, and 69; RRS §§ 3456 through 3458, and 3460.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-307 Purchaser's right to requisites for registration of transfer. Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer. [1995 c 48 § 33; 1986 c 35 § 22; 1965 ex.s. c 157 § 8-307. Cf. former RCW sections: (i) RCW 23.80.090; 1939 c 100 § 9; RRS § 3803-109; formerly RCW 23.20.100. (ii) RCW 62.01.049; 1955 c 35 § 62.01.049; prior: 1899 c 149 § 49; RRS § 3440.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-308 through 62A.8-321 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

PART 4 REGISTRATION

62A.8-401 Duty of issuer to register transfer. (1) If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(a) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(b) The indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(c) Reasonable assurance is given that the indorsement or instruction is genuine and authorized (RCW 62A.8-402);

(d) Any applicable law relating to the collection of taxes has been complied with;

(e) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with RCW 62A.8-204;

(f) A demand that the issuer not register transfer has not become effective under RCW 62A.8-403, or the issuer has

complied with RCW 62A.8-403(2) but no legal process or indemnity bond is obtained as provided in RCW 62A.8-403(4); and

(g) The transfer is in fact rightful or is to a protected purchaser.

(2) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer. [1995 c 48 § 34; 1986 c 35 § 37; 1965 ex.s. c 157 § 8-401.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-402 Assurance that indorsement or instruction is effective. (1) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(a) In all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

(b) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(c) If the indorsement is made or the instruction is originated by a fiduciary pursuant to RCW 62A.8-107(1) (d) or (e), appropriate evidence of appointment or incumbency;

(d) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) If the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(2) An issuer may elect to require reasonable assurance beyond that specified in this section.

(3) In this section:

(a) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(b) "Appropriate evidence of appointment or incumbency" [means]:

(i) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(ii) 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 an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considered appropriate. [1995 c 48 § 35; 1986 c 35 § 38; 1965 ex.s. c 157 § 8-402.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-403 Demand that issuer not register transfer.

(1) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner

and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(2) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (a) the person who initiated the demand at the address provided in the demand and (b) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(i) The certificated security has been presented for registration of transfer or instruction for registration of transfer of uncertificated security has been received;

(ii) A demand that the issuer not register transfer had previously been received; and

(iii) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(3) The period described in subsection (2)(b)(iii) of this section may not exceed thirty days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(a) Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(b) File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(5) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective. [1995 c 48 § 36; 1986 c 35 § 39; 1965 ex.s. c 157 § 8-403.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-404 Wrongful registration. (1) Except as otherwise provided in RCW 62A.8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(a) Pursuant to an ineffective indorsement or instruction;

(b) After a demand that the issuer not register transfer became effective under RCW 62A.8-403(1) and the issuer did not comply with RCW 62A.8-403(2);

(c) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to

act on the injunction, restraining order, or other legal process; or

(d) By an issuer acting in collusion with the wrongdoer.

(2) An issuer that is liable for wrongful registration of transfer under subsection (1) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by RCW 62A.8-210.

(3) Except as otherwise provided in subsection (1) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction. [1995 c 48 § 37; 1986 c 35 § 40; 1965 ex.s. c 157 § 8-404.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-405 Replacement of lost, destroyed, or wrongfully taken security certificate. (1) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(a) So requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

(b) Files with the issuer a sufficient indemnity bond; and

(c) Satisfies any other reasonable requirements imposed by the issuer.

(2) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by RCW 62A.8-209. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from the person to whom it was issued or any person taking under that person, except a protected purchaser. [1995 c 48 § 38; 1986 c 35 § 41; 1965 ex.s. c 157 § 8-405. Cf. former RCW 23.80.170; 1939 c 100 § 17; RRS § 3803-117; formerly RCW 23.20.180.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-406 Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate. If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under RCW 62A.8-404 or a claim to a new security certificate under RCW 62A.8-405. [1995 c 48 § 39; 1986 c 35 § 42; 1965 ex.s. c 157 § 8-406.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-407 Authenticating trustee, transfer agent, and registrar. A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the

registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions. [1995 c 48 § 40; 1986 c 35 § 43.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-408 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

PART 5 SECURITY ENTITLEMENTS

62A.8-501 Securities account; acquisition of security entitlement from securities intermediary. (1) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(2) Except as otherwise provided in subsections (4) and (5) of this section, a person acquires a security entitlement if a securities intermediary:

(a) Indicates by book entry that a financial asset has been credited to the person's securities account;

(b) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(c) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(3) If a condition of subsection (2) of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(4) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(5) Issuance of a security is not establishment of a security entitlement. [1995 c 48 § 41.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-502 Assertion of adverse claim against entitlement holder. An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under RCW 62A.8-501 for value and without notice of the adverse claim. [1995 c 48 § 42.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-503 Property interest of entitlement holder in financial asset held by securities intermediary. (1) To the extent necessary for a securities intermediary to satisfy

all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in RCW 62A.8-511.

(2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(3) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under RCW 62A.8-505 through 62A.8-508.

(4) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section may be enforced against a purchaser of the financial asset or interest therein only if:

(a) Insolvency proceedings have been initiated by or against the securities intermediary;

(b) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(c) The securities intermediary violated its obligations under RCW 62A.8-504 by transferring the financial asset or interest therein to the purchaser; and

(d) The purchaser is not protected under subsection (5) of this section.

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(5) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1) of this section, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under RCW 62A.8-504. [1995 c 48 § 43.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-504 Duty of securities intermediary to maintain financial asset. (1) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1) of this section.

(3) A securities intermediary satisfies the duty in subsection (1) of this section if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(4) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements. [1995 c 48 § 44.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-505. Duty of securities intermediary with respect to payments and distributions. (1) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(2) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary. [1995 c 48 § 45.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-506 Duty of securities intermediary to exercise rights as directed by entitlement holder. A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder. [1995 c 48 § 46.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-507 Duty of securities intermediary to comply with entitlement order. (1) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(a) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages. [1995 c 48 § 47.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-508 Duty of securities intermediary to change entitlement holder's position to other form of security holding. A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder. [1995 c 48 § 48.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-509 Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder. (1) If the substance of a duty imposed upon a securities intermediary by RCW 62A.8-504 through 62A.8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(2) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(3) The obligation of a securities intermediary to perform the duties imposed by RCW 62A.8-504 through 62A.8-508 is subject to:

(a) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(b) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(4) RCW 62A.8-504 through 62A.8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule. [1995 c 48 § 49.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-510 Rights of purchaser of security entitlement from entitlement holder. (1) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under RCW 62A.8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(3) In a case not covered by the priority rules in Article 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary. [1995 c 48 § 50.]

Effective date—1995 c 48: See RCW 62A.11-113.

62A.8-511 Priority among security interests and entitlement holders. (1) Except as otherwise provided in subsections (2) and (3) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(3) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders. [1995 c 48 § 51.]

Effective date—1995 c 48: See RCW 62A.11-113.

PART 6
TRANSITION PROVISIONS FOR
REVISED ARTICLE 8 AND CONFORMING
AMENDMENTS TO *ARTICLES 1, 5, 9, AND 10

*Reviser's note: See 1995 c 48 §§ 54 through 71.

62A.8-601 Savings clause. (1) Chapter 48, Laws of 1995 does not affect an action or proceeding commenced before April 17, 1995.

(2) If a security interest in a security is perfected by April 17, 1995, and the action by which the security interest was perfected would suffice to perfect a security interest under chapter 48, Laws of 1995, no further action is required to continue perfection. If a security interest in a security is perfected by April 17, 1995, but the action by which the security interest was perfected would not suffice to perfect a security interest under chapter 48, Laws of 1995, the security interest remains perfected through December 31, 1995, and continues perfected thereafter if appropriate action to perfect under chapter 48, Laws of 1995 is taken by that date. If a security interest is perfected by April 17, 1995, and the security interest can be perfected by filing under chapter 48, Laws of 1995, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect. [1995 c 48 § 53.]

Effective date—1995 c 48: See RCW 62A.11-113.

Article 9

SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

Sections

62A.9-103	Perfection of security interest in multiple state transactions.
62A.9-105	Definitions and index of definitions.
62A.9-106	Definitions: "Account"; "general intangibles".
62A.9-115	Investment property.
62A.9-116	Security interest arising in purchase or delivery of financial asset.
62A.9-203	Attachment and enforceability of security interest; proceeds; formal requisites.
62A.9-301	Persons who take priority over unperfected security interests; rights of "lien creditor".
62A.9-302	When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.
62A.9-304	Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.
62A.9-305	When possession by secured party perfects security interest without filing.
62A.9-306	"Proceeds"; secured party's rights on disposition of collateral.
62A.9-309	Protection of purchasers of instruments, documents, and securities.
62A.9-312	Priorities among conflicting security interests in the same collateral.

62A.9-103 Perfection of security interest in multiple state transactions. (1) Documents, instruments and ordinary goods.

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs

on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Article to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of RCW 62A.9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security

interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Investment property.

(a) This subsection applies to investment property.

(b) Except as otherwise provided in paragraph (f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in RCW 62A.8-110(4).

(d) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in RCW 62A.8-110(5).

(e) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

(i) if an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) if an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph (i), but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) if an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) if an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or

commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located. [1995 c 48 § 58; 1986 c 35 § 45; 1981 c 41 § 7; 1965 ex.s. c 157 § 9-103.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-105 Definitions and index of definitions. (1) In this Article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of Article 1 (RCW 62A.1-201), and a receipt of the kind described in subsection (2) of RCW 62A.7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (RCW 62A.9-313), but does not include money, documents, instruments, investment property, commodity contracts, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;

(i) "Instrument" means a negotiable instrument (defined in RCW 62A.3-104), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. The term does not include investment property;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Account".	RCW 62A.9-106.
"Attach".	RCW 62A.9-203.
"Commodity contract".	RCW 62A.9-115.
"Commodity customer".	RCW 62A.9-115.
"Commodity intermediary".	RCW 62A.9-115.
"Construction mortgage".	RCW 62A.9-313(1).
"Consumer goods".	RCW 62A.9-109(1).
"Control".	RCW 62A.9-115.
"Equipment".	RCW 62A.9-109(2).
"Farm products".	RCW 62A.9-109(3).
"Fixture".	RCW 62A.9-313.
"Fixture filing".	RCW 62A.9-313.
"General intangibles".	RCW 62A.9-106.
"Inventory".	RCW 62A.9-109(4).
"Investment property".	RCW 62A.9-115.
"Lien creditor".	RCW 62A.9-301(3).
"Proceeds".	RCW 62A.9-306(1).
"Purchase money security interest".	RCW 62A.9-107.
"United States".	RCW 62A.9-103.

(3) The following definitions in other Articles apply to this Article:

"Broker".	RCW 62A.8-102.
"Certificated security".	RCW 62A.8-102.
"Check".	RCW 62A.3-104.
"Clearing corporation".	RCW 62A.8-102.
"Contract for sale".	RCW 62A.2-106.
"Control".	RCW 62A.8-106.
"Delivery".	RCW 62A.8-301.
"Entitlement holder".	RCW 62A.8-102.
"Financial asset".	RCW 62A.8-102.
"Holder in due course".	RCW 62A.3-302.
"Note".	RCW 62A.3-104.
"Sale".	RCW 62A.2-106.
"Securities intermediary".	RCW 62A.8-102.
"Security".	RCW 62A.8-102.
"Security certificate".	RCW 62A.8-102.
"Security entitlement".	RCW 62A.8-102.
"Uncertificated security".	RCW 62A.8-102.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1995 c 48 § 59; 1986 c 35 § 46; 1981 c 41 § 9; 1965 ex.s. c 157 § 9-105. Cf. former RCW sections: (i) RCW 61.20.010; 1943 c 71 § 1; Rem. Supp. 1943 § 11548-30. (ii) RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-106 Definitions: "Account"; "general intangibles". "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts. [1995 c 48 § 60; 1981 c 41 § 10; 1965 ex.s. c 157 § 9-106. Cf. former RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-115 Investment property. (1) In this Article:

(a) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(b) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:

(i) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or

(ii) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(c) "Commodity customer" means a person for whom a commodity intermediary carries a commodity contract on its books.

(d) "Commodity intermediary" means:

(i) a person who is registered as a futures commission merchant under the federal commodities laws; or

(ii) a person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.

(e) "Control" with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in RCW 62A.8-106. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract

to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.

(f) "Investment property" means:

(i) a security, whether certificated or uncertificated;

(ii) a security entitlement;

(iii) a securities account;

(iv) a commodity contract; or

(v) a commodity account.

(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

(a) A security interest in investment property may be perfected by control.

(b) Except as otherwise provided in paragraphs (c) and (d), a security interest in investment property may be perfected by filing.

(c) If the debtor is a broker or securities intermediary a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) Except as otherwise provided in paragraphs (c) and (d), conflicting security interests of secured parties each of whom has control rank equally.

(c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(f) In all other cases, priority between conflicting security interests in investment property is governed by RCW 62A.9-312 (5), (6), and (7). RCW 62A.9-312(4) does not apply to investment property.

(6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking. [1995 c 48 § 61.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.9-116 Security interest arising in purchase or delivery of financial asset. (1) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected. [1995 c 48 § 62.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.9-203 Attachment and enforceability of security interest; proceeds; formal requisites. (1) Subject to the provisions of RCW 62A.4-208 on the security interest of a collecting bank, RCW 62A.9-115 and 62A.9-116 on security interests in investment property, and RCW 62A.9-113 on a

security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by RCW 62A.9-306.

(4) A transaction, although subject to this Article, is also subject to chapters 31.04, 31.12, 31.16, 31.20, and 31.24 RCW, and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein. [1995 c 48 § 63; 1986 c 35 § 47; 1985 c 412 § 12; 1982 c 186 § 1; 1981 c 41 § 12; 1965 ex.s. c 157 § 9-203. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.20.020; 1957 c 249 § 1; 1943 c 71 § 2; Rem. Supp. 1943 § 11548-31. (iii) RCW 61.20.040; 1943 c 71 § 4; Rem. Supp. 1943 § 11548-33. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.020 and 63.16.030; 1947 c 8 §§ 2 and 3; Rem. Supp. 1947 §§ 2721-2 and 2721-3.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1982 c 186: "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 midnight June 30, 1982." [1982 c 186 § 12.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-301 Persons who take priority over unperfected security interests; rights of "lien creditor". (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under RCW 62A.9-312;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, general intangibles, and investment property, a person who is not a secured party and

who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within twenty days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within forty-five days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien. [1995 c 48 § 64; 1982 c 186 § 2; 1981 c 41 § 15; 1965 ex.s. c 157 § 9-301. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (iii) RCW 61.20.010 and 61.20.090(2); 1943 c 71 §§ 1 and 9; Rem. Supp. 1943 §§ 11548-30 and 11548-38. (iv) RCW 61.20.080(1), (2), (3); 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (v) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (vi) RCW 63.16.020 and 63.16.030; 1947 c 8 §§ 2 and 3; Rem. Supp. 1947 §§ 2721-2 and 2721-3.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-302 When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply. (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under RCW 62A.9-305;

(b) a security interest temporarily perfected in instruments, certificated securities, or documents without delivery under RCW 62A.9-304 or in proceeds for a ten day period under RCW 62A.9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered and other property subject to subsection (3) of this section; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in RCW 62A.9-313;

(e) a security interest of a collecting bank (RCW 62A.4-208) or arising under the Article on Sales (RCW 62A.9-113) or covered in subsection (3) of this section;

(f) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(g) a security interest in investment property which is perfected without filing under RCW 62A.9-115 or 62A.9-116.

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Article for filing of the security interest; or

(b) the following statute of this state: RCW 46.12.095 or 88.02.070; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of RCW 62A.9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in RCW 62A.9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Article.

(5) Part 4 of this Article does not apply to a security interest in property of any description created by a deed of trust or mortgage made by any corporation primarily engaged in the railroad or street railway business, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipe line, or the production, transmission or distribution of electricity, steam, gas or water, but such security interest may be perfected under this Article by filing such deed of trust or mortgage with the department of licensing. When so filed, such instrument shall remain effective until terminated, without the need for filing a continuation statement. Assignments and releases of such instruments may also be filed with the department of licensing. The director of licensing shall be a filing officer for the foregoing purposes. [1995 c 48 § 65. Prior: 1987 c 189 § 1; 1986 c 35 § 48; 1985 c 258 § 3; 1981 c 41 § 16; 1979 c 158 § 210; 1977 ex.s. c 117 § 6; 1967 c 114 § 4; 1965 ex.s. c 157 § 9-302. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1.

(ii) RCW 61.20.030 and 61.20.090; 1943 c 71 §§ 3 and 9; Rem. Supp. 1943 §§ 11548-32 and 11548-38. (iii) RCW 61.20.080; 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.030; 1947 c 8 § 3; Rem. Supp. 1947 § 2721-3.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1985 c 258: See note following RCW 88.02.070.

Effective date—1981 c 41: See RCW 62A.11-101.

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Motor vehicles—Certificate of ownership and registration: RCW 46.12.010.

Seed bailment contracts: Filing, recording or notice of contract not required to establish validity of contract or title in bailor: RCW 15.48.270 through 15.48.290.

62A.9-304 Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of RCW 62A.9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments, certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument, a certificated security, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange but priority between conflicting security interests in the goods is subject to subsection (3) of RCW 62A.9-312; or

(b) delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

(6) After the twenty-one day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article. [1995 c 48 § 66; 1986 c 35 § 49; 1981 c 41 § 17; 1965 ex.s. c 157 § 9-304. Cf. former RCW sections: (i) RCW 61.20.030 and 61.20.090; 1943 c 71 §§ 3 and 9; Rem. Supp. 1943 §§ 11548-32 and 11548-38. (ii) RCW 61.20.080; 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (iii) RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-305 When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (subsection (2)(a) of RCW 62A.5-116), goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party. [1995 c 48 § 67; 1986 c 35 § 50; 1981 c 41 § 18; 1965 ex.s. c 157 § 9-305.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-306 "Proceeds"; secured party's rights on disposition of collateral. (1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security

interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds;

(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds or instruments;

(c) the original collateral was investment property and the proceeds are identifiable cash proceeds; or

(d) the security interest in the proceeds is perfected before the expiration of the ten day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this Article for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under RCW 62A.9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security

interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods. [1995 c 48 § 68; 1981 c 41 § 19; 1965 ex.s. c 157 § 9-306. Cf. former RCW sections: (i) RCW 61.20.090 and 61.20.100; 1943 c 71 §§ 9 and 10; Rem. Supp. 1943 §§ 11548-38 and 11548-39. (ii) RCW 63.12.030; 1937 c 196 § 2; 1925 ex.s. c 120 § 1; RRS § 3791-1. (iii) RCW 63.16.080; 1947 c 8 § 8; Rem. Supp. 1947 § 2721-8.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-309 Protection of purchasers of instruments, documents, and securities. Nothing in this Article limits the rights of a holder in due course of a negotiable instrument (RCW 62A.3-302) or a holder to whom a negotiable document of title has been duly negotiated (RCW 62A.7-501) or a protected purchaser of a security (RCW 62A.8-303) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers. [1995 c 48 § 69; 1986 c 35 § 51; 1965 ex.s. c 157 § 9-309. Cf. former RCW 61.20.090(1); 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

62A.9-312 Priorities among conflicting security interests in the same collateral. (1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: RCW 62A.4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; RCW 62A.9-103 on security interests related to other jurisdictions; RCW 62A.9-114 on consignments; RCW 62A.9-115 on security interests in investment property.

(2) Conflicting priorities between security interests in crops shall be governed by chapter 60.11 RCW.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of RCW 62A.9-304); and

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within twenty days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under RCW 62A.9-115 or 62A.9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made. [1995 c 48 § 70; 1989 c 251 § 1; 1986 c 35 § 52; 1982 c 186 § 3; 1981 c 41 § 22; 1965 ex.s. c 157 § 9-312. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.20.010 and 61.20.090; 1943 c 71 §§ 1 and 9; Rem. Supp. 1943 §§ 11548-30 and 11548-38. (iii) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (iv) RCW 63.16.030 and 63.16.090; 1947 c 8 §§ 3 and 9; Rem. Supp. 1947 §§ 2721-3 and 2721-9.]

Effective date—1995 c 48: See RCW 62A.11-113.

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

Article 10

EFFECTIVE DATE AND REPEALER

Sections

62A.10-104 Laws not repealed.

62A.10-104 Laws not repealed. The Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (RCW 62A.1-201). [1995 c 48 § 71; 1965 ex.s. c 157 § 10-104.]

Savings—1995 c 48: See RCW 62A.8-601.

Effective date—1995 c 48: See RCW 62A.11-113.

Article 11

EFFECTIVE DATE AND TRANSITION PROVISIONS

Sections

62A.11-113 Effective date—1995 c 48.

62A.11-113 Effective date—1995 c 48. 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, 1995. [1995 c 48 § 72.]

Savings—1995 c 48: See RCW 62A.8-601.

Title 63

PERSONAL PROPERTY

Chapters

63.10 Consumer leases.

63.14 Retail installment sales of goods and services.

Chapter 63.10

CONSUMER LEASES

Sections

63.10.020 Definitions. (*Effective January 1, 1996.*)

63.10.040 Lease contracts—Disclosure requirements. (*Effective January 1, 1996.*)

63.10.045 Unlawful acts or practices—Consumer lease of a motor vehicle. (*Effective January 1, 1996.*)

63.10.050 Violations—Unfair acts under consumer protection act—Damages. (*Effective January 1, 1996.*)

63.10.055 Remedies—Effect of chapter. (*Effective January 1, 1996.*)

63.10.901 Severability—1995 c 112.

63.10.902 Effective date—1995 c 112.

63.10.020 Definitions. (*Effective January 1, 1996.*) As used in this chapter, unless the context otherwise requires:

(1) The term "adjusted capitalized cost" means the agreed-upon amount that serves as the basis for determining the periodic lease payment, computed by subtracting from the capitalized cost any capitalized cost reduction.

(2) The term "capitalized cost" means the amount ascribed by the lessor to the vehicle including optional equipment, plus taxes, title, license fees, lease acquisition

and administrative fees, insurance premiums, warranty charges, and any other product, service, or amount amortized in the lease. However, any definition of capitalized cost adopted by the federal reserve board to be used in the context of mandatory disclosure of the capitalized cost to lessees in consumer motor vehicle lease transactions supercedes the definition of capitalized cost in this subsection.

(3) The term "capitalized cost reduction" means any payment made by cash, check, or similar means, any manufacturer rebate, and net trade in allowance granted by the lessor at the inception of the lease for the purpose of reducing the capitalized cost but does not include any periodic lease payments due at the inception of the lease or all of the periodic lease payments if they are paid at the inception of the lease.

(4) The term "consumer lease" means a contract of lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding twenty-five thousand dollars, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any lease which meets the definition of a retail installment contract under RCW 63.14.010 or the definition of a lease-purchase agreement under chapter 63.19 RCW. The twenty-five thousand dollar total contractual obligation in this subsection shall not apply to consumer leases of motor vehicles. The inclusion in a lease of a provision whereby the lessee's or lessor's liability, at the end of the lease period or upon an earlier termination, is based on the value of the leased property at that time, shall not be deemed to make the transaction other than a consumer lease. The term "consumer lease" does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

(5) The term "lessee" means a natural person who leases or is offered a consumer lease.

(6) The term "lessor" means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease. [1995 c 112 § 1; 1992 c 134 § 15; 1983 c 158 § 2.]

Short title—Severability—1992 c 134: See RCW 63.19.900 and 63.19.901.

63.10.040 Lease contracts—Disclosure requirements. (*Effective January 1, 1996.*) (1) In any lease contract subject to this chapter, the following items, as applicable, shall be disclosed:

(a) A brief description of the leased property, sufficient to identify the property to the lessee and lessor.

(b) The total amount of any payment, such as a refundable security deposit paid by cash, check, or similar means, advance payment, capitalized cost reduction, or any trade-in allowance, appropriately identified, to be paid by the lessee at consummation of the lease.

(c) The number, amount, and due dates or periods of payments scheduled under the lease and the total amount of the periodic payments.

(d) The total amount paid or payable by the lessee during the lease term for official fees, registration, certificate of title, license fees, or taxes.

(e) The total amount of all other charges, individually itemized, payable by the lessee to the lessor, which are not included in the periodic payments. This total includes the amount of any liabilities the lease imposes upon the lessee at the end of the term, but excludes the potential difference between the estimated and realized values required to be disclosed under (m) of this subsection.

(f) A brief identification of insurance in connection with the lease including (i) if provided or paid for by the lessor, the types and amounts of coverages and cost to the lessee, or (ii) if not provided or paid for by the lessor, the types and amounts of coverages required of the lessee.

(g) A statement identifying any express warranties or guarantees available to the lessee made by the lessor or manufacturer with respect to the leased property.

(h) An identification of the party responsible for maintaining or servicing the leased property together with a brief description of the responsibility, and a statement of reasonable standards for wear and use, if the lessor sets such standards.

(i) A description of any security interest, other than a security deposit disclosed under (b) of this subsection, held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates.

(j) The amount or method of determining the amount of any penalty or other charge for delinquency, default, or late payments.

(k) A statement of whether or not the lessee has the option to purchase the leased property and, if at the end of the lease term, at what price, and, if prior to the end of the lease term, at what time, and the price or method of determining the price.

(l) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination.

(m) A statement that the lessee shall be liable for the difference between the estimated value of the property and its realized value at early termination or the end of the lease term, if such liability exists.

(n) Where the lessee's liability at early termination or at the end of the lease term is based on the estimated value of the leased property, a statement that the lessee may obtain at the end of the lease term or at early termination, at the lessee's expense, a professional appraisal of the value which could be realized at sale of the leased property by an independent third party agreed to by the lessee and the lessor, which appraisal shall be final and binding on the parties.

(o) Where the lessee's liability at the end of the lease term is based upon the estimated value of the leased property:

(i) The value of the property at consummation of the lease, the itemized total lease obligation at the end of the lease term, and the difference between them.

(ii) That there is a rebuttable presumption that the estimated value of the leased property at the end of the lease term is unreasonable and not in good faith to the extent that

it exceeds the realized value by more than three times the average payment allocable to a monthly period, and that the lessor cannot collect the amount of such excess liability unless the lessor brings a successful action in court in which the lessor pays the lessee's attorney's fees, and that this provision regarding the presumption and attorney's fees does not apply to the extent the excess of estimated value over realized value is due to unreasonable wear or use, or excessive use.

(iii) A statement that the requirements of (o)(ii) of this subsection do not preclude the right of a willing lessee to make any mutually agreeable final adjustment regarding such excess liability.

(p) In consumer leases of motor vehicles:

(i) The capitalized cost stated as a total and the identity of the components listed in the definition of capitalized cost and the respective amount of each component;

(ii) Any capitalized cost reduction stated as a total and the identity of the components and the respective amount of each component;

(iii) A statement of adjusted capitalized cost;

(iv) A disclosure, in proximity to the lessee's signature, in not less than ten point bold type to the lessee: "WARNING!: EARLY TERMINATION UNDER THIS LEASE MAY RESULT IN SIGNIFICANT COSTS TO YOU THE CONSUMER. READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ALL PROVISIONS BEFORE SIGNING. GET ALL PROMISES IN WRITING. ORAL PROMISES ARE DIFFICULT TO ENFORCE."; and

(v) If the lessee trades in a motor vehicle, the amount of any sales tax exemption for the agreed value of the traded vehicle and any reduction in the periodic payments resulting from the application of the sales tax exemption shall be disclosed in the lease contract.

(2) Where disclosures required under this chapter are the same as those required under Title I of the federal consumer protection act (90 Stat. 257, 15 U.S.C. Sec. 1667 et seq.), which is also known as the federal consumer leasing act, as of the date upon which the consumer lease is executed, disclosures complying with the federal consumer leasing act shall be deemed to comply with the disclosure requirements of this chapter. [1995 c 112 § 2; 1983 c 158 § 4.]

63.10.045 Unlawful acts or practices—Consumer lease of a motor vehicle. (*Effective January 1, 1996.*) Each of the following acts or practices are unlawful in the context of offering a consumer lease of a motor vehicle:

(1) Advertising that is false, deceptive, misleading, or in violation of 12 C.F.R. Sec. 213.5 (a) through (d) and 15 U.S.C. 1667, Regulation M;

(2) Misrepresenting any of the following:

(a) The material terms or conditions of a lease agreement;

(b) That the transaction is a purchase agreement as opposed to a lease agreement; or

(c) The amount of any equity or value the leased vehicle will have at the end of the lease; and

(3) Failure to comply with the disclosure requirements of Title I of the federal consumer protection act (90 Stat. 257, 15 U.S.C. Sec. 1667 et seq.), which is also known as the federal consumer leasing act, including, but not limited

to, failure to disclose all fees that will be due when a consumer exercises the option to purchase. [1995 c 112 § 3.]

63.10.050 Violations—Unfair acts under consumer protection act—Damages. (*Effective January 1, 1996.*)

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 or practice in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

Regarding damages awarded under this section, the court may award damages allowed under chapter 19.86 RCW or 15 U.S.C. Sec. 1667d (a) and 15 U.S.C. Sec. 1640, but not both. [1995 c 112 § 4; 1983 c 158 § 5.]

63.10.055 Remedies—Effect of chapter. (*Effective January 1, 1996.*)

The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law or in equity. [1995 c 112 § 5.]

63.10.901 Severability—1995 c 112. 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. [1995 c 112 § 6.]

63.10.902 Effective date—1995 c 112. This act shall take effect January 1, 1996. [1995 c 112 § 7.]

Chapter 63.14

RETAIL INSTALLMENT SALES OF GOODS AND SERVICES

Sections

63.14.135	Repealed.
63.14.136	Retail installment transaction—Unconscionable—Judicial action.
63.14.924	Application—1995 c 249.
63.14.925	Savings—1995 c 249.
63.14.926	Effective date—1995 c 249.

63.14.135 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

63.14.136 Retail installment transaction—Unconscionable—Judicial action. (1) With respect to a retail installment transaction, as defined in RCW 63.14.010(8), if the court as a matter of law finds the agreement or contract, or any clause in the agreement or contract, to have been unconscionable at the time it was made, the court may refuse to enforce the agreement or contract, may enforce the remainder of the agreement or contract, or may limit the application of any unconscionable clause to avoid an unconscionable result.

(2) If it is claimed or it appears to the court that the agreement or contract, or any clause in the agreement or contract, may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to assist the court in making a determination regarding unconscionability.

(3) For the purpose of this section, a charge or practice expressly permitted by this chapter is not in itself unconscionable. [1995 c 249 § 4.]

63.14.924 Application—1995 c 249. This act applies prospectively only and not retroactively. It applies only to retail installment transactions entered into on or after May 5, 1995. [1995 c 249 § 2.]

63.14.925 Savings—1995 c 249. The repeals in section 1, chapter 249, Laws of 1995 shall not be construed as affecting any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or order adopted pursuant to those statutes; nor as affecting any proceeding instituted under them. [1995 c 249 § 3.]

63.14.926 Effective date—1995 c 249. 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 immediately [May 5, 1995]. [1995 c 249 § 5.]

Title 64

REAL PROPERTY AND CONVEYANCES

Chapters

- 64.38** Homeowners' associations.
- 64.40** Property rights—Damages from governmental actions.
- 64.42** Regulation of private property.

Chapter 64.38

HOMEOWNERS' ASSOCIATIONS

Sections

- 64.38.005 Intent.
- 64.38.010 Definitions.
- 64.38.015 Association membership.
- 64.38.020 Association powers.
- 64.38.025 Board of directors—Standard of care—Restrictions—Budget—Removal from board.
- 64.38.030 Association bylaws.
- 64.38.035 Association meetings—Notice—Board of directors.
- 64.38.040 Quorum for meeting.
- 64.38.045 Financial and other records—Property of association—Copies—Examination—Annual financial statement—Accounts.
- 64.38.050 Violation—Remedy—Attorneys' fees.

64.38.005 Intent. The intent of this chapter is to provide consistent laws regarding the formation and legal administration of homeowners' associations. [1995 c 283 § 1.]

[1995 RCW Supp—page 762]

64.38.010 Definitions. For purposes of this chapter:

(1) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. "Homeowners' association" does not mean an association created under chapter 64.32 or 64.34 RCW.

(2) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

(3) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.

(5) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this chapter.

(6) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes. [1995 c 283 § 2.]

64.38.015 Association membership. The membership of an association at all times shall consist exclusively of the owners of all real property over which the association has jurisdiction, both developed and undeveloped. [1995 c 283 § 3.]

64.38.020 Association powers. Unless otherwise provided in the governing documents, an association may:

- (1) Adopt and amend bylaws, rules, and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;
- (3) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association, but not on behalf of owners involved in disputes that are not the responsibility of the association;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common areas;
- (7) Cause additional improvements to be made as a part of the common areas;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;

(9) Grant easements, leases, licenses, and concessions through or over the common areas and petition for or consent to the vacation of streets and alleys;

(10) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common areas;

(11) Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association;

(12) Exercise any other powers conferred by the bylaws;

(13) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(14) Exercise any other powers necessary and proper for the governance and operation of the association. [1995 c 283 § 4.]

64.38.025 Board of directors—Standard of care—Restrictions—Budget—Removal from board. (1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW.

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

(3) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(4) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause. [1995 c 283 § 5.]

64.38.030 Association bylaws. Unless provided for in the governing documents, the bylaws of the association shall provide for:

(1) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(2) Election by the board of directors of the officers of the association as the bylaws specify;

(3) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(4) Which of its officers may prepare, execute, certify, and record amendments to the governing documents on behalf of the association;

(5) The method of amending the bylaws; and

(6) Subject to the provisions of the governing documents, any other matters the association deems necessary and appropriate. [1995 c 283 § 6.]

64.38.035 Association meetings—Notice—Board of directors. (1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent of the votes in the association. Not less than fourteen nor more than sixty days in advance of any meeting, the secretary or other officers specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner. The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

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

the disclosure of information in violation of law or which is otherwise exempt from disclosure. [1995 c 283 § 7.]

64.38.040 Quorum for meeting. Unless the governing documents specify a different percentage, a quorum is present throughout any meeting of the association if the owners to which thirty-four percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting. [1995 c 283 § 8.]

64.38.045 Financial and other records—Property of association—Copies—Examination—Annual financial statement—Accounts. (1) The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status. All financial and other records of the association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, are the property of the association. Each association managing agent shall turn over all original books and records to the association immediately upon termination of the management relationship with the association, or upon such other demand as is made by the board of directors. An association managing agent is entitled to keep copies of association records. All records which the managing agent has turned over to the association shall be made reasonably available for the examination and copying by the managing agent.

(2) All records of the association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the association or its managing agent. The association shall not release the unlisted telephone number of any owner. The association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the association in providing access to records.

(3) At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association. The financial statements of associations with annual assessments of fifty thousand dollars or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if sixty-seven percent of the votes cast by owners, in person or by proxy, at a meeting of the association at which a quorum is present, vote each year to waive the audit.

(4) The funds of the association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. [1995 c 283 § 9.]

64.38.050 Violation—Remedy—Attorneys' fees. Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party. [1995 c 283 § 10.]

Chapter 64.40

PROPERTY RIGHTS—DAMAGES FROM GOVERNMENTAL ACTIONS

Sections

64.40.050 Local government immunity from liability. (*Expires June 30, 1998.*)

64.40.050 Local government immunity from liability. (*Expires June 30, 1998.*) A local government is not liable for damages under this chapter due to the local government's failure to make a final decision within the time limits established in RCW 36.70B.090. [1995 c 347 § 421.]

Expiration date—Application—1995 c 347 §§ 413 and 421: See note following RCW 36.70B.090.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Chapter 64.42

REGULATION OF PRIVATE PROPERTY

Sections

- 64.42.001 Short title. (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*)
- 64.42.005 Intent. (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*)
- 64.42.010 Definitions. (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*)
- 64.42.015 Regulation or restraint prohibited without analysis of economic impact—Necessary public purpose—Least possible impact. (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*)
- 64.42.020 General public use—Taking—Compensation—Restrictions on governmental entity—State responsibility—Time limit. (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*)
- 64.42.025 Governmental entity pays for information. (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*)
- 64.42.030 Judicial enforcement—Costs—Attorneys' fees. (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*)
- 64.42.900 Severability—1995 c 98 (Initiative Measure No. 164). (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*)

64.42.001 Short title. (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*) This chapter shall be known as the private property regulatory fairness act. [1995 c 98 § 2 (Initiative Measure No. 164).]

64.42.005 Intent. (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*) This chapter is intended to provide remedies to property owners in addition to any constitutional rights under the state and/or federal constitutions and is not intended to restrict or replace any constitutional rights. [1995 c 98 § 1 (Initiative Measure No. 164).]

64.42.010 Definitions. (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Full compensation" means the reduction in the fair market value of the portion or parcel of property taken for general public use which is attributable to the regulation or restraint. Such reduction shall be measured as of the date of adoption of the regulation or imposition of restraint on the use of private property.

(2) "Governmental entity" means Washington state, state agencies, agencies and commissions funded fully or partially by the state, counties, cities, and other political subdivisions.

(3) "Private property" means:

(a) Land;

(b) Any interest in land or improvements thereon;

(c) Any proprietary water right;

(d) Any crops, forest products, or resources capable of being harvested or extracted that is owned by a nongovernmental entity and is protected by either the Fifth or Fourteenth Amendments to the U.S. Constitution or the Washington State Constitution.

(4) "Restraint of land use" means any action, requirement, or restriction by a governmental entity, other than actions to prevent or abate public nuisances, that limits the use or development or [of] private property. [1995 c 98 § 7 (Initiative Measure No. 164).]

64.42.015 Regulation or restraint prohibited without analysis of economic impact—Necessary public purpose—Least possible impact. (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*) A regulation of private property or restraint of land use by a governmental entity is prohibited unless a statement containing a full analysis of the total economic impact in private property of such regulation or restraint is prepared by the entity and made available to the public at least thirty days prior to adoption of the regulation or imposition of the restraint. Such statement shall identify the manner in which the proposed action will substantially advance the purpose of protecting public health and safety against identified public health or safety risks created by the use of private property, and analyze the economic impact of all reasonable alternatives to the regulation or restraint. Should the governmental entity choose to adopt a proposed regulation or restraint on the use [of] private property, the governmental entity shall adopt the regulation or restraint that has the least possible impact on private property and still accomplishes the necessary public purpose. [1995 c 98 § 3 (Initiative Measure No. 164).]

64.42.020 General public use—Taking—Compensation—Restrictions on governmental entity—State responsibility—Time limit. (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*) (1) A portion or parcel of private property shall be considered to have been taken for general public use when:

(a) A governmental entity regulates or imposes a restraint of land use on such portion or parcel of property for

public benefit including wetlands, fish or wildlife habitat, buffer zone, or other public benefit designations; and

(b) No public nuisance will be created absent the regulation; and[.]

(2) When private property is taken for general public use, the regulating agency or jurisdiction shall pay full compensation of reduction in value to the owner, or the use of the land by the owner may not be restricted because of the regulation or restraint. The jurisdiction may not require waiving this compensation as a condition of approval of use or another permit, nor as a condition for subdivision of land.

(3) Compensation must be paid to the owner of a private property within three months of the adoption of a regulation or restraint which results in a taking for general public use.

(4) A governmental entity may not deflate the value of property by suggesting or threatening a designation to avoid full compensation to the owner.

(5) A governmental entity that places restrictions on the use of public or private property which deprive a landowner of access to his or her property must also provide alternative access to the property at the governmental entity's expense, or purchase the inaccessible property.

(6) The assessor shall adjust property valuation for tax purposes and notify the owner of the new tax valuation, which must be reflected and identified in the next tax assessment notice.

(7) The state is responsible for the compensation liability of other governmental entities for any action which restricts the use of property when such action is mandated by state law or any state agency.

(8) Claims for compensation as a result of a taking of private property under this chapter must be brought within the time period specified in RCW 4.16.020. [1995 c 98 § 4 (Initiative Measure No. 164).]

64.42.025 Governmental entity pays for information. (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*) No governmental entity may require any private property owner to provide or pay for any studies, maps, plans, or reports used in decisions to consider restricting the use of private property for public use. [1995 c 98 § 6 (Initiative Measure No. 164).]

64.42.030 Judicial enforcement—Costs—Attorneys' fees. (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*) This chapter may be enforced in superior court against any governmental entity which fails to comply with the provisions of this chapter by any owner of property subject to the jurisdiction of such entity. Any prevailing plaintiff is entitled to recover the costs of litigation, including reasonable attorney's fees. [1995 c 98 § 8 (Initiative Measure No. 164).]

64.42.900 Severability—1995 c 98 (Initiative Measure No. 164). (*Effective if Initiative 164 is approved at the November 1995 election under Referendum Measure 48.*) 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. [1995 c 98 § 9 (Initiative Measure No. 164).]

Title 65

RECORDING, REGISTRATION, AND LEGAL PUBLICATION

Chapters

- 65.12** Registration of land titles (Torrens Act).
65.16 Legal publications.

Chapter 65.12

REGISTRATION OF LAND TITLES (TORRENS ACT)

Sections

- 65.12.780** Fees of clerk.

65.12.780 Fees of clerk. On the filing of any application for registration, the applicant shall pay to the clerk of the court filing fees as set in RCW 36.18.016. When any number of defendants enter their appearance at the same time, before default, but one fee shall be paid. Every publication in a newspaper required by this chapter shall be paid for by the party on whose application the order of publication is made, in addition to the fees above prescribed. The party at whose request any notice is issued, shall pay for the service of the same, except when sent by mail by the clerk of court, or the registrar of titles. [1995 c 292 § 19; 1907 c 250 § 94; RRS § 10723.]

Chapter 65.16

LEGAL PUBLICATIONS

Sections

- 65.16.160** Publication of ordinances.

65.16.160 Publication of ordinances. (1) Whenever any county is required by law to publish legal notices containing the full text of any proposed or adopted ordinance in a newspaper, the county may publish a summary of the ordinance which summary shall be approved by the governing body and which shall include:

- (a) The name of the county;
- (b) The formal identification or citation number of the ordinance;
- (c) A descriptive title;
- (d) A section-by-section summary;
- (e) Any other information which the county finds is necessary to provide a complete summary; and
- (f) A statement that the full text will be mailed upon request.

Publication of the title of an ordinance by a county authorizing the issuance of bonds, notes, or other evidences of indebtedness shall constitute publication of a complete

summary of that ordinance, and a section-by-section summary shall not be required.

(2) Subsection (1) of this section notwithstanding, whenever any publication is made under this section and the proposed or adopted ordinance contains provisions regarding taxation or penalties or contains legal descriptions of real property, then the sections containing this matter shall be published in full and shall not be summarized. When a legal description of real property is involved, the notice shall also include the street address or addresses of the property described, if any. In the case of descriptions covering more than one street address, the street addresses of the four corners of the area described shall meet this requirement.

(3) The full text of any ordinance which is summarized by publication under this section shall be mailed without charge to any person who requests the text from the adopting county. [1995 c 157 § 1; 1994 c 273 § 19; 1977 c 34 § 4.]

Title 66

ALCOHOLIC BEVERAGE CONTROL

Chapters

- 66.08** Liquor control board—General provisions
66.12 Exemptions
66.16 State liquor stores
66.20 Liquor permits
66.24 Licenses—Stamp taxes
66.28 Miscellaneous regulatory provisions
66.44 Enforcement—Penalties

Chapter 66.08

LIQUOR CONTROL BOARD—GENERAL PROVISIONS

Sections

- 66.08.180** Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies.
66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for noncompliance.
66.08.195 Liquor revolving fund—Definition of terms relating to border areas.
66.08.196 Liquor revolving fund—Distribution of funds to border areas.
66.08.198 Liquor revolving fund—Distribution of funds to border areas—Guidelines adoption.

66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies. Moneys in the liquor revolving fund shall be distributed by the board at least once every three months in accordance with RCW 66.08.190, 66.08.200 and 66.08.210: PROVIDED, That the board shall reserve from distribution such amount not exceeding five hundred thousand dollars as may be necessary for the proper administration of this title.

(1) All license fees, penalties and forfeitures derived under this act from class H licenses or class H licensees shall every three months be disbursed by the board as follows:

(a) Three hundred thousand dollars per biennium, to the University of Washington for the forensic investigations council to conduct the state toxicological laboratory pursuant to RCW 68.50.107; and

(b) Of the remaining funds:

(i) 6.06 percent to the University of Washington and 4.04 percent to Washington State University for alcoholism and drug abuse research and for the dissemination of such research; and

(ii) 89.9 percent to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050;

(2) The first fifty-five dollars per license fee provided in RCW 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand dollars annually shall be disbursed every three months by the board to the general fund to be used for juvenile alcohol and drug prevention programs for kindergarten through third grade to be administered by the superintendent of public instruction;

(3) Twenty percent of the remaining total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.340, 66.24.350, 66.24.360, and 66.24.370, shall be transferred to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050; and

(4) One-fourth cent per liter of the tax imposed by RCW 66.24.210 shall every three months be disbursed by the board to Washington State University solely for wine and wine grape research, extension programs related to wine and wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine industry in accordance with RCW 28B.30.068. The director of financial management shall prescribe suitable accounting procedures to ensure that the funds transferred to the general fund to be used by the department of social and health services and appropriated are separately accounted for. [1995 c 398 § 16; 1987 c 458 § 10; 1986 c 87 § 1; 1981 1st ex.s. c 5 § 6; 1979 c 151 § 166; 1967 ex.s. c 75 § 1; 1965 ex.s. c 143 § 2; 1949 c 5 § 10; 1935 c 13 § 2; 1933 ex.s. c 62 § 77; Rem. Supp. 1949 § 7306-77. Formerly RCW 43.66.080.]

Severability—1987 c 458: See note following RCW 48.21.160.

Effective date—1986 c 87: "This act shall take effect July 1, 1987." [1986 c 87 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: "The effective date of this 1967 amendatory act is July 1, 1967." [1967 ex.s. c 75 § 8.]

Severability—1949 c 5: See RCW 66.98.080.

Distribution for state toxicological lab: RCW 68.50.107.

Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.

66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for noncompliance. When excess funds are distributed, all moneys subject to distribution shall be disbursed as follows:

(1) Three-tenths of one percent to border areas under RCW 66.08.195; and

(2) From the amount remaining after distribution under subsection (1) of this section, fifty percent to the general

fund of the state, ten percent to the counties of the state, and forty percent to the incorporated cities and towns of the state.

The governor may notify and direct the state treasurer to withhold the revenues to which the counties and cities are entitled under this section if the counties or cities are found to be in noncompliance pursuant to RCW 36.70A.340. [1995 c 159 § 1; 1991 sp.s. c 32 § 34; 1988 c 229 § 4; 1957 c 175 § 6. Prior: 1955 c 109 § 2; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.090.]

Effective date—1995 c 159: "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, 1995." [1995 c 159 § 6.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Finding—1988 c 229: "The legislature finds and declares that certain counties and municipalities near international borders are subjected to a constant volume and flow of travelers and visitors for whom local government services must be provided. The legislature further finds that it is in the public interest and for the protection of the health, property, and welfare of the residents and visitors to provide supplemental resources to augment and maintain existing levels of police protection in such areas and to alleviate the impact of such added burdens." [1988 c 229 § 2.]

Effective date—1988 c 229 §§ 2-4: "Sections 2 through 4 of this act shall take effect July 1, 1989." [1988 c 229 § 5.]

66.08.195 Liquor revolving fund—Definition of terms relating to border areas. For the purposes of this chapter:

(1) "Border area" means any incorporated city or town located within seven miles of the Washington-Canadian border or any unincorporated area that is a point of land surrounded on three sides by saltwater and adjacent to the Canadian border.

(2) "Border area per-capita law-enforcement spending" equals total per capita expenditures in a border area on: Law enforcement operating costs, court costs, law enforcement-related insurance, and detention expenses, minus funds allocated to a border area under RCW 66.08.190 and 66.08.196.

(3) "Border-crossing traffic total" means the number of vehicles, vessels, and aircraft crossing into the United States through a United States customs service border crossing that enter into the border area during a federal fiscal year, using border crossing statistics and criteria included in guidelines adopted by the department of community, trade, and economic development.

(4) "Border-related crime statistic" means the sum of infractions and citations issued, and arrests of persons permanently residing outside Washington state in a border area during a calendar year. [1995 c 159 § 2; 1988 c 229 § 3.]

Effective date—1995 c 159: See note following RCW 66.08.190.

Finding—Effective date—1988 c 229: See notes following RCW 66.08.190.

66.08.196 Liquor revolving fund—Distribution of funds to border areas. Distribution of funds to border areas under RCW 66.08.190 shall be as follows:

(1) Sixty-five percent of the funds shall be distributed to border areas ratably based on border area traffic totals;

(2) Twenty-five percent of the funds shall be distributed to border areas ratably based on border-related crime statistics; and

(3) Ten percent of the funds shall be distributed to border areas ratably based upon border area per capita law enforcement spending.

Distributions to an unincorporated area that is a point of land surrounded on three sides by saltwater and adjacent to the Canadian border shall be made to the county in which such an area is located and may only be spent on services provided to that area. [1995 c 159 § 3.]

Effective date—1995 c 159: See note following RCW 66.08.190.

66.08.198 Liquor revolving fund—Distribution of funds to border areas—Guidelines adoption. The department of community, trade, and economic development shall develop guidelines to determine the figures used under the three distribution factors defined in RCW 66.08.195. At the request of any border community, the department may review these guidelines once every three years. [1995 c 159 § 4.]

Effective date—1995 c 159: See note following RCW 66.08.190.

Chapter 66.12 EXEMPTIONS

Sections

66.12.120 Bringing alcoholic beverages into state from another state—
Payment of markup and tax.

66.12.120 Bringing alcoholic beverages into state from another state—Payment of markup and tax. Notwithstanding any other provision of Title 66 RCW, a person twenty-one years of age or over may, free of tax and markup, for personal or household use, bring into the state of Washington from another state no more than once per calendar month up to two liters of spirits or wine or two hundred eighty-eight ounces of beer. Additionally, such person may be authorized by the board to bring into the state of Washington from another state a reasonable amount of alcoholic beverages in excess of that provided in this section for personal or household use only upon payment of an equivalent markup and tax as would be applicable to the purchase of the same or similar liquor at retail from a state liquor store. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying into effect the provisions of this section. [1995 c 100 § 1; 1975 1st ex.s. c 173 § 3.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Chapter 66.16 STATE LIQUOR STORES

Sections

66.16.040 Sales of liquor by employees—Identification cards—Permit holders—Sales for cash.

66.16.040 Sales of liquor by employees—Identification cards—Permit holders—Sales for cash.

[1995 RCW Supp—page 768]

Except as otherwise provided by law, an employee in a state liquor store or agency may sell liquor to any person of legal age to purchase alcoholic beverages and may also sell to holders of permits such liquor as may be purchased under such permits.

Where there may be a question of a person's right to purchase liquor by reason of age, such person shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Liquor control authority card of identification of any state or province of Canada.

(2) Driver's license, instruction permit or identification card of any state or province of Canada, or "identocard" issued by the Washington state department of licensing pursuant to RCW 46.20.117.

(3) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents.

(4) Passport.

(5) Merchant Marine identification card issued by the United States Coast Guard.

The board may adopt such regulations as it deems proper covering the acceptance of such cards of identification.

No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash. [1995 c 16 § 1; 1981 1st ex.s. c 5 § 8; 1979 c 158 § 217; 1973 1st ex.s. c 209 § 3; 1971 ex.s. c 15 § 1; 1959 c 111 § 1; 1933 ex.s. c 62 § 7; RRS § 7306-7.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 ex.s. c 15 § 8.]

Renewal driver's license accepted as proper identification: RCW 46.20.185.

Chapter 66.20 LIQUOR PERMITS

Sections

66.20.300 Alcohol servers—Definitions.

66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions.

66.20.320 Alcohol servers—Education program—Fees—Issuance of permits.

66.20.330 Alcohol servers—Rules.

66.20.340 Alcohol servers—Violation of rules—Penalties.

66.20.350 Alcohol servers—Deposit of fees.

66.20.300 Alcohol servers—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 66.20.310 through 66.20.350.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person serving or selling alcohol, spirits, wines, or beer for consumption at an on-premises retail licensed facility as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

(5) "Retail licensed premises" means any premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by RCW 66.24.320, 66.24.330, 66.24.340, 66.24.350, 66.24.400, 66.24.425, and 66.24.450. [1995 c 51 § 2.]

Findings—1995 c 51: "The legislature finds that education of alcohol servers on issues such as the physiological effects of alcohol on consumers, liability and legal implications of serving alcohol, driving while intoxicated, and methods of intervention with the problem customer are important in protecting the health and safety of the public. The legislature further finds that it is in the best interest of the citizens of the state of Washington to have an alcohol server education program." [1995 c 51 § 1.]

66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions. (1)(a) There shall be an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There shall be an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective July 1, 1996, except as provided in (d) of this subsection, every person employed, under contract or otherwise, by an annual retail liquor licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.340, 66.24.350, 66.24.400, 66.24.425, or 66.24.450, who as part of his or her employment participates in any manner in the sale or service of alcoholic beverages shall have issued to them a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit shall be valid for employment at any retail licensed premises described in (a) of this subsection.

(c) No licensee described in (a) of this subsection, except as provided in (d) of this subsection, may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor shall have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After July 1, 1996, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Establishments licensed under RCW 66.24.320 and 66.24.340, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350. [1995 c 51 § 3.]

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.320 Alcohol servers—Education program—Fees—Issuance of permits. (1) The board shall regulate a required alcohol server education program that includes:

(a) Development of the curriculum and materials for the education program;

(b) Examination and examination procedures;

(c) Certification procedures, enforcement policies, and penalties for education program instructors and providers;

(d) The curriculum for an approved class 12 alcohol permit training program that includes but is not limited to the following subjects:

(i) The physiological effects of alcohol including the effects of alcohol in combination with drugs;

(ii) Liability and legal information;

(iii) Driving while intoxicated;

(iv) Intervention with the problem customer, including ways to stop service, ways to deal with the belligerent customer, and alternative means of transportation to get the customer safely home;

(v) Methods for checking proper identification of customers;

(vi) Nationally recognized programs, such as TAM (Techniques in Alcohol Management) and TIPS (Training for Intervention Programs) modified to include Washington laws and regulations.

(2) The board shall provide the program through liquor licensee associations, independent contractors, private

persons, private or public schools certified by the board, or any combination of such providers.

(3) Each training entity shall provide a class 12 permit to the manager or bartender who has successfully completed a course the board has certified. A list of the individuals receiving the class 12 permit shall be forwarded to the board on the completion of each course given by the training entity.

(4) After July 1, 1996, the board shall require all alcohol servers applying for a class 13 alcohol server permit to view a video training session. Retail liquor licensees shall fully compensate employees for the time spent participating in this training session.

(5) When requested by a retail liquor licensee, the board shall provide copies of videotaped training programs that have been produced by private vendors and make them available for a nominal fee to cover the cost of purchasing and shipment, with the fees being deposited in the liquor revolving fund for distribution to the board as needed.

(6) Each training entity may provide the board with a video program of not less than one hour that covers the subjects in subsection (1)(d) (i) through (v) of this section that will be made available to a licensee for the training of a class 13 alcohol server.

(7) Applicants shall be given a class 13 permit upon the successful completion of the program.

(8) A list of the individuals receiving the class 13 permit shall be forwarded to the board on the completion of each video training program.

(9) The board shall develop a model permit for the class 12 and 13 permits. The board may provide such permits to training entities or licensees for a nominal cost to cover production.

(10) Persons who have completed a nationally recognized alcohol management or intervention program since July 1, 1993, may be issued a class 12 or 13 permit upon providing proof of completion of such training to the board. [1995 c 51 § 4.]

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.330 Alcohol servers—Rules. The board shall adopt rules to implement RCW 66.20.300 through 66.20.350 including, but not limited to, procedures and grounds for denying, suspending, or revoking permits. [1995 c 51 § 5.]

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.340 Alcohol servers—Violation of rules—Penalties. A violation of any of the rules of the board adopted to implement RCW 66.20.300 through 66.20.350 is a misdemeanor, punishable by a fine of not more than two hundred fifty dollars for a first offense. A subsequent offense is punishable by a fine of not more than five hundred dollars, or imprisonment for not more than ninety days, or both the fine and imprisonment. [1995 c 51 § 6.]

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.350 Alcohol servers—Deposit of fees. Fees collected by the board under RCW 66.20.300 through 66.20.350 shall be deposited in the liquor revolving fund in accordance with RCW 66.08.170. [1995 c 51 § 7.]

Findings—1995 c 51: See note following RCW 66.20.300.

Chapter 66.24

LICENSES—STAMP TAXES

Sections

66.24.010	Issuance, transferability, refusal, suspension, or cancellation—Grounds, hearings, procedure—Rules—Duration of licenses or certificates of approval—Conditions and restrictions—Posting—Notice to local authorities—Proximity to churches, schools, etc.—Temporary licenses.
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66.24.420	Liquor by the drink, class H license—Schedule of fees—Location—Number of licenses.
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66.24.010 Issuance, transferability, refusal, suspension, or cancellation—Grounds, hearings, procedure—Rules—Duration of licenses or certificates of approval—Conditions and restrictions—Posting—Notice to local authorities—Proximity to churches, schools, etc.—Temporary licenses. (1) Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension or revocation of any license, the liquor control board may consider any prior criminal conduct of the applicant and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, grant or refuse the license applied for. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) A person who has not resided in the state for at least one month prior to making application, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(d) A corporation, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

(3) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be. The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to

administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446, as now or hereafter amended. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a class H license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by the regulations in force from time to time. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8) Before the board shall issue a license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application be

for a license within an incorporated city or town, or to the county legislative authority, if the application be for a license outside the boundaries of incorporated cities or towns; and such incorporated city or town, through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the board within twenty days after date of transmittal of such notice, written objections against the applicant or against the premises for which the license is asked, and shall include with such objections a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the liquor control board may in its discretion hold a formal hearing subject to the applicable provisions of Title 34 RCW. Upon the granting of a license under this title the board shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

(9) Before the board issues any license to any applicant, it shall give (a) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (b) written notice by certified mail of the application to churches, schools, and public institutions within five hundred feet of the premises to be licensed. The board shall issue no beer retailer license class A, B, D, or E or wine retailer license class C or F or class H license covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the outer property line of the school grounds to the nearest public entrance of the premises proposed for license, and if, after receipt by the school or public institution of the notice as provided in this subsection, the board receives written notice, within twenty days after posting such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. For the purpose of this section, church shall mean a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies. It is the intent under this subsection that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall

state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or wholesaler license to an applicant assuming an existing retail or wholesaler license to continue the operation of the retail or wholesaler premises during the period the application for the license is pending and when the following conditions exist:

(a) The licensed premises has been operated under a retail or wholesaler license within ninety days of the date of filing the application for a temporary license;

(b) The retail or wholesaler license for the premises has been surrendered pursuant to issuance of a temporary operating license;

(c) The applicant for the temporary license has filed with the board an application to assume the retail or wholesaler license at such premises to himself or herself; and

(d) The application for a temporary license is accompanied by a temporary license fee established by the board by rule.

A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for an additional sixty-day period upon payment of an additional fee and upon compliance with all conditions required in this section.

Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 and chapter 34.05 RCW shall apply to temporary licenses.

Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full. [1995 c 232 § 1; 1988 c 200 § 1; 1987 c 217 § 1; 1983 c 160 § 3; 1982 c 85 § 2; 1981 1st ex.s. c 5 § 10; 1981 c 67 § 31; 1974 ex.s. c 66 § 1; 1973 1st ex.s. c 209 § 10; 1971 c 70 § 1; 1969 ex.s. c 178 § 3; 1947 c 144 § 1; 1935 c 174 § 3; 1933 ex.s. c 62 § 27; Rem. Supp. 1947 § 7306-27. Formerly RCW 66.24.010, part and 66.24.020 through 66.24.100. FORMER PART OF SECTION: 1937 c 217 § 1 (23U) now codified as RCW 66.24.025.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 c 70: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 c 70 § 4.]

66.24.025 Transfer of license—Fee—Exception—Corporate changes, approval—Fee. (1) If the board approves, a license may be transferred, without charge, to the surviving spouse only of a deceased licensee if the parties were maintaining a marital community and the license was issued in the names of one or both of the parties.

(2) The proposed sale of more than ten percent of the outstanding and/or issued stock of a licensed corporation or any proposed change in the officers of a licensed corporation must be reported to the board, and board approval must be obtained before such changes are made. A fee of seventy-five dollars will be charged for the processing of such change of stock ownership and/or corporate officers. [1995 c 232 § 2; 1981 1st ex.s. c 5 § 11; 1973 1st ex.s. c 209 § 11; 1971 c 70 § 2; 1937 c 217 § 1 (23U) (adding new section 23-U to 1933 ex.s. c 62); RRS § 7306-23U.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 c 70: See note following RCW 66.24.010.

66.24.210 Imposition of tax on all wines sold to wine wholesalers and liquor control board—Additional taxes imposed. (1) There is hereby imposed upon all wines sold to wine wholesalers and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter: PROVIDED, HOWEVER, That wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax. The tax provided for in this section shall be collected by direct payments based on wine purchased by wine wholesalers. Every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. The board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. Such additional tax shall cease to be imposed on July 1, 2001. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) An additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine as defined in RCW 66.04.010(34) when bottled or packaged by the manufacturer and one cent per liter on all other wine. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month. [1995 c 232 § 3; 1994 sp.s. c 7 § 901 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 160 § 2; 1991 c 192 § 3; 1989 c 271 § 501; 1987 c 452 § 11; 1983 2nd ex.s. c 3 § 10; 1982 1st ex.s. c 35 § 23; 1981 1st ex.s. c 5 § 12; 1973 1st ex.s. c 204 § 2; 1969 ex.s. c 21 § 3; 1943 c 216 § 2; 1939 c 172 § 3; 1935 c 158 § 3 (adding new section 24-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-24A. Formerly RCW 66.04.120, 66.24.210, part, 66.24.220, and 66.24.230, part. FORMER PART OF SECTION: 1933 ex.s. c 62 § 25, part, now codified as RCW 66.24.230.]

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: "Sections 901 through 909, chapter 7, Laws of 1994 sp. sess. shall be submitted as a single ballot measure to the people for their adoption and ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof unless section 13, chapter 2, Laws of 1994, has been declared invalid or otherwise enjoined or stayed by a court of competent jurisdiction." [1994 sp.s. c 7 § 911 (Referendum Bill No. 43, approved November 8, 1994).]

Reviser's note: Sections 901 through 909, chapter 7, Laws of 1994 sp. sess., were adopted and ratified by the people at the November 8, 1994, general election.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1993 c 160: See note following RCW 66.12.180.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.310.

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Floor stocks tax: "There is hereby imposed upon every licensed wine wholesaler who possesses wine for resale upon which the tax has not been paid under section 2 of this 1973 amendatory act, a floor stocks tax of sixty-five cents per wine gallon on wine in his possession or under his control on June 30, 1973. Each such wholesaler shall within twenty days after June 30, 1973, file a report with the Washington State liquor control board in such form as the board may prescribe, showing the wine products on hand July 1, 1973, converted to gallons thereof and the amount of tax due thereon. The tax imposed by this section shall be due and payable within twenty days after July 1, 1973, and thereafter bear interest at the rate of one percent per month." [1973 1st ex.s. c 204 § 3.]

Effective date—1973 1st ex.s. c 204: See note following RCW 82.08.150.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

Giving away liquor prohibited—Exceptions: RCW 66.28.040.

No tax on wine shipped to bonded warehouse: RCW 66.24.185.

66.24.290 Authorized, prohibited sales—Monthly reports—Added tax—Late payment penalty—Additional taxes, purposes. (1) Any brewer or beer wholesaler

licensed under this title may sell and deliver beer to holders of authorized licenses direct, but to no other person, other than the board; and every such brewer or beer wholesaler shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer within the state a tax of two dollars and sixty cents per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer shall pay a tax computed in gallons at the rate of two dollars and sixty cents per barrel of thirty-one gallons. Any brewer or beer wholesaler whose applicable tax payment is not post-marked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Beer shall be sold by brewers and wholesalers in sealed barrels or packages.

(2) An additional tax is imposed equal to seven percent multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on all beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(4)(a) An additional tax is imposed on all beer subject to tax under subsection (1) of this section. The additional tax is equal to ninety-six cents per barrel of thirty-one gallons through June 30, 1995, two dollars and thirty-nine cents per barrel of thirty-one gallons for the period July 1, 1995, through June 30, 1997, and four dollars and seventy-eight cents per barrel of thirty-one gallons thereafter.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection (4) shall be deposited in the health services account under RCW 43.72.900.

(5) The tax imposed under this section shall not apply to "strong beer" as defined in this title. [1995 c 232 § 4; 1994 sp.s. c 7 § 902 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 311; 1989 c 271 § 502; 1983 2nd ex.s. c 3 § 11; 1982 1st ex.s. c 35 § 24; 1981 1st ex.s. c 5 § 16; 1965 ex.s. c 173 § 30; 1933 ex.s. c 62 § 24; RRS § 7306-24.]

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.310.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1965 ex.s. c 173: See note following RCW 82.98.030.
Giving away of liquor prohibited—Exceptions: RCW 66.28.040.

66.24.300 Refunds for taxes paid on exported beer—Bond securing tax payment. (1) The board may make refunds for all taxes paid on beer exported from the state for use outside the state.

(2) The board shall require filing with the board of a bond to be approved by it, in such amount as the board may fix, securing the payment of the tax. If any licensee fails to pay the tax when due, the board may forthwith suspend or cancel his license until all taxes are paid. [1995 c 232 § 5; 1951 c 93 § 1; 1937 c 217 § 2 (adding new section 24-B to 1933 ex.s. c 62); RRS § 7306-24B.]

66.24.320 Beer retailer’s license—Class A—Containers—Fee. There shall be a beer retailer’s license to be designated as a class A license to sell beer at retail, for consumption on the premises and to sell beer for consumption off the premises. Beer sold for consumption off the premises must be in original sealed packages of the manufacturer or bottler of not less than four gallons. Beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale. Such licenses may be issued only to hotels, restaurants, drug stores or soda fountains, dining places on boats and airplanes, to clubs, and at sports arenas or race tracks during recognized professional athletic events. The annual fee for said license, if issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns	Fee
Less than 20,000	\$ 205
20,000 or over	\$ 355

The annual fee for such license, if issued outside of cities and towns, shall be two hundred five dollars. The annual license fee for such license, if issued to dining places on vessels not exceeding one thousand gross tons, plying on inland waters of the state of Washington on regular schedules, shall be two hundred five dollars. [1995 c 232 § 6; 1991 c 42 § 1; 1987 c 458 § 11; 1981 1st ex.s. c 5 § 37; 1977 ex.s. c 9 § 1; 1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.330 Beer retailer’s license—Class B—Containers—Fee. There shall be a beer retailer’s license to be designated as a class B license to sell beer at retail, for consumption on the premises and to sell beer for consumption off the premises. Beer sold for consumption off the premises must be in original sealed packages of the manu-

facturer or bottler of not less than four gallons. Beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale. Such licenses may be issued only to a person operating a tavern. The annual fee for said license, if issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns	Fee
Less than 20,000	\$ 205
20,000 or over	\$ 355

The annual fee for such license, if issued outside of cities and towns, shall be two hundred five dollars. [1995 c 232 § 7; 1991 c 42 § 2; 1987 c 458 § 12; 1981 1st ex.s. c 5 § 38; 1977 ex.s. c 9 § 2; 1973 1st ex.s. c 209 § 15; 1967 ex.s. c 75 § 3; 1941 c 220 § 2; 1937 c 217 § 1 (23N) (adding new section 23-N to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23N.]

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.420 Liquor by the drink, class H license—Schedule of fees—Location—Number of licenses. (1) The class H license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for said license, if issued to a club, whether inside or outside of incorporated cities and towns, shall be seven hundred dollars.

(b) The annual fee for said license, if issued to any other class H licensee in incorporated cities and towns, shall be graduated according to the population thereof as follows:

Incorporated	
Cities and towns	Fees
Less than 20,000	\$1,200
20,000 or over	\$2,000

(c) The annual fee for said license when issued to any other class H licensee outside of incorporated cities and towns shall be: Two thousand dollars; this fee shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(d) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a restaurant in an airport terminal facility shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking and serving of complete meals, and such food service shall be available on request in other licensed places on the premises: PROVIDED, FUR-

THER, That an additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(e) Where the license shall be issued to any corporation, association, or person operating dining places at publicly owned civic centers with facilities for sports, entertainment, and conventions, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a dining place at such a publicly owned civic center shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking and serving of complete meals, and food service shall be available on request in other licensed places on the premises: PROVIDED FURTHER, That an additional license fee of ten dollars shall be required for such duplicate licenses.

(f) Where the license shall be issued to any corporation, association or person operating more than one building containing dining places at privately owned facilities which are open to the public and where there is a continuity of ownership of all adjacent property, such license shall be issued upon the payment of an annual fee which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to the additional dining places on the property or, in the case of a class H licensed hotel, property owned or controlled by leasehold interest by that hotel for use as a conference or convention center or banquet facility open to the general public for special events in the same metropolitan area, at the discretion of the board and a duplicate license may be issued for each additional place: PROVIDED, That the holder of the master license for the dining place shall not offer alcoholic beverages for sale, service, and consumption at the additional place unless food service is available at both the location of the master license and the duplicate license: PROVIDED FURTHER, That an additional license fee of twenty dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine class H licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue class H licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of class H licenses issued in the state of Washington by the board, not including those class

H licenses issued to clubs, shall not in the aggregate at any time exceed one license for each fifteen hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a class H license to any applicant if in the opinion of the board the class H licenses already granted for the particular locality are adequate for the reasonable needs of the community. [1995 c 55 § 1; 1981 1st ex.s. c 5 § 45; 1979 c 87 § 1; 1977 ex.s. c 219 § 4; 1975 1st ex.s. c 245 § 1; 1971 ex.s. c 208 § 2; 1970 ex.s. c 13 § 2. Prior: 1969 ex.s. c 178 § 6; 1969 ex.s. c 136 § 1; 1965 ex.s. c 143 § 3; 1949 c 5 § 3 (adding new section 23-S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.490 Special occasion license—Caterers—Class I—Fee. (1) There shall be a retailer's license to be designated as a class I caterer's license; this shall be a special occasion license to be issued to the holder of a class A, C, D, or public H license to extend the privilege of selling and serving liquor as authorized under such a license at retail, for consumption on the premises, to members and guests of a society or organization on special occasions at a specified date and place when such special occasions of such groups are held on premises other than the licensed premises and for consumption on the premises of such outside location. The holder of such special occasion license shall be allowed to remove from the liquor stocks at the licensed premises, and allow liquor for sale and service at such special occasion locations. An annual class I license may be issued to the holder of a class A, C, D, or public H license upon proper application to the board and payment of a fee of three hundred fifty dollars.

(2) The holder of a class I license shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request the class I licensee shall provide to the board all necessary or requested information concerning the society or organization which will be holding the function at which the class I license will be utilized.

(3) If attendance at the function will be open to the general public, the society or organization sponsoring the function shall be within the definition of "society or organization" in RCW 66.24.375. If attendance at the function will be limited to members and invited guests of the sponsoring society or organization, then the requirement that the society or organization be within the definition of RCW 66.24.375 is waived. [1995 c 232 § 9; 1994 c 201 § 3; 1987 c 386 § 6; 1985 c 306 § 1; 1981 1st ex.s. c 5 § 19; 1977 ex.s. c 9 § 5; 1969 ex.s. c 178 § 7; 1967 c 55 § 1.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Chapter 66.28

MISCELLANEOUS REGULATORY PROVISIONS

Sections

66.28.180 Price modification by certain persons, firms, or corporations—Board notification and approval—Intent—Price posting—Price filing, contracts, memoranda.

66.28.180 Price modification by certain persons, firms, or corporations—Board notification and approval—Intent—Price posting—Price filing, contracts, memoranda. It is unlawful for a person, firm, or corporation holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer wholesaler's license, a brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine wholesaler's license within the state of Washington to modify any prices without prior notification to and approval of the board.

(1) Intent. This section is enacted, pursuant to the authority of this state under the twenty-first amendment to the United States Constitution, to promote the public's interest in fostering the orderly and responsible distribution of malt beverages and wine towards effective control of consumption; to promote the fair and efficient three-tier system of distribution of such beverages; and to confirm existing board rules as the clear expression of state policy to regulate the manner of selling and pricing of wine and malt beverages by licensed suppliers and wholesalers.

(2) Beer and wine wholesale price posting.

(a) Every beer or wine wholesaler shall file with the board at its office in Olympia a price posting showing the wholesale prices at which any and all brands of beer and wine sold by such beer and/or wine wholesaler shall be sold to retailers within the state.

(b) Each price posting shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth:

(i) All brands, types, packages, and containers of beer offered for sale by such beer and/or wine wholesaler;

(ii) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.

(c) No beer and/or wine wholesaler may sell or offer to sell any package or container of beer or wine to any retail licensee at a price differing from the price for such package or container as shown in the price posting filed by the beer and/or wine wholesaler and then in effect, according to rules adopted by the board.

(d) Quantity discounts are prohibited. No price may be posted that is below acquisition cost plus ten percent of acquisition cost. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(e) Wholesale prices on a "close-out" item shall be accepted by the board if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the wholesaler who posts such a close-out price shall not restock the item

for a period of one year following the first effective date of such close-out price.

(f) The board may reject any price posting that it deems to be in violation of this section or any rule, or portion thereof, or that would tend to disrupt the orderly sale and distribution of beer and wine. Whenever the board rejects any posting, the licensee submitting the posting may be heard by the board and shall have the burden of showing that the posting is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer and wine. If the posting is accepted, it shall become effective at the time fixed by the board. If the posting is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved, in accordance with the provisions of this section.

(g) All price postings filed as required by this section shall at all times be open to inspection to all trade buyers within the state of Washington and shall not in any sense be considered confidential.

(h) Any beer and/or wine wholesaler or employee authorized by the wholesaler-employer may sell beer and/or wine at the wholesaler's posted prices to any class A, B, C, D, E, F, H, G, or J licensee upon presentation to the wholesaler or employee at the time of purchase of a special permit issued by the board to such licensee.

(i) Every class A, B, C, D, E, F, H, G, or J licensee, upon purchasing any beer and/or wine from a wholesaler, shall immediately cause such beer or wine to be delivered to the licensed premises, and the licensee shall not thereafter permit such beer to be disposed of in any manner except as authorized by the license.

(ii) Beer and wine sold as provided in this section shall be delivered by the wholesaler or an authorized employee either to the retailer's licensed premises or directly to the retailer at the wholesaler's licensed premises. A wholesaler's prices to retail licensees shall be the same at both such places of delivery.

(3) Beer and wine suppliers' price filings, contracts, and memoranda.

(a) Every brewery and winery offering beer and/or wine for sale within the state shall file with the board at its office in Olympia a copy of every written contract and a memorandum of every oral agreement which such brewery or winery may have with any beer or wine wholesaler, which contracts or memoranda shall contain a schedule of prices charged to wholesalers for all items and all terms of sale, including all regular and special discounts; all advertising, sales and trade allowances, and incentive programs; and all commissions, bonuses or gifts, and any and all other discounts or allowances. Whenever changed or modified, such revised contracts or memoranda shall forthwith be filed with the board as provided for by rule. The provisions of this section also apply to certificate of approval holders, beer and/or wine importers, and beer and/or wine wholesalers who sell to other beer and/or wine wholesalers.

Each price schedule shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth all brands, types, packages, and containers of beer or wine offered for sale by such licensed brewery or winery; all additional information required may be filed as a supplement to the price schedule forms.

(b) Prices filed by a brewery or winery shall be uniform prices to all wholesalers on a state-wide basis less bona fide allowances for freight differentials. Quantity discounts are prohibited. No price shall be filed that is below acquisition/production cost plus ten percent of that cost, except that acquisition cost plus ten percent of acquisition cost does not apply to sales of beer or wine between a beer or wine importer who sells beer or wine to another beer or wine importer or to a beer or wine wholesaler, or to a beer or wine wholesaler who sells beer or wine to another beer or wine wholesaler. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition/production cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(c) No brewery, winery, certificate of approval holder, wine importer, or wine wholesaler may sell or offer to sell any beer or wine to any persons whatsoever in this state until copies of such written contracts or memoranda of such oral agreements are on file with the board.

(d) No brewery or winery may sell or offer to sell any package or container of beer or wine to any wholesaler at a price differing from the price for such package or container as shown in the schedule of prices filed by the brewer or domestic winery and then in effect, according to rules adopted by the board.

(e) The board may reject any supplier's price filing, contract, or memorandum of oral agreement, or portion thereof that it deems to be in violation of this section or any rule or that would tend to disrupt the orderly sale and distribution of beer or wine. Whenever the board rejects any such price filing, contract, or memorandum, the licensee submitting the price filing, contract, or memorandum may be heard by the board and shall have the burden of showing that the price filing, contract, or memorandum is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer or wine. If the price filing, contract, or memorandum is accepted, it shall become effective at a time fixed by the board. If the price filing, contract, or memorandum, or portion thereof, is rejected, the last effective price filing, contract, or memorandum shall remain in effect until such time as an amended price filing, contract, or memorandum is filed and approved, in accordance with the provisions of this section.

(f) All prices, contracts, and memoranda filed as required by this section shall at all times be open to inspection to all trade buyers within the state of Washington and shall not in any sense be considered confidential. [1995 c 232 § 10; 1985 c 226 § 4.]

Chapter 66.44

ENFORCEMENT—PENALTIES

Sections

66.44.318 Employees aged eighteen to twenty-one stocking, merchandising, and handling beer and wine.

66.44.318 Employees aged eighteen to twenty-one stocking, merchandising, and handling beer and wine. Licensees holding nonretail class liquor licenses are permit-

ted to allow their employees between [the] ages of eighteen and twenty-one to stock, merchandise, and handle beer or wine on or about the nonretail premises if there is an adult twenty-one years of age or older on duty supervising such activities on the premises. [1995 c 100 § 2.]

Title 67

SPORTS AND RECREATION— CONVENTION FACILITIES

Chapters

- 67.16 Horse racing.
- 67.18 Washington state horse park.
- 67.28 Public stadium, convention, performing arts, and visual arts facilities.
- 67.38 Cultural arts, stadium and convention districts.
- 67.40 Convention and trade facilities.

Chapter 67.16

HORSE RACING

Sections

- 67.16.100 Disposition of fees—"State trade fair fund"—"Fair fund."
- 67.16.105 Gross receipts—Commission's percentage—Distributions—Rules.

67.16.100 Disposition of fees—"State trade fair fund"—"Fair fund." (1) All sums paid to the commission under this chapter, including those sums collected for license fees and excluding those sums collected under RCW 67.16.102, 67.16.105(3), and 67.16.105(4), shall be disposed of by the commission as follows:

(a) Fifty percent thereof shall be retained by the commission for the payment of the salaries of its members, secretary, clerical, office, and other help and all expenses incurred in carrying out the provisions of this chapter. No salary, wages, expenses, or compensation of any kind shall be paid by the state in connection with the work of the commission.

(b) One percent shall, on the next business day following the receipt thereof, be paid to the state treasurer to be deposited in the general fund.

(c) Three percent shall, on the next business day following the receipt thereof, be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "state trade fair fund" which shall be maintained as a separate and independent fund, and made available to the director of community, trade, and economic development for the sole purpose of assisting state trade fairs.

(d) Forty-six percent shall be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "fair fund," which shall be maintained as a separate and independent fund outside of the state treasury, and made available to the director of agriculture for the sole purpose of assisting fairs in the manner provided in Title 15 RCW.

(2) Any moneys collected or paid to the commission under the terms of this chapter and not expended at the close of the fiscal biennium shall be paid to the state treasurer and be placed in the general fund. The commission may, with the approval of the office of financial management, retain any sum required for working capital. [1995 c 399 § 166; 1991 c 270 § 4. Prior: 1985 c 466 § 67; 1985 c 146 § 6; 1980 c 16 § 1; prior: 1979 c 151 § 169; 1979 c 31 § 2; 1977 c 75 § 81; 1965 c 148 § 7; 1955 c 106 § 5; 1947 c 34 § 2; 1941 c 48 § 4; 1935 c 182 § 30; 1933 c 55 § 9; Rem. Supp. 1947 § 8312-9.]

Effective date—Severability—1985 c 466: See notes following RCW 43.31.085.

Severability—1985 c 146: See note following RCW 67.16.010.

State international trade fairs: RCW 43.31.800 through 43.31.850.

Transfer of surplus funds in state trade fair fund to general fund: RCW 43.31.832 through 43.31.834.

67.16.105 Gross receipts—Commission's percentage—Distributions—Rules. (1) Licensees of race meets that are nonprofit in nature, are of ten days or less, and have an average daily handle of one hundred twenty thousand dollars or less shall withhold and pay to the commission daily for each authorized day of racing one-half percent of the daily gross receipts from all parimutuel machines at each race meet.

(2) Licensees of race meets that do not fall under subsection (1) of this section shall withhold and pay to the commission daily for each authorized day of racing the following applicable percentage of all daily gross receipts from all parimutuel machines at each race meet:

(a) If the daily gross receipts of all parimutuel machines are more than two hundred fifty thousand dollars, the licensee shall withhold and pay to the commission daily two and one-half percent of the daily gross receipts; and

(b) If the daily gross receipts of all parimutuel machines are two hundred fifty thousand dollars or less, the licensee shall withhold and pay to the commission daily one percent of the daily gross receipts.

(3) In addition to those amounts in subsections (1) and (2) of this section, all licensees shall forward one-tenth of one percent of the daily gross receipts of all parimutuel machines to the commission daily for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the licensees. The total of such payments shall not exceed one hundred fifty thousand dollars in any one year and any amount in excess of one hundred fifty thousand dollars shall be remitted to the general fund. Payments to nonprofit race meets under this subsection shall be distributed on a pro rata per-race-day basis and used only for purses at race tracks that have been operating under RCW 67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment.

(4) In addition to those sums paid to the commission in subsection (2) of this section, licensees who are nonprofit corporations and have race meets of thirty days or more shall retain and dedicate: (a) An amount equal to one and one-quarter percent of the daily gross receipts of all parimutuel machines at each race meet to be used solely for the purpose of increasing purses; and (b) an amount equal to one and

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one-quarter percent of the daily gross receipts of all parimutuel machines at each race meet to be deposited in an escrow or trust account and used solely for construction of a new thoroughbred race track facility in western Washington. Said percentages shall come from that amount the licensee is authorized to retain under RCW 67.16.170(2). The commission shall adopt such rules as may be necessary to enforce this subsection.

(5) In the event the new race track is not constructed before January 1, 2001, all funds including interest, remaining in the escrow or trust account established in subsection (4) of this section, shall revert to the state general fund. [1995 c 173 § 2; 1994 c 159 § 2; 1993 c 170 § 2; 1991 c 270 § 6; 1987 c 347 § 4; 1985 c 146 § 7; 1982 c 32 § 3; 1979 c 31 § 6.]

Intent—1995 c 173: "It is the intent of the legislature that one-half of the money being paid into the Washington thoroughbred racing fund continue to be directed to enhanced purses, and that one-half of the money being paid into the fund continue to be deposited into an escrow or trust account and used for the construction of a new thoroughbred racing facility in western Washington." [1995 c 173 § 1.]

Effective date—1995 c 173: "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 immediately [May 1, 1995]." [1995 c 173 § 3.]

Intent—1994 c 159: "It is the intent of the legislature to terminate payments into the Washington thoroughbred racing fund from licensees of nonprofit race meets from March 30, 1994, until June 1, 1995, and to provide that one-half of moneys that otherwise would have been paid into the fund be directed to enhanced purses and one-half of moneys be deposited in an escrow or trust account and used solely for construction of a new thoroughbred race track facility in western Washington." [1994 c 159 § 1.]

Effective date—1994 c 159: "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 immediately [March 30, 1994]." [1994 c 159 § 4.]

Intent—1993 c 170: "It is the intent of the legislature that one-half of those moneys that would otherwise have been paid into the Washington thoroughbred racing fund be retained for the purpose of enhancing purses, excluding stakes purses, until that time as a permanent thoroughbred racing facility is built and operating in western Washington. It is recognized by the Washington legislature that the enhancement in purses provided in this legislation will not directly benefit all race tracks in Washington. It is the legislature's intent that the horse racing commission work with the horse racing community to ensure that this opportunity for increased purses will not inadvertently injure horse racing at tracks not directly benefiting from this legislation." [1993 c 170 § 1.]

Effective date—1993 c 170: "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 immediately [April 30, 1993]." [1993 c 170 § 3.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

Chapter 67.18

WASHINGTON STATE HORSE PARK

Sections

67.18.005	Findings—Purpose.
67.18.010	Definitions.
67.18.020	Park established—Site approval—Ownership of land—Development, promotion, operation, management, and maintenance.
67.18.030	Washington state horse park authority—Formation—Powers—Articles of incorporation—Board.
67.18.040	Washington state horse park authority—Powers.

- 67.18.050 Collaboration by authority and state on projects of shared interest—Cooperation with groups for youth recreational activities.
- 67.18.900 Severability—1995 c 200.

67.18.005 Findings—Purpose. The legislature finds that:

(1) Horses are part of a large, highly diverse, and vital industry which provides significant economic, employment, recreational, and educational contributions to residents of and visitors to the state of Washington;

(2) Currently there is no adequate facility in the Pacific Northwest with the acreage, services, and capacity to host large regional horse shows, national championships, or Olympics-quality events to showcase and promote this important Washington industry;

(3) Establishing a first-class horse park facility in Washington would meet important needs of the state's horse industry, attract investment, enhance recreational opportunities, and bring new exhibitors and tourists to the state from throughout the region and beyond; and

(4) A unique opportunity exists to form a partnership between state, county, and private interests to create a major horse park facility that will provide public recreational opportunities and state-wide economic and employment benefits.

It is the purpose of this legislation to create the framework for such a partnership to facilitate development of the Washington state horse park. It is further the intent of the legislature that the state horse park shall be developed in stages, based on factors such as the availability of funds, equipment, and other materials donated by private sources; the availability and willingness of volunteers to work on park development; and the availability of revenues generated by the state horse park as it is developed and utilized. [1995 c 200 § 1.]

67.18.010 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Authority" means the Washington state horse park authority authorized to be created in RCW 67.18.030.

(2) "Commission" means the Washington state parks and recreation commission.

(3) "Horses" includes all domesticated members of the taxonomic family Equidae, including but not limited to horses, donkeys, and mules.

(4) "State horse park" means the Washington state horse park established in RCW 67.18.020. [1995 c 200 § 2.]

67.18.020 Park established—Site approval—Ownership of land—Development, promotion, operation, management, and maintenance. (1) The Washington state horse park is hereby established, to be located at a site approved by the commission. In approving a site for the state horse park, the commission shall consider areas with large blocks of land suitable for park development, the distance to various population centers in the state, the ease of transportation to the site for large vehicles traveling along either a north-south or an east-west corridor, and other factors deemed important by the commission.

(2) Ownership of land for the state horse park shall be as follows:

(a) The commission is vested with and shall retain ownership of land provided by the state for the state horse park. Any lands acquired by the commission after July 23, 1995, for the state horse park shall be purchased under chapter 43.98A RCW. The legislature encourages the commission to provide a long-term lease of the selected property to the Washington state horse park authority at a minimal charge. The lease shall contain provisions ensuring public access to and use of the horse park facilities, and generally maximizing public recreation opportunities at the horse park, provided that the facility remains available primarily for horse-related activities.

(b) Land provided for the state horse park by the county in which the park is located shall remain in the ownership of that county unless the county determines otherwise. The legislature encourages the county to provide a long-term lease of selected property to the Washington state horse park authority at a minimal charge.

(c) If the authority acquires additional lands through donations, grants, or other means, or with funds generated from the operation of the state horse park, the authority shall retain ownership of those lands. The authority shall also retain ownership of horse park site improvements paid for by or through donations or gifts to the authority.

(3) Development, promotion, operation, management, and maintenance of the state horse park is the responsibility of the authority created in RCW 67.18.030. [1995 c 200 § 3.]

67.18.030 Washington state horse park authority—Formation—Powers—Articles of incorporation—Board.

(1) A nonprofit corporation may be formed under the nonprofit corporation provisions of chapter 24.03 RCW to carry out the purposes of this chapter. Except as provided in RCW 67.18.040, the corporation shall have all the powers and be subject to the same restrictions as are permitted or prescribed to nonprofit corporations and shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The nonprofit corporation shall be known as the Washington state horse park authority. The articles of incorporation shall provide that it is the responsibility of the authority to develop, promote, operate, manage, and maintain the Washington state horse park. The articles of incorporation shall provide for appointment of directors and other conduct of business consistent with the requirements of this chapter.

(2)(a) The articles of incorporation shall provide for a seven-member board of directors for the authority, all appointed by the governor. Board members shall serve three-year terms, except that two of the original appointees shall serve one-year terms, and two of the original appointees shall serve two-year terms. A board member may serve consecutive terms.

(b) The articles of incorporation shall provide that the governor appoint board members as follows:

(i) One board member shall represent the interests of the commission. In making this appointment, the governor shall solicit recommendations from the commission;

(ii) One board member shall represent the interests of the county in which the park is located. In making this appointment, the governor shall solicit recommendations from the county legislative authority; and

(iii) Five board members shall represent the geographic and sports discipline diversity of equestrian interests in the state, and at least one of these members shall have business experience relevant to the organization of horse shows or operation of a horse show facility. In making these appointments, the governor shall solicit recommendations from a variety of active horse-related organizations in the state.

(3) The articles of incorporation shall include a policy that provides for the preferential use of a specific area of the horse park facilities at nominal cost for horse groups associated with youth groups and the disabled.

(4) The governor shall make appointments to fill board vacancies for positions authorized under subsection (2) of this section, upon additional solicitation of recommendations from the board of directors.

(5) The board of directors shall perform their duties in the best interests of the authority, consistent with the standards applicable to directors of nonprofit corporations under RCW 24.03.127. [1995 c 200 § 4.]

67.18.040 Washington state horse park authority—Powers. To meet its responsibility for developing, promoting, operating, managing, and maintaining the state horse park, the authority is empowered to do the following:

(1) Exercise the general powers authorized for any nonprofit corporation as specified in RCW 24.03.035. All debts of the authority shall be in the name of the authority and shall not be debts of the state of Washington for which the state or any state agency shall have any obligation to pay; and the authority may not issue bonds. Neither the full faith and credit of the state nor the state's taxing power is pledged for any indebtedness of the authority;

(2) Employ and discharge at its discretion employees, agents, advisors, and other personnel;

(3) Apply for or solicit, accept, administer, and dispose of grants, gifts, and bequests of money, services, securities, real estate, or other property. However, if the authority accepts a donation designated for a specific purpose, the authority shall use the donation for the designated purpose;

(4) Establish, revise, collect, manage, and expend such fees and charges at the state horse park as the authority deems necessary to accomplish its responsibilities;

(5) Make such expenditures as are appropriate for paying the administrative costs and expenses of the authority and the state horse park;

(6) Authorize use of the state horse park facilities by the general public and by and for compatible nonequestrian events as the authority deems reasonable, so long as the primacy of the center for horse-related purposes is not compromised;

(7) Insure its obligations and potential liability;

(8) Enter into cooperative agreements with and provide for private nonprofit groups to use the state horse park facilities and property to raise money to contribute gifts, grants, and support to the authority for the purposes of this chapter;

(9) Grant concessions or leases at the state horse park upon such terms and conditions as the authority deems appropriate, but in no event shall the term of a concession or lease exceed twenty-five years. Concessions and leases shall be consistent with the purposes of this chapter and may be renegotiated at least every five years; and

(10) Generally undertake any and all lawful acts necessary or appropriate to carry out the purposes for which the authority and the state horse park are created. [1995 c 200 § 5.]

67.18.050 Collaboration by authority and state on projects of shared interest—Cooperation with groups for youth recreational activities. (1) If the authority and state agencies find it mutually beneficial to do so, they are authorized to collaborate and cooperate on projects of shared interest. Agencies authorized to collaborate with the authority include but are not limited to: The commission for activities and projects related to public recreation; the department of agriculture for projects related to the equine agricultural industry; the department of community, trade, and economic development with respect to community and economic development and tourism issues associated with development of the state horse park; Washington State University with respect to opportunities for animal research, education, and extension; the department of ecology with respect to opportunities for making the state horse park's waste treatment facilities a demonstration model for the handling of waste to protect water quality; and with local community colleges with respect to programs related to horses, economic development, business, and tourism.

(2) The authority shall cooperate with 4-H clubs, pony clubs, youth groups, and local park departments to provide youth recreational activities. The authority shall also provide for preferential use of an area of the horse park facility for youth and the disabled at nominal cost. [1995 c 200 § 6.]

67.18.900 Severability—1995 c 200. 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. [1995 c 200 § 8.]

Chapter 67.28

PUBLIC STADIUM, CONVENTION, PERFORMING AND VISUAL ARTS FACILITIES

Sections	
67.28.180	Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies.
67.28.182	Special excise tax authorized—County within which is a national park—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies.
67.28.210	Special excise tax authorized—Proceeds credited to special fund—Limitation on use—Investment.
67.28.240	Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies.
67.28.250	Repealed.
67.28.270	City or county in San Juan islands—Tax for county fair facilities.

67.28.310 Special excise tax authorized—Certain cities—Hotel, rooming house, tourist court, motel, etc., charges—Tourism.

67.28.180 Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies.

(1) Subject to the conditions set forth in subsections (2) and (3) of this section, the legislative body of any county or any city, is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property: PROVIDED, That it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) Any levy authorized by this section shall be subject to the following:

(a) Any county ordinance or resolution adopted pursuant to this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed pursuant to this section upon the same taxable event.

(b) In the event that any county has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such county shall be exempt from the provisions of (a) of this subsection, to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160: PROVIDED, That so much of such pledged tax revenues, together with any investment earnings thereon, not immediately necessary for actual payment of principal and interest on such bonds may be used: (i) In any county with a population of one million or more, for repayment either of limited tax levy general obligation bonds or of any county fund or account from which a loan was made, the proceeds from the bonds or loan being used to pay for constructing, installing, improving, and equipping stadium capital improvement projects, and to pay for any engineering, planning, financial, legal and professional services incident to the development of such stadium capital improvement projects, regardless of the date the debt for such capital improvement projects was or may be incurred; or (ii) in other counties, for county-owned facilities for agricultural promotion. A county is exempt under this subsection in respect to city revenue or general obligation bonds issued after April 1, 1991, only if such bonds mature before January 1, 2013.

As used in this subsection (2)(b), "capital improvement projects" may include, but not be limited to a stadium restaurant facility, restroom facilities, artificial turf system, seating facilities, parking facilities and scoreboard and information system adjacent to or within a county owned stadium, together with equipment, utilities, accessories and appurtenances necessary thereto. The stadium restaurant

authorized by this subsection (2)(b) shall be operated by a private concessionaire under a contract with the county.

(c) No city within a county exempt under subsection (2)(b) of this section may levy the tax authorized by this section so long as said county is so exempt: PROVIDED, That in the event that any city in such county has levied the tax authorized by this section and has, prior to June 26, 1975, authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such city may levy the tax so long as the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160.

(3) Any levy authorized by this section by a county that has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160 shall be subject to the following:

(a) Taxes collected under this section in any calendar year in excess of five million three hundred thousand dollars shall only be used as follows:

(i) Seventy-five percent from January 1, 1992, through December 31, 2000, and seventy percent from January 1, 2001, through December 31, 2012, for art museums, cultural museums, heritage museums, the arts, and the performing arts. Moneys spent under this subsection (3)(a)(i) shall be used for the purposes of this subsection (3)(a)(i) in all parts of the county.

(ii) Twenty-five percent from January 1, 1992, through December 31, 2000, and thirty percent from January 1, 2001, through December 31, 2012, for the following purposes and in a manner reflecting the following order of priority: Stadium capital improvements, as defined in subsection (2)(b) of this section; acquisition of open space lands; youth sports activities; and tourism promotion.

(b) At least seventy percent of moneys spent under (a)(i) of this subsection for the period January 1, 1992, through December 31, 2000, shall be used only for the purchase, design, construction, and remodeling of performing arts, visual arts, heritage, and cultural facilities, and for the purchase of fixed assets that will benefit art, heritage, and cultural organizations. For purposes of this subsection, fixed assets are tangible objects such as machinery and other equipment intended to be held or used for ten years or more. Moneys received under this subsection (3)(b) may be used for payment of principal and interest on bonds issued for capital projects. Qualifying organizations receiving moneys under this subsection (3)(b) must be financially stable and have at least the following:

(i) A legally constituted and working board of directors;

(ii) A record of artistic, heritage, or cultural accomplishments;

(iii) Been in existence and operating for at least two years;

(iv) Demonstrated ability to maintain net current liabilities at less than thirty percent of general operating expenses;

(v) Demonstrated ability to sustain operational capacity subsequent to completion of projects or purchase of machinery and equipment; and

(vi) Evidence that there has been independent financial review of the organization.

(c) At least forty percent of the revenues distributed pursuant to (a)(i) of this subsection for the period January 1, 2001, through December 31, 2012, shall be deposited in an account and shall be used to establish an endowment. Principal in the account shall remain permanent and irreducible. The earnings from investments of balances in the account may only be used for the purposes of (a)(i) of this subsection.

(d) School districts and schools shall not receive revenues distributed pursuant to (a)(i) of this subsection.

(e) Moneys distributed to art museums, cultural museums, heritage museums, the arts, and the performing arts, and moneys distributed for tourism promotion shall be in addition to and may not be used to replace or supplant any other funding by the legislative body of the county.

(f) As used in this section, "tourism promotion" includes activities intended to attract visitors for overnight stays, arts, heritage, and cultural events, and recreational, professional, and amateur sports events. Moneys allocated to tourism promotion in a class AA county shall be allocated to nonprofit organizations formed for the express purpose of tourism promotion in the county. Such organizations shall use moneys from the taxes to promote events in all parts of the class AA county.

(g) No taxes collected under this section may be used for the operation or maintenance of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged. Expenditures for operation or maintenance include all expenditures other than expenditures that directly result in new fixed assets or that directly increase the capacity, life span, or operating economy of existing fixed assets.

(h) No ad valorem property taxes may be used for debt service on bonds issued for a public stadium that is financed by bonds to which the tax is pledged, unless the taxes collected under this section are or are projected to be insufficient to meet debt service requirements on such bonds.

(i) If a substantial part of the operation and management of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged is performed by a nonpublic entity or if a public stadium is sold that is financed directly or indirectly by bonds to which the tax is pledged, any bonds to which the tax is pledged shall be retired. This subsection (3)(i) does not apply in respect to a public stadium transferred to, owned by, or constructed by a public facilities district under chapter 36.100 RCW.

(j) The county shall not lease a public stadium that is financed directly or indirectly by bonds to which the tax is pledged to, or authorize the use of the public stadium by, a professional major league sports franchise unless the sports franchise gives the right of first refusal to purchase the sports franchise, upon its sale, to local government. This subsection (3)(j) does not apply to contracts in existence on April 1, 1986.

If a court of competent jurisdiction declares any provision of this subsection (3) invalid, then that invalid provision shall be null and void and the remainder of this section is not affected. [1995 1st sp.s. c 14 § 10; 1995 c

386 § 8. Prior: 1991 c 363 § 139; 1991 c 336 § 1; 1987 c 483 § 1; 1986 c 104 § 1; 1985 c 272 § 1; 1975 1st ex.s. c 225 § 1; 1973 2nd ex.s. c 34 § 5; 1970 ex.s. c 89 § 1; 1967 c 236 § 11.]

Severability—Effective dates—1995 1st sp.s. c 14: See notes following RCW 36.100.010.

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Effective date—1991 c 336: "This act shall take effect January 1, 1992." [1991 c 336 § 3.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Effective date—1986 c 104: "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, 1986." [1986 c 104 § 2.]

Severability—1985 c 272: "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 272 § 2.]

Contracts for marketing facility and services—Matching nonstate funds: RCW 67.40.120.

Special excise tax authorized for convention or trade facilities: RCW 67.40.100.
imposed in King county for state convention and trade center: RCW 67.40.090.

67.28.182 Special excise tax authorized—County within which is a national park—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies. (1) The legislative body of any county with a population of over five hundred thousand but less than one million, within which is a national park, and the legislative bodies of cities in these counties are each authorized to levy and collect a special excise tax of not to exceed five percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property. For the purposes of this tax, it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) Any county ordinance or resolution adopted under this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed under this section upon the same taxable event.

(3) Any seller, as defined in RCW 82.08.010, who is required to collect any tax under this section shall pay over such tax to the county or city as provided in RCW 67.28.200. The deduction from state taxes under RCW 67.28.190 does not apply to taxes imposed under this section.

(4) All taxes levied and collected under this section shall be credited to a special fund in the treasury of the county or city. Such taxes shall be levied as follows: (a) At least two percent for the purpose of visitor and convention promotion and development, including marketing of local convention facilities; and (b) at least three percent for the acquisition, construction, expansion, marketing, management, and financing of convention facilities, and facilities necessary to support major tourism destination attractions that serve a minimum of one million visitors per year. Until withdrawn

for use, the moneys accumulated in such fund may be invested in interest bearing securities by the county or city treasurer in any manner authorized by law. [1995 c 386 § 9; 1987 c 483 § 2.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.28.210 Special excise tax authorized—Proceeds credited to special fund—Limitation on use—Investment. All taxes levied and collected under RCW 67.28.180, 67.28.240, and 67.28.260 shall be credited to a special fund in the treasury of the county or city imposing such tax. Such taxes shall be levied only for the purpose of paying all or any part of the cost of acquisition, construction, or operating of stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities or to pay or secure the payment of all or any portion of general obligation bonds or revenue bonds issued for such purpose or purposes under this chapter, or to pay for advertising, publicizing, or otherwise distributing information for the purpose of attracting visitors and encouraging tourist expansion when a county or city has imposed such tax for such purpose, or as one of the purposes hereunder, and until withdrawn for use, the moneys accumulated in such fund or funds may be invested in interest bearing securities by the county or city treasurer in any manner authorized by law. In addition such taxes may be used to develop strategies to expand tourism: **PROVIDED,** That any county, and any city within a county, bordering upon Grays Harbor may use the proceeds of such taxes for construction and maintenance of a movable tall ships tourist attraction in cooperation with a tall ships restoration society, except to the extent that such proceeds are used for payment of principal and interest on debt incurred prior to June 11, 1986: **PROVIDED FURTHER,** That any city or county may use the proceeds of such taxes for the refurbishing and operation of a steam railway for tourism promotion purposes: **PROVIDED FURTHER,** That any city bordering on the Pacific Ocean or on Baker Bay with a population of not less than eight hundred and the county in which such a city is located, a city bordering on the Skagit river with a population of not less than twenty thousand, or any city within a county made up entirely of islands may use the proceeds of such taxes for funding special events or festivals, or for the acquisition, construction, or operation of publicly owned tourist promotional infrastructures, structures, or buildings including but not limited to an ocean beach boardwalk, public docks, and viewing towers: **PROVIDED FURTHER,** That any county which imposes a tax under RCW 67.28.182 or any city with a population less than fifty thousand in such county may use the proceeds of the tax levied and collected under RCW 67.28.180 to provide public restroom facilities available to and intended for use by visitors: **PROVIDED FURTHER,** That any county made up entirely of islands, and any city or town that has a population less than five thousand, may use the proceeds of the tax levied and collected under RCW 67.28.180 to provide public restroom facilities available to and intended for use by visitors: **PROVIDED FURTHER,** That any city or county may use the proceeds of such taxes for funding a civic festival, if the following conditions are met: The festival is a community-wide event held not more

than once annually; the festival is approved by the city, town, or county in which it is held; the festival is sponsored by an exempt organization defined in section 501(c)(3), (4), or (6) of the federal internal revenue code; the festival provides family-oriented events suiting a broad segment of the community; and the proceeds of such taxes are used solely for advertising and promotional materials intended to attract overnight visitors. [1995 c 290 § 1; 1994 c 290 § 1. Prior: 1993 c 197 § 1; 1993 c 46 § 1; 1992 c 202 § 1; 1991 c 331 § 3; 1990 c 17 § 1; 1988 ex.s. c 1 § 24; 1986 c 308 § 1; 1979 ex.s. c 222 § 5; 1973 2nd ex.s. c 34 § 6; 1970 ex.s. c 89 § 3; 1967 c 236 § 14.]

Public restroom facilities—1994 c 290: "Any county that commenced use of the proceeds of the tax levied and collected under RCW 67.28.180 to provide public restroom facilities, prior to March 10, 1994, may continue to use such proceeds until the facilities are completed or December 31, 1995, whichever date is earlier.

This section expires January 1, 1996." [1994 c 290 § 2.]

Severability—1986 c 308: "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 308 § 3.]

67.28.240 Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies. (1) The legislative body of a county that qualified under RCW 67.28.180(2)(b) other than a county with a population of one million or more and the legislative bodies of cities in the qualifying county are each authorized to levy and collect a special excise tax of three percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property. For the purposes of this tax, it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) No county may impose the special excise tax authorized in subsection (1) of this section until such time as those cities within the county containing at least one-half of the total incorporated population have imposed the tax.

(3) Any county ordinance or resolution adopted under this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed under this section upon the same taxable event.

(4) Any seller, as defined in RCW 82.08.010, who is required to collect any tax under this section shall pay over such tax to the county or city as provided in RCW 67.28.200. The deduction from state taxes under RCW 67.28.190 does not apply to taxes imposed under this section. [1995 c 386 § 10; 1993 sp.s. c 16 § 3; 1991 c 363 § 140; 1988 ex.s. c 1 § 21.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

67.28.250 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

67.28.270 City or county in San Juan islands—Tax for county fair facilities. In addition to the other uses authorized in this chapter, any city with a population of not less than one thousand people located on one of the San Juan islands or the county within which such city is located may impose the tax as provided in RCW 67.28.180, and use the proceeds from that tax as provided herein for the acquisition, construction, or operation of publicly owned facilities that are used either for county fairs occurring no more than once a year and not extending over a period of more than seven days or to mitigate the impacts of tourism. Mitigation may include paying all or any part of the cost of acquisition, construction, or operation of public information and educational facilities designed to inform visitors of the historical, cultural, ecological, and environmental resources of the county; of day use parks used by visitors; of kayak and canoe access to public tidelands; of rest, information, and assembly areas for bicycle visitors; of special signage to inform visitors of local points of interest; and of sport and recreational facilities that provide activities of interest to visitors. [1995 c 290 § 2; 1991 c 357 § 4.]

Effective date, application—1991 c 357: See note following RCW 67.28.080.

67.28.310 Special excise tax authorized—Certain cities—Hotel, rooming house, tourist court, motel, etc., charges—Tourism. (1) The legislative body of any city meeting the criteria in subsection (2) or (3) of this section may impose a special excise tax on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, not to exceed the rate specified in the subsection. For the purposes of this tax, it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2)(a) In a county east of the crest of the Cascade mountains with a population of at least fifty-five thousand but less than sixty-two thousand:

(i) A city with a population of at least three thousand but less than four thousand may impose a tax under this section not to exceed three percent.

(ii) A city with a population of at least one thousand eight hundred but less than two thousand five hundred may impose a tax under this section not to exceed three percent.

(b) All taxes levied and collected under this subsection (2) shall be credited to a special fund in the treasury of the city collecting the tax. Such taxes shall only be used for tourism promotion.

(3)(a) In a county east of the crest of the Cascade mountains with a population of at least fifty-five thousand but less than sixty-two thousand, a city with a population of at least twenty-two thousand but less than twenty-eight thousand may impose a tax under this section not to exceed two percent.

(b) In a county east of the crest of the Cascade mountains with a population of at least twenty-eight thousand but less than thirty-three thousand, a city with a population of at least three thousand but less than six thousand may impose a tax under this section not to exceed two percent.

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(c) All taxes levied and collected under this subsection (3) shall be credited to a special fund in the treasury of the city collecting the tax. Such taxes shall only be used for tourism promotion, and for the design, expansion, and construction of public facilities related to tourism promotion.

(4) The taxes authorized in this section are in addition to any other taxes authorized by law.

(5) Any seller, as defined in RCW 82.08.010, who is required to collect any tax under this section shall pay over such tax to the city as provided in RCW 67.28.200. The deduction from state taxes under RCW 67.28.190 does not apply to the taxes imposed under this section. [1995 c 340 § 1.]

Chapter 67.38

CULTURAL ARTS, STADIUM AND CONVENTION DISTRICTS

Sections

67.38.070 Comprehensive plan—Review—Approval or disapproval—Resubmission.

67.38.070 Comprehensive plan—Review—Approval or disapproval—Resubmission. The comprehensive cultural arts, stadium and convention plan adopted by the district shall be reviewed by the department of community, trade, and economic development to determine:

(1) Whether the plan will enhance the progress of the state and provide for the general welfare of the population; and

(2) Whether such plan is eligible for matching federal funds.

After reviewing the comprehensive cultural arts, stadium and convention plan, the department of community, trade, and economic development shall have sixty days in which to approve such plan and to certify to the state treasurer that such district shall be eligible to receive funds. To be approved a plan shall provide for coordinated cultural arts, stadium and convention planning, and be consistent with the public cultural arts, stadium and convention coordination criteria in a manner prescribed by chapter 35.60 RCW. In the event such comprehensive plan is disapproved and ruled ineligible to receive funds, the department of community, trade, and economic development shall provide written notice to the district within thirty days as to the reasons for such plan's disapproval and such ineligibility. The district may resubmit such plan upon reconsideration and correction of such deficiencies cited in such notice of disapproval. [1995 c 399 § 167; 1985 c 6 § 22; 1982 1st ex.s. c 22 § 7.]

Chapter 67.40

CONVENTION AND TRADE FACILITIES

Sections

67.40.020 State convention and trade center—Public nonprofit corporation authorized—Board of directors—Powers and duties.

67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use.

67.40.045 Authorization to borrow from state treasury for project completion costs—Limits—"Project completion" defined—Legislative intent—Application.

- 67.40.090 Special excise tax imposed in King county—Hotel, motel, rooming house, trailer camp, etc., charges—Rates—Proceeds.
- 67.40.130 Convention and trade facilities—Tax on transient lodging authorized—Rates.
- 67.40.140 Convention and trade facilities—Remittance of tax—Credit.
- 67.40.150 Convention and trade facilities—Contract of administration and collection to department of revenue—Disposition of tax—Procedure.
- 67.40.160 Convention and trade facilities—Tax on construction—Disposition.
- 67.40.170 Convention and trade facilities—Use of collected taxes.
- 67.40.180 Convention and trade facilities—Use of funds—Acceptance by board of directors of funding commitment.
- 67.40.190 Convention and trade facilities—Use of funds—Encumbered revenue.

67.40.020 State convention and trade center—Public nonprofit corporation authorized—Board of directors—Powers and duties. (1) The governor is authorized to form a public nonprofit corporation in the same manner as a private nonprofit corporation is formed under chapter 24.03 RCW. The public corporation shall be an instrumentality of the state and have all the powers and be subject to the same restrictions as are permitted or prescribed to private nonprofit corporations, but shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The governor shall appoint a board of nine directors for the corporation who shall serve terms of six years, except that two of the original directors shall serve for two years and two of the original directors shall serve for four years. After January 1, 1991, at least one position on the board shall be filled by a member representing management in the hotel or motel industry subject to taxation under RCW 67.40.090. The directors may provide for the payment of their expenses. The corporation may acquire, construct, expand, and improve the state convention and trade center within the city of Seattle. Notwithstanding the provisions of subsection (2) of this section, the corporation may acquire, lease, sell, or otherwise encumber property rights, including but not limited to development or condominium rights, deemed by the corporation as necessary for facility expansion.

(2) The corporation may acquire and transfer real and personal property by lease, sublease, purchase, or sale, and further acquire property by condemnation of privately owned property or rights to and interests in such property pursuant to the procedure in chapter 8.04 RCW. However, acquisitions and transfers of real property, other than by lease, may be made only if the acquisition or transfer is approved by the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the senate and house of representatives. The corporation may accept gifts or grants, request the financing provided for in RCW 67.40.030, cause the state convention and trade center facilities to be constructed, and do whatever is necessary or appropriate to carry out those purposes. Upon approval by the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the house of representatives and the senate, the corporation may enter into lease and sublease contracts for a term exceeding the fiscal period in which these lease and sublease contracts are made. The terms of sale or lease of properties acquired by the corporation on February 9, 1987, pursuant to the

property purchase and settlement agreement entered into by the corporation on June 12, 1986, including the McKay parcel which the corporation is contractually obligated to sell under that agreement, shall also be subject to the approval of the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the house of representatives and the senate. No approval by the director of financial management is required for leases of individual retail space, meeting rooms, or convention-related facilities. In order to allow the corporation flexibility to secure appropriate insurance by negotiation, the corporation is exempt from RCW 48.30.270. The corporation shall maintain, operate, promote, and manage the state convention and trade center.

(3) In order to allow the corporation flexibility in its personnel policies, the corporation is exempt from chapter 41.06 RCW, chapter 41.05 RCW, RCW 43.01.040 through 43.01.044, chapter 41.04 RCW and chapter 41.40 RCW. [1995 c 386 § 12; 1993 c 500 § 9; 1988 ex.s. c 1 § 1; 1987 1st ex.s. c 8 § 2; 1984 c 210 § 1; 1983 2nd ex.s. c 1 § 2; 1982 c 34 § 2.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Severability—1987 1st ex.s. c 8: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 8 § 17.]

Savings—1984 c 210: "This act shall not terminate or modify any right acquired under a contract of employment in existence prior to March 27, 1984." [1984 c 210 § 7.] For codification of 1984 c 210, see Codification Tables, Volume 0.

Severability—1984 c 210: "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 210 § 8.]

67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use. (1) The proceeds from the sale of the bonds authorized in RCW 67.40.030, proceeds of the taxes imposed under RCW 67.40.090 and 67.40.130, and all other moneys received by the state convention and trade center from any public or private source which are intended to fund the acquisition, design, construction, expansion, exterior cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, purchase of the land and building known as the McKay Parcel, development of low-income housing, or renovation of the center, and those expenditures authorized under RCW 67.40.170 shall be deposited in the state convention and trade center account hereby created in the state treasury and in such subaccounts as are deemed appropriate by the directors of the corporation.

(2) Moneys in the account, including unanticipated revenues under RCW 43.79.270, shall be used exclusively for the following purposes in the following priority:

(a) For reimbursement of the state general fund under RCW 67.40.060;

(b) After appropriation by statute:

(i) For payment of expenses incurred in the issuance and sale of the bonds issued under RCW 67.40.030;

- (ii) For expenditures authorized in RCW 67.40.170;
- (iii) For acquisition, design, and construction of the state convention and trade center; and
- (iv) For reimbursement of any expenditures from the state general fund in support of the state convention and trade center; and
- (c) For transfer to the state convention and trade center operations account.

(3) The corporation shall identify with specificity those facilities of the state convention and trade center that are to be financed with proceeds of general obligation bonds, the interest on which is intended to be excluded from gross income for federal income tax purposes. The corporation shall not permit the extent or manner of private business use of those bond-financed facilities to be inconsistent with treatment of such bonds as governmental bonds under applicable provisions of the Internal Revenue Code of 1986, as amended.

(4) In order to ensure consistent treatment of bonds authorized under RCW 67.40.030 with applicable provisions of the Internal Revenue Code of 1986, as amended, and notwithstanding RCW 43.84.092, investment earnings on bond proceeds deposited in the state convention and trade center account in the state treasury shall be retained in the account, and shall be expended by the corporation for the purposes authorized under chapter 386, Laws of 1995 and in a manner consistent with applicable provisions of the Internal Revenue Code of 1986, as amended. [1995 c 386 § 13; 1991 sp.s. c 13 § 11; 1990 c 181 § 2; 1988 ex.s. c 1 § 4; 1987 1st ex.s. c 8 § 4; 1985 c 57 § 66; 1983 2nd ex.s. c 1 § 4; 1982 c 34 § 4.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

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

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

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

67.40.045 Authorization to borrow from state treasury for project completion costs—Limits—"Project completion" defined—Legislative intent—Application.

(1) The director of financial management, in consultation with the chairpersons of the appropriate fiscal committees of the senate and house of representatives, may authorize temporary borrowing from the state treasury for the purpose of covering cash deficiencies in the state convention and trade center account resulting from project completion costs. Subject to the conditions and limitations provided in this section, lines of credit may be authorized at times and in amounts as the director of financial management determines are advisable to meet current and/or anticipated cash deficiencies. Each authorization shall distinctly specify the maximum amount of cash deficiency which may be incurred and the maximum time period during which the cash deficiency may continue. The total amount of borrowing outstanding at any time shall never exceed the lesser of:

(a) \$58,275,000; or

(b) An amount, as determined by the director of financial management from time to time, which is necessary to provide for payment of project completion costs.

(2) Unless the due date under this subsection is extended by statute, all amounts borrowed under the authority of this section shall be repaid to the state treasury by June 30, 1999, together with interest at a rate determined by the state treasurer to be equivalent to the return on investments of the state treasury during the period the amounts are borrowed. Borrowing may be authorized from any excess balances in the state treasury, except the agricultural permanent fund, the Millersylvania park permanent fund, the state university permanent fund, the normal school permanent fund, the permanent common school fund, and the scientific permanent fund.

(3) As used in this section, "project completion" means:

(a) All remaining development, construction, and administrative costs related to completion of the convention center; and

(b) Costs of the McKay building demolition, Eagles building rehabilitation, development of low-income housing, and construction of rentable retail space and an operable parking garage.

(4) It is the intent of the legislature that project completion costs be paid ultimately from the following sources:

(a) \$29,250,000 to be received by the corporation under an agreement and settlement with Industrial Indemnity Co.;

(b) \$1,070,000 to be received by the corporation as a contribution from the city of Seattle;

(c) \$20,000,000 from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(d) \$4,765,000 for contingencies and project reserves from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(e) \$13,000,000 for conversion of various retail and other space to meeting rooms, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(f) \$13,300,000 for expansion at the 900 level of the facility, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(g) \$10,400,000 for purchase of the land and building known as the McKay Parcel, for development of low-income housing, for development, construction, and administrative costs related to completion of the state convention and trade center, including settlement costs related to construction litigation, and for partially refunding obligations under the parking garage revenue note issued by the corporation to Industrial Indemnity Company in connection with the agreement and settlement identified in (a) of this subsection, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090. All proceeds from any sale of the McKay parcel shall be deposited in the state convention and trade center account and shall not be expended without appropriation by law;

(h) \$300,000 for Eagles building exterior cleanup and repair, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090; and

(i) The proceeds of the sale of any properties owned by the state convention and trade center that are not planned for use for state convention and trade center operations, with the proceeds to be used for development, construction, and administrative costs related to completion of the state

convention and trade center, including settlement costs related to construction litigation.

(5) The borrowing authority provided in this section is in addition to the authority to borrow from the general fund to meet the bond retirement and interest requirements set forth in RCW 67.40.060. To the extent the specific conditions and limitations provided in this section conflict with the general conditions and limitations provided for temporary cash deficiencies in RCW 43.88.260 (section 7, chapter 502, Laws of 1987), the specific conditions and limitations in this section shall govern.

(6) For expenditures authorized under RCW 67.40.170, the corporation may use the proceeds of the special excise tax authorized under RCW 67.40.090, the sales tax authorized under RCW 67.40.130, contributions to the corporation from public or private participants, and investment earnings on any of the funds listed in this subsection. [1995 c 386 § 14; 1993 sp.s. c 12 § 9; 1992 c 4 § 1; 1991 c 2 § 1; 1990 c 181 § 3; 1988 ex.s. c 1 § 9; 1987 1st ex.s. c 8 § 1.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Severability—1993 sp.s. c 12: See RCW 43.991.900.

Severability—1991 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." [1991 c 2 § 5.]

67.40.090 Special excise tax imposed in King county—Hotel, motel, rooming house, trailer camp, etc., charges—Rates—Proceeds. (1) Commencing April 1, 1982, there is imposed, and the department of revenue shall collect, in King county a special excise tax on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, or trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, except that no such tax may be levied on any premises having fewer than sixty lodging units. It shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes rental or lease of real property and not a mere license to use or enjoy the same. The legislature on behalf of the state pledges to maintain and continue this tax until the bonds authorized by this chapter are fully redeemed, both principal and interest.

(2) The rate of the tax imposed under this section shall be as provided in this subsection.

(a) From April 1, 1982, through December 31, 1982, inclusive, the rate shall be three percent in the city of Seattle and two percent in King county outside the city of Seattle.

(b) From January 1, 1983, through June 30, 1988, inclusive, the rate shall be five percent in the city of Seattle and two percent in King county outside the city of Seattle.

(c) From July 1, 1988, through December 31, 1992, inclusive, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(d) From January 1, 1993, and until bonds and all other borrowings authorized under RCW 67.40.030 are retired, the rate shall be seven percent in the city of Seattle and two and eight-tenths percent in King county outside the city of Seattle.

(e) Except as otherwise provided in (d) of this subsection, on and after the change date, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(f) As used in this section, "change date" means the October 1st next occurring after certification occurs under (g) of this subsection.

(g) On August 1st of 1998 and of each year thereafter until certification occurs under this subsection, the state treasurer shall determine whether seventy-one and forty-three one-hundredths percent of the revenues actually collected and deposited with the state treasurer for the tax imposed under this section during the twelve months ending June 30th of that year, excluding penalties and interest, exceeds the amount actually paid in debt service during the same period for bonds issued under RCW 67.40.030 by at least two million dollars. If so, the state treasurer shall so certify to the department of revenue.

(3) The proceeds of the special excise tax shall be deposited as provided in this subsection.

(a) Through June 30, 1988, inclusive, all proceeds shall be deposited in the state convention and trade center account.

(b) From July 1, 1988, through December 31, 1992, inclusive, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(c) From January 1, 1993, until the change date, eighty-five and seventy-one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(d) On and after the change date, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(4) Chapter 82.32 RCW applies to the tax imposed under this section. [1995 c 386 § 15; 1991 c 2 § 3; 1988 ex.s. c 1 § 6; 1987 1st ex.s. c 8 § 6; 1982 c 34 § 9.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Severability—1991 c 2: See note following RCW 67.40.045.

Intent—1988 ex.s. c 1 § 6: "The legislature intends that the additional revenue generated by the increase in the special excise tax from five to six percent in the city of Seattle and from two percent to two and four-tenths percent in King county outside the city of Seattle be used for marketing the facilities and services of the convention center, for promoting the locale as a convention and visitor destination, and for related activities. Actual use of these funds shall be determined through biennial appropriation by the legislature." [1988 ex.s. c 1 § 7.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

Special excise taxes authorized for public stadium, convention, and arts facilities: Chapter 67.28 RCW.

67.40.130 Convention and trade facilities—Tax on transient lodging authorized—Rates. (1) The governing body of a city, while not required by legislative mandate to do so, may, after July 1, 1995, by resolution or ordinance for the purposes authorized under RCW 67.40.170 and 67.40.190, fix and impose a sales tax on the charge for

rooms to be used for lodging by transients in accordance with the terms of chapter 386, Laws of 1995. Such tax shall be collected from those persons who are taxable by the state under RCW 67.40.090, but only those taxable persons located within the boundaries of the city imposing the tax. The rate of such tax imposed by a city shall be two percent of the charge for rooms to be used for lodging by transients. Any such tax imposed under this section shall not be collected prior to January 1, 2000. The tax authorized under this section shall be levied and collected in the same manner as those taxes authorized under chapter 82.14 RCW. Penalties, receipts, abatements, refunds, and all other similar matters relating to the tax shall be as provided in chapter 82.08 RCW.

(2) The tax levied under this section shall remain in effect and not be modified for that period for which the principal and interest obligations of state bonds issued to finance the expansion of the state convention and trade center under RCW 67.40.030 remain outstanding.

(3) As used in this section, the term "city" means a municipality that has within its boundaries a convention and trade facility as defined in RCW 67.40.020. [1995 c 386 § 1.]

Severability—1995 c 386: "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." [1995 c 386 § 17.]

Effective date—1995 c 386: "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 immediately [May 16, 1995]." [1995 c 386 § 18.]

67.40.140 Convention and trade facilities—Remittance of tax—Credit. When remitting sales tax receipts to the state under RCW 82.14.050, the city treasurer, or its designee, shall at the same time remit the sales taxes collected under RCW 67.40.130 for the municipality. The sum so collected and paid over on behalf of the municipality shall be credited against the amount of the tax otherwise due to the state from those same taxpayers under RCW 82.08.020(1). [1995 c 386 § 2.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.150 Convention and trade facilities—Contract of administration and collection to department of revenue—Disposition of tax—Procedure. (1) The cities shall contract, prior to the effective date of a resolution or ordinance imposing a sales tax under RCW 67.40.130, the administration and collection of the local option sales tax to the state department of revenue at no cost to the municipality. The tax authorized by chapter 386, Laws of 1995 which is collected by the department of revenue shall be deposited by the state into the account created under RCW 67.40.040 in the state treasury.

(2) The sales tax authorized under RCW 67.40.130 shall be due and payable in the same manner as those taxes authorized under RCW 82.14.030. [1995 c 386 § 3.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.160 Convention and trade facilities—Tax on construction—Disposition. The state sales tax on construction performed under RCW 67.40.170 collected by the department of revenue under chapter 82.08 RCW shall be deposited by the state into the account created under RCW 67.40.040 in the state treasury. [1995 c 386 § 4.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.170 Convention and trade facilities—Use of collected taxes. All taxes levied and collected under RCW 67.40.130 shall be credited to the state convention and trade center account in the state treasury and used solely by the corporation formed under RCW 67.40.020 for the purpose of paying all or any part of the cost associated with: The financing, design, acquisition, construction, equipping, operating, maintaining, and reequipping of convention center facilities related to the expansion recommended by the convention center expansion and city facilities task force created under section 148, chapter 6, Laws of 1994 sp. sess.; the acquisition, construction, and relocation costs of replacement housing; and the repayment of loans and advances from the state, including loans authorized previously under this chapter, or to pay or secure the payment of all or part of the principal of or interest on any state bonds issued for purposes authorized under this chapter. [1995 c 386 § 5.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.180 Convention and trade facilities—Use of funds—Acceptance by board of directors of funding commitment. Upon May 16, 1995, the corporation may proceed with preliminary design and planning activities, environmental studies, and real estate appraisals for convention center improvements. No other expenditures may be made in support of the expansion project recommended by the convention center expansion and city facilities task force created under section 148, chapter 6, Laws of 1994 sp. sess. prior to acceptance by the board of directors of the corporation of an irrevocable commitment for funding from public or private participants consistent with the expansion development study task force recommendations report dated December 1994. [1995 c 386 § 6.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.190 Convention and trade facilities—Use of funds—Encumbered revenue. (1) Moneys received from any tax imposed under RCW 67.40.130 shall be used for the purpose of providing funds to the corporation for the costs associated with paying all or any part of the cost associated with: The financing, design, acquisition, construction, equipping, operating, maintaining, and reequipping of convention center facilities; the acquisition, construction, and relocation costs of replacement housing; and repayment of loans and advances from the state, including loans authorized previously under this chapter, or to pay or secure the payment of all or part of the principal of or interest on any state bonds issued for purposes authorized under this chapter.

(2) If any of the revenue from any local sales tax authorized under RCW 67.40.130 shall have been encum-

bered or pledged by the state to secure the payment of any state bonds as authorized under RCW 67.40.030, then as long as that agreement or pledge shall be in effect, the legislature shall not withdraw from the municipality the authority to levy and collect the tax or the tax credit authorized under RCW 67.40.130 and 67.40.140. [1995 c 386 § 7.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Title 68

CEMETERIES, MORGUES, AND HUMAN REMAINS

Chapters

- 68.46** **Prearrangement contracts.**
68.50 **Human remains.**
68.60 **Abandoned and historic cemeteries and historic graves.**

Chapter 68.46

PREARRANGEMENT CONTRACTS

Sections

- 68.46.050** **Withdrawals from trust funds—Notice of department of social and health services' claim.**

68.46.050 **Withdrawals from trust funds—Notice of department of social and health services' claim.** (1) A bank, trust company, or savings and loan association designated as the depository of prearrangement funds shall permit withdrawal by a cemetery authority of all funds deposited under any specific prearrangement contract plus interest accrued thereon, under the following circumstances and conditions:

(a) If the cemetery authority files a verified statement with the depository that the prearrangement merchandise and services covered by a contract have been furnished and delivered in accordance therewith; or

(b) If the cemetery authority files a verified statement that a specific prearrangement contract has been canceled in accordance with its terms.

(2) The department of social and health services shall notify the cemetery authority maintaining a prearrangement trust fund regulated by this chapter that the department has a claim on the estate of a beneficiary for long-term care services. Such notice shall be renewed at least every three years. The cemetery authority upon becoming aware of the death of a beneficiary shall give notice to the department of social and health services, office of financial recovery, who shall file any claim there may be within thirty days of the notice. [1995 1st sp.s. c 18 § 65; 1973 1st ex.s. c 68 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Chapter 68.50 HUMAN REMAINS

Sections

- 68.50.107** **State toxicological laboratory established—State toxicologist.**
68.50.540 **Anatomical gifts—Authorized—Procedures—Changes—Refusal.**

68.50.107 **State toxicological laboratory established—State toxicologist.** There shall be established in conjunction with the University of Washington Medical School and under the authority of the state forensic investigations council a state toxicological laboratory under the direction of the state toxicologist whose duty it will be to perform all necessary toxicologic procedures requested by all coroners, medical examiners, and prosecuting attorneys. The state forensic investigations council shall appoint a toxicologist as state toxicologist. The laboratory shall be funded by disbursement from the class H license fees as provided in RCW 66.08.180 and by appropriation from the death investigations account as provided in RCW 43.79.445. [1995 c 398 § 10; 1986 c 87 § 2; 1983 1st ex.s. c 16 § 10; 1975-'76 2nd ex.s. c 84 § 1; 1970 ex.s. c 24 § 1; 1953 c 188 § 13. Formerly RCW 68.08.107.]

Effective date—1986 c 87: See note following RCW 66.08.180.

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

State death investigations council: Chapter 43.103 RCW.

68.50.540 **Anatomical gifts—Authorized—Procedures—Changes—Refusal.** (1) An individual who is at least eighteen years of age, or an individual who is at least sixteen years of age as provided in subsection (12) of this section, may (a) make an anatomical gift for any of the purposes stated in RCW 68.50.570(1), (b) limit an anatomical gift to one or more of those purposes, or (c) refuse to make an anatomical gift.

(2) An anatomical gift may be made by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other and state that it has been so signed.

(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2) of this section. Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) The donee or other person authorized to accept the anatomical gift may employ or authorize a physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(6) A donor may amend or revoke an anatomical gift, not made by will, by:

(a) A signed statement;

(b) An oral statement made in the presence of two individuals;

(c) Any form of communication during a terminal illness or injury; or

(d) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6) of this section.

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of a person after the donor's death.

(9) An individual may refuse to make an anatomical gift of the individual's body or part by (a) a writing signed in the same manner as a document of gift, (b) a statement attached to or imprinted on a donor's motor vehicle operator's license, or (c) another writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(10) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under RCW 68.50.550.

(11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9) of this section.

(12) An individual who is under the age of eighteen, but is at least sixteen years of age, may make an anatomical gift as provided by subsection (2) of this section, if the document of gift is also signed by either parent or a guardian of the donor. A document of gift signed by a donor under the age of eighteen that is not signed by either parent or a guardian shall not be considered valid until the person reaches the age of eighteen, but may be considered as evidence that the donor has not refused permission to make an anatomical gift under the provisions of RCW 68.50.550. [1995 c 132 § 1; 1993 c 228 § 3.]

Chapter 68.60

ABANDONED AND HISTORIC CEMETERIES AND HISTORIC GRAVES

Sections

68.60.030 Preservation and maintenance corporations—Authorization of other corporations to restore, maintain, and protect abandoned cemeteries.

68.60.030 Preservation and maintenance corporations—Authorization of other corporations to restore, maintain, and protect abandoned cemeteries. (1)(a) The archaeological and historical division of the department of community, trade, and economic development may grant by nontransferable certificate authority to maintain and protect an abandoned cemetery upon application made by a preservation organization which has been incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery. Such authority shall be limited to the care, maintenance, restoration, protection, and historical preserva-

tion of the abandoned cemetery, and shall not include authority to make burials, unless specifically granted by the cemetery board.

(b) Those preservation and maintenance corporations that are granted authority to maintain and protect an abandoned cemetery shall be entitled to hold and possess burial records, maps, and other historical documents as may exist. Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery shall not be liable to those claiming burial rights, ancestral ownership, or to any other person or organization alleging to have control by any form of conveyance not previously recorded at the county auditor's office within the county in which the abandoned cemetery exists. Such organizations shall not be liable for any reasonable alterations made during restoration work on memorials, roadways, walkways, features, plantings, or any other detail of the abandoned cemetery.

(c) Should the maintenance and preservation corporation be dissolved, the archaeological and historical division of the department of community, trade, and economic development shall revoke the certificate of authority.

(d) Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery may establish care funds pursuant to chapter 68.44 RCW, and shall report in accordance with chapter 68.44 RCW to the state cemetery board.

(2) Except as provided in subsection (1) of this section, the department of community, trade, and economic development may, in its sole discretion, authorize any Washington nonprofit corporation that is not expressly incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery, to restore, maintain, and protect one or more abandoned cemeteries. The authorization may include the right of access to any burial records, maps, and other historical documents, but shall not include the right to be the permanent custodian of original records, maps, or documents. This authorization shall be granted by a nontransferable certificate of authority. Any nonprofit corporation authorized and acting under this subsection is immune from liability to the same extent as if it were a preservation organization holding a certificate of authority under subsection (1) of this section.

(3) The department of community, trade, and economic development shall establish standards and guidelines for granting certificates of authority under subsections (1) and (2) of this section to assure that any restoration, maintenance, and protection activities authorized under this subsection are conducted and supervised in an appropriate manner. [1995 c 399 § 168; 1993 c 67 § 1; 1990 c 92 § 3.]

Title 69

FOOD, DRUGS, COSMETICS, AND POISONS

Chapters

69.04 Intrastate commerce in food, drugs, and cosmetics.

- 69.07 Washington food processing act.
- 69.08 Flour, white bread, and rolls.
- 69.10 Food storage warehouses.
- 69.25 Washington wholesome eggs and egg products act.
- 69.30 Sanitary control of shellfish.
- 69.50 Uniform controlled substances act.

Chapter 69.04

INTRASTATE COMMERCE IN FOOD, DRUGS, AND COSMETICS

(Formerly: Food, drug, and cosmetic act)

Sections

- 69.04.123 Exception to petition requirement under RCW 69.04.120.

69.04.123 Exception to petition requirement under RCW 69.04.120. The director need not petition the superior court as provided for in RCW 69.04.120 if the owner or claimant of such food or food products agrees in writing to the disposition of such food or food products as the director may order. [1995 c 374 § 20.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Chapter 69.07

WASHINGTON FOOD PROCESSING ACT

Sections

- 69.07.040 Food processing license—Waiver if licensed under chapter 15.36 RCW—Expiration date—Application, contents—Fee.
- 69.07.085 Sanitary certificates—Fee.
- 69.07.100 Establishments exempted from provisions of chapter.

69.07.040 Food processing license—Waiver if licensed under chapter 15.36 RCW—Expiration date—Application, contents—Fee. It shall be unlawful for any person to operate a food processing plant or process foods in the state without first having obtained an annual license from the department, which shall expire on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates. Application for a license shall be on a form prescribed by the director and accompanied by the license fee. The license fee is determined by computing the gross annual sales for the accounting year immediately preceding the license year. If the license is for a new operator, the license fee shall be based on an estimated gross annual sales for the initial license period.

If gross annual sales are:	The license fee is:
\$0 to \$50,000	\$55.00
\$50,001 to \$500,000	\$110.00
\$500,001 to \$1,000,000	\$220.00
\$1,000,001 to \$5,000,000	\$385.00
\$5,000,001 to \$10,000,000	\$550.00
Greater than \$10,000,000	\$825.00

Such application shall include the full name of the applicant for the license and the location of the food processing plant he or she intends to operate. If such applicant is an individ-

ual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant. The application shall also specify the type of food to be processed and the method or nature of processing operation or preservation of that food and any other necessary information. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof.

Licenses shall be issued to cover only those products, processes, and operations specified in the license application and approved for licensing. Wherever a license holder wishes to engage in processing a type of food product that is different than the type specified on the application supporting the licensee's existing license and processing that type of food product would require a major addition to or modification of the licensee's processing facilities or has a high potential for harm, the licensee shall submit an amendment to the current license application. In such a case, the licensee may engage in processing the new type of food product only after the amendment has been approved by the department.

If upon investigation by the director, it is determined that a person is processing food for retail sale and is not under permit, license, or inspection by a local health authority, then that person may be considered a food processor and subject to the provisions of this chapter. The director may waive the licensure requirements of this chapter for a person's operations at a facility if the person has obtained a milk processing plant license under chapter 15.36 RCW to conduct the same or a similar operation at the facility. [1995 c 374 § 21. Prior: 1993 sp.s. c 19 § 11; 1993 c 212 § 2; 1992 c 160 § 3; 1991 c 137 § 3; 1988 c 5 § 1; 1969 c 68 § 2; 1967 ex.s. c 121 § 4.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.07.085 Sanitary certificates—Fee. The department may issue sanitary certificates to food processors under this chapter subject to such requirements as it may establish by rule. The fee for issuance shall be fifty dollars per certificate. Fees collected under this section shall be deposited in the agricultural local fund. [1995 c 374 § 23; 1988 c 254 § 9.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.07.100 Establishments exempted from provisions of chapter. The provisions of this chapter shall not apply to establishments issued a permit or licensed under the provisions of:

- (1) Chapter 69.25 RCW, the Washington wholesome eggs and egg products act;

(2) Chapter 69.28 RCW, the Washington state honey act;

(3) Chapter 16.49 RCW, the Meat inspection act;

(4) Title 66 RCW, relating to alcoholic beverage control; and

(5) Chapter 69.30 RCW, the Sanitary control of shellfish act: PROVIDED, That if any such establishments process foods not specifically provided for in the above entitled acts, such establishments shall be subject to the provisions of this chapter.

The provisions of this chapter shall not apply to restaurants or food service establishments. [1995 c 374 § 22; 1988 c 5 § 4; 1983 c 3 § 168; 1967 ex.s. c 121 § 10.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Chapter 69.08

FLOUR, WHITE BREAD, AND ROLLS

Sections

69.08.010 through 69.08.090 Repealed.

69.08.010 through 69.08.090 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 69.10

FOOD STORAGE WAREHOUSES

Sections

- 69.10.005 Definitions.
- 69.10.010 Inspection of food storage warehouses—Powers of director.
- 69.10.015 Annual license required—Director's duties—Fee—Application—Renewal.
- 69.10.020 Exemption from licensure—Independent inspection—Report to department.
- 69.10.025 Application for renewal of license after expiration date—Additional fee.
- 69.10.030 Director may deny, suspend, or revoke license—Actions by applicant—Hearing required.
- 69.10.035 Immediate danger to public health—Summarily suspending license—Written notification—Hearing—Reinstatement of license.
- 69.10.040 Unlicensed food storage warehouse—Unlawful to sell, offer for sale, or distribute in intrastate commerce.
- 69.10.045 Disposition of moneys received under this chapter.
- 69.10.050 Civil remedies—Restrictions on civil penalties—Fee limitations for inspections and analyses.
- 69.10.055 Rules.
- 69.10.060 Director and deputies, assistants, and inspectors authorized to act—May take verified statements.
- 69.10.900 Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68.

69.10.005 Definitions. For the purpose of this chapter:

(1) "Food storage warehouse" means any premises, establishment, building, room area, facility, or place, in whole or in part, where food is stored, kept, or held for wholesale distribution to other wholesalers or to retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer. Food storage warehouses include, but are not limited to, facilities where food

is kept or held refrigerated or frozen and include facilities where food is stored to the account of another firm and/or is owned by the food storage warehouse. "Food storage warehouse" does not include grain elevators or fruit and vegetable storage and packing houses that store, pack, and ship fresh fruit and vegetables even though they may use refrigerated or controlled atmosphere storage practices in their operation. However, this chapter applies to multiple food storage operations that also distribute or ripen fruits and vegetables.

(2) "Department" means the Washington department of agriculture.

(3) "Director" means the director of the Washington department of agriculture.

(4) "Food" means the same as defined in RCW 69.04.008.

(5) "Independent sanitation consultant" means an individual, partnership, cooperative, or corporation that by reason of education, certification, and experience has satisfactorily demonstrated expertise in food and dairy sanitation and is approved by the director to advise on such areas including, but not limited to: Principles of cleaning and sanitizing food processing plants and equipment; rodent, insect, bird, and other pest control; principals [principles] of hazard analysis critical control point; basic food product labeling; principles of proper food storage and protection; proper personnel work practices and attire; sanitary design, construction, and installation of food plant facilities, equipment, and utensils; and other pertinent food safety issues. [1995 c 374 § 8.]

69.10.010 Inspection of food storage warehouses—Powers of director. The director or his or her representative may inspect food storage warehouses for compliance with the provisions of chapter 69.04 RCW and the rules adopted under chapter 69.04 RCW as deemed necessary by the director. Any food storage warehouse found to not be in substantial compliance with chapter 69.04 RCW and the rules adopted under chapter 69.04 RCW will be reinspected as deemed necessary by the director to determine compliance. This does not preclude the director from using any other remedies as provided under chapter 69.04 RCW to gain compliance or to embargo products as provided under RCW 69.04.110 to protect the public from adulterated foods. [1995 c 374 § 9.]

69.10.015 Annual license required—Director's duties—Fee—Application—Renewal. Except as provided in this section and RCW 69.10.020, it shall be unlawful for any person to operate a food storage warehouse in the state without first having obtained an annual license from the department, which shall expire on a date set by rule by the director. Application for a license or license renewal shall be on a form prescribed by the director and accompanied by the license fee. The license fee is fifty dollars.

For a food storage warehouse that has been inspected on at least an annual basis for compliance with the provisions of the current good manufacturing practices (Title 21 C.F.R. part 110) by a federal agency or by a state agency acting on behalf of and under contract with a federal agency and that is not exempted from licensure by RCW 69.10.020, the annual license fee for the warehouse is twenty-five dollars.

The application shall include the full name of the applicant for the license and the location of the food storage warehouse he or she intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation must be given on the application. The application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted under this chapter by the department, the applicant shall be issued a license or renewal thereof. The director shall waive licensure under this chapter for firms that are licensed under the provisions of chapter 69.07 or 15.36 RCW. [1995 c 374 § 10.]

69.10.020 Exemption from licensure—Independent inspection—Report to department. A food storage warehouse that is inspected for compliance with the current good manufacturing practices (Title 21 C.F.R. part 110) on at least an annual basis by an independent sanitation consultant approved by the department shall be exempted from licensure under this chapter.

A report identifying the inspector and the inspecting entity, the date of the inspection, and any violations noted on such inspection shall be forwarded to the department by the food storage warehouse within sixty days of the completion of the inspection. An inspection shall be conducted and an inspection report for a food storage warehouse shall be filed with the department at least once every twelve months or the warehouse shall be licensed under this chapter and inspected by the department for a period of two years. [1995 c 374 § 11.]

69.10.025 Application for renewal of license after expiration date—Additional fee. If the application for renewal of any license provided for under this chapter is not filed prior to the expiration date as established by rule by the director, an additional fee of ten percent of the cost of the license shall be assessed and added to the original fee and must be paid by the applicant before the renewal license is issued. [1995 c 374 § 12.]

69.10.030 Director may deny, suspend, or revoke license—Actions by applicant—Hearing required. The director may, subsequent to a hearing thereon, deny, suspend, or revoke any license provided for in this chapter if he or she determines that an applicant has committed any of the following acts:

(1) Refused, neglected, or failed to comply with the provisions of this chapter, the rules adopted under this chapter, or any lawful order of the director;

(2) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make such records available if requested pursuant to the provisions of this chapter;

(3) Refused the department access to any portion or area of the food storage warehouse for the purpose of carrying out the provisions of this chapter;

(4) Refused the department access to any records required to be kept under the provisions of this chapter;

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington food, drug, and cosmetic act, or any rules adopted under chapter 69.04 RCW.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do not apply to an action taken under RCW 69.10.035. [1995 c 374 § 13.]

69.10.035 Immediate danger to public health—Summarily suspending license—Written notification—Hearing—Reinstatement of license. (1) Whenever the director finds a food storage warehouse operating under conditions that constitute an immediate danger to public health or whenever the licensee or any employee of the licensee actively prevents the director or the director's representative, during an on-site inspection, from determining whether such a condition exists, the director may summarily suspend, pending a hearing, a license provided for in this chapter.

(2) Whenever a license is summarily suspended, the holder of the license shall be notified in writing that the license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) Whenever a license is summarily suspended, food distribution operations shall immediately cease. However, the director may reinstate the license if the condition that caused the suspension has been abated to the director's satisfaction. [1995 c 374 § 14.]

69.10.040 Unlicensed food storage warehouse—Unlawful to sell, offer for sale, or distribute in intrastate commerce. It is unlawful to sell, offer for sale, or distribute in intrastate commerce food from or stored in a food storage warehouse that is required to be licensed under this chapter but that has not obtained a license, once notification by the director has been given to the persons selling, offering, or distributing food for sale, that the food is in or from such an unlicensed food storage warehouse. [1995 c 374 § 15.]

69.10.045 Disposition of moneys received under this chapter. All moneys received by the department under provisions of this chapter, except moneys collected for civil penalties levied under this chapter, shall be paid into an account created in the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out provisions of this chapter and chapter 69.04 RCW. All moneys collected for civil penalties levied under this chapter shall be deposited in the state general fund. [1995 c 374 § 16.]

69.10.050 Civil remedies—Restrictions on civil penalties—Fee limitations for inspections and analyses. (1) Except as provided in subsection (2) of this section, the department may use all the civil remedies provided under

chapter 69.04 RCW in carrying out and enforcing the provisions of this chapter.

(2) Civil penalties are intended to be used to obtain compliance and shall not be collected if a warehouse successfully completes a mutually agreed upon compliance agreement with the department. A warehouse that enters into a compliance agreement with the department shall pay only for inspections conducted by the department and any laboratory analyses as required by the inspections as outlined and agreed to in the compliance agreement. In no event shall the fee for these inspections and analyses exceed four hundred dollars per inspection or one thousand dollars in total. [1995 c 374 § 17.]

69.10.055 Rules. (1) The department shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose.

(2) The adoption of rules under the provisions of this chapter are subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act. [1995 c 374 § 18.]

69.10.060 Director and deputies, assistants, and inspectors authorized to act—May take verified statements. The director or director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. The department personnel are empowered to administer oaths of verification on the statement. [1995 c 374 § 19.]

69.10.900 Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68. See note following RCW 15.36.012.

Chapter 69.25

WASHINGTON WHOLESOME EGGS AND EGG PRODUCTS ACT

Sections

69.25.020	Definitions.
69.25.050	Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure.
69.25.150	Penalties—Liability of employer—Defense—Interference with person performing official duties.
69.25.170	Exemptions permitted by rule of director.
69.25.250	Assessment—Rate, applicability, time of payment—Reports—Contents, frequency.
69.25.310	Containers—Marking required—Obliteration of previous markings required for reuse—Temporary use of another handler's or dealer's permanent number—Penalty.
69.25.320	Records required, additional—Sales to retailer or food service—Exception—Defense to charged violation—Sale of eggs deteriorated due to storage time—Requirements for storage, display, or transportation.
69.25.330	Repealed.
69.25.340	Repealed.

69.25.020 Definitions. When used in this chapter the following terms shall have the indicated meanings, unless the context otherwise requires:

(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 any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof, or assignee for the benefit of creditors.

(4) "Adulterated" applies to any egg or egg product under one or more of the following circumstances:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance (other than one which is: (i) A pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(c) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, as enacted or hereafter amended;

(d) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394, as enacted or hereafter amended;

(e) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396, as enacted or hereafter amended: PROVIDED, That an article which is not otherwise deemed adulterated under subsection (4)(c), (d), or (e) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the director in official plants;

(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(g) If it consists in whole or in part of any damaged egg or eggs to the extent that the egg meat or white is leaking, or it has been contacted by egg meat or white leaking from other eggs;

(h) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(i) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(j) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(k) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(l) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its

quality or strength, or make it appear better or of greater value than it is.

(5) "Capable of use as human food" shall apply to any egg or egg product unless it is denatured, or otherwise identified, as required by regulations prescribed by the director, to deter its use as human food.

(6) "Intrastate commerce" means any eggs or egg products in intrastate commerce, whether such eggs or egg products are intended for sale, held for sale, offered for sale, sold, stored, transported, or handled in this state in any manner and prepared for eventual distribution in this state, whether at wholesale or retail.

(7) "Container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.

(8) "Immediate container" means any consumer package, or any other container in which egg products, not consumer-packaged, are packed.

(9) "Shipping container" means any container used in packaging a product packed in an immediate container.

(10) "Egg handler" or "dealer" means any person who produces, contracts for or obtains possession or control of any eggs for the purpose of sale to another dealer or retailer, or for processing and sale to a dealer, retailer or consumer: PROVIDED, That for the purpose of this chapter, "sell" or "sale" includes the following: Offer for sale, expose for sale, have in possession for sale, exchange, barter, trade, or as an inducement for the sale of another product.

(11) "Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion, or historically have not been, in the judgment of the director, considered by consumers as products of the egg food industry, and which may be exempted by the director under such conditions as he may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg products.

(12) "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea, or any other specie of fowl.

(13) "Check" means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(14) "Clean and sound shell egg" means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(15) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

(16) "Incubator reject" means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(17) "Inedible" means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(18) "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(19) "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(20) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss.

(21) "Inspection" means the application of such inspection methods and techniques as are deemed necessary by the director to carry out the provisions of this chapter.

(22) "Inspector" means any employee or official of the department authorized to inspect eggs or egg products under the authority of this chapter.

(23) "Misbranded" shall apply to egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the director under RCW 69.25.100.

(24) "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter.

(25) "Official device" means any device prescribed or authorized by the director for use in applying any official mark.

(26) "Official inspection legend" means any symbol prescribed by regulations of the director showing that egg products were inspected in accordance with this chapter.

(27) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article under this chapter.

(28) "Official plant" means any plant which is licensed under the provisions of this chapter, at which inspection of the processing of egg products is maintained by the United States department of agriculture or by the state under cooperative agreements with the United States department of agriculture or by the state.

(29) "Official standards" means the standards of quality, grades, and weight classes for eggs, adopted under the provisions of this chapter.

(30) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful, viable micro-organisms by such processes as may be prescribed by regulations of the director.

(31) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meaning for purposes of this chapter as prescribed in chapter 69.04 RCW.

(32) "Plant" means any place of business where egg products are processed.

(33) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(34) "Retailer" means any person in intrastate commerce who sells eggs to a consumer.

(35) "At retail" means any transaction in intrastate commerce between a retailer and a consumer.

(36) "Consumer" means any person who purchases eggs for his or her own family use or consumption; or any

restaurant, hotel, boarding house, bakery, or other institution or concern which purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(37) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place.

(38) "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.

(39) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs. [1995 c 374 § 25; 1982 c 182 § 42; 1975 1st ex.s. c 201 § 3.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1982 c 182: See RCW 19.02.901.

69.25.050 Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure. No person shall act as an egg handler or dealer without first obtaining an annual license and permanent dealer's number from the department; such license shall expire on the master license expiration date. Application for an egg dealer license or egg dealer branch license, shall be made through the master license system. The annual egg dealer license fee shall be thirty dollars and the annual egg dealer branch license fee shall be fifteen dollars. A copy of the master license shall be posted at each location where such licensee operates. Such application shall include the full name of the applicant for the license and the location of each facility he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant and any other necessary information prescribed by the director. Upon the approval of the application and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof. Such license and permanent egg handler or dealer's number shall be nontransferable. [1995 c 374 § 26; 1982 c 182 § 43; 1975 1st ex.s. c 201 § 6.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1982 c 182: See RCW 19.02.901.

Master license—Expiration date: RCW 19.02.090.

Master license system

definition: RCW 69.25.020(38).

existing licenses or permits registered under, when: RCW 19.02.810.

to include additional licenses: RCW 19.02.110.

69.25.150 Penalties—Liability of employer—Defense—Interference with person performing official duties. (1)(a) Any person violating any provision of this chapter or any rule adopted under this chapter is guilty of a

misdeemeanor and guilty of a gross misdemeanor for any second and subsequent violation. Any offense committed more than five years after a previous conviction shall be considered a first offense. A misdemeanor under this section is punishable to the same extent that a misdemeanor is punishable under RCW 9A.20.021 and a gross misdemeanor under this section is punishable to the same extent that a gross misdemeanor is punishable under RCW 9A.20.021.

(b) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to (a) of this subsection, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense.

When construing or enforcing the provisions of RCW 69.25.110, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of the person's employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(2) No carrier or warehouseman shall be subject to the penalties of this chapter, other than the penalties for violation of RCW 69.25.140, or subsection (3) of this section, by reason of his or her receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouseman refuses to furnish on request of a representative of the director the name and address of the person from whom he or she received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman.

(3) Notwithstanding any other provision of law any person who forcibly assaults, resists, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his or her official duties under this chapter shall be punished by a fine of not more than five thousand dollars or imprisonment in a state correctional facility for not more than three years, or both. Whoever, in the commission of any such act, uses a deadly or dangerous weapon, shall be punished by a fine of not more than ten thousand dollars or by imprisonment in a state correctional facility for not more than ten years, or both. [1995 c 374 § 27; 1992 c 7 § 47; 1975 1st ex.s. c 201 § 16.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.170 Exemptions permitted by rule of director.

(1) The director may, by regulation and under such conditions and procedures as he may prescribe, exempt from specific provisions of this chapter:

(a) The sale, transportation, possession, or use of eggs which contain no more restricted eggs than are allowed by the tolerance in the official state standards for consumer grades for shell eggs;

(b) The processing of egg products at any plant where the facilities and operating procedures meet such sanitary standards as may be prescribed by the director, and where the eggs received or used in the manufacture of egg products contain no more restricted eggs than are allowed by the official standards of the state consumer grades for shell eggs, and the egg products processed at such plant;

(c) The sale of eggs by any poultry producer from his own flocks directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(d) The sale of eggs by shell egg packers on his own premises directly to household consumers for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(e) The sale of eggs by any egg producer with an annual egg production from a flock of three thousand hens or less.

(2) The director may modify or revoke any regulation granting exemption under this chapter whenever he deems such action appropriate to effectuate the purposes of this chapter. [1995 c 374 § 28; 1975 1st ex.s. c 201 § 18.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.250 Assessment—Rate, applicability, time of payment—Reports—Contents, frequency. There is hereby levied an assessment not to exceed three mills per dozen eggs entering intrastate commerce, as prescribed by rules and regulations issued by the director. Such assessment shall be applicable to all eggs entering intrastate commerce except as provided in RCW 69.25.170 and 69.25.290. Such assessment shall be paid to the director on a monthly basis on or before the tenth day following the month such eggs enter intrastate commerce. The director may require reports by egg handlers or dealers along with the payment of the assessment fee. Such reports may include any and all pertinent information necessary to carry out the purposes of this chapter. The director may, by regulations, require egg container manufacturers to report on a monthly basis all egg containers sold to any egg handler or dealer and bearing such egg handler or dealer's permanent number. [1995 c 374 § 29; 1993 sp.s. c 19 § 12; 1975 1st ex.s. c 201 § 26.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.310 Containers—Marking required—Obliteration of previous markings required for reuse—Temporary use of another handler's or dealer's permanent number—Penalty. (1) All containers used by an egg handler or dealer to package eggs shall bear the name and address or the permanent number issued by the director to said egg handler or dealer. Such permanent number shall be displayed in a size and location prescribed by the director. It shall be a violation for any egg handler or dealer to use a container that bears the permanent number of another egg handler or dealer unless such number is totally obliterated prior to use. The director may in addition require the obliteration of any or all markings that may be on any

container which will be used for eggs by an egg handler or dealer.

(2) Notwithstanding subsection (1) of this section and following written notice to the director, licensed egg handlers and dealers may use new containers bearing another handler's or dealer's permanent number on a temporary basis, in any event not longer than one year, with the consent of such other handler or dealer for the purpose of using up existing container stocks. Sale of container stock shall constitute agreement by the parties to use the permanent number. [1995 c 374 § 30; 1975 1st ex.s. c 201 § 32.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.320 Records required, additional—Sales to retailer or food service—Exception—Defense to charged violation—Sale of eggs deteriorated due to storage time—Requirements for storage, display, or transportation. (1) In addition to any other records required to be kept and furnished the director under the provisions of this chapter, the director may require any person who sells to any retailer, or to any restaurant, hotel, boarding house, bakery, or any institution or concern which purchases eggs for serving to guests or patrons thereof or for its use in preparation of any food product for human consumption, candled or graded eggs other than those of his own production sold and delivered on the premises where produced, to furnish that retailer or other purchaser with an invoice covering each such sale, showing the exact grade or quality, and the size or weight of the eggs sold, according to the standards prescribed by the director, together with the name and address of the person by whom the eggs were sold. The person selling and the retailer or other purchaser shall keep a copy of said invoice on file at his place of business for a period of thirty days, during which time the copy shall be available for inspection at all reasonable times by the director: PROVIDED, That no retailer or other purchaser shall be guilty of a violation of this chapter if he can establish a guarantee from the person from whom the eggs were purchased to the effect that they, at the time of purchase, conformed to the information required by the director on such invoice: PROVIDED FURTHER, That if the retailer or other purchaser having labeled any such eggs in accordance with the invoice keeps them for such a time after they are purchased as to cause them to deteriorate to a lower grade or standard, and sells them under the label of the invoice grade or standard, he shall be guilty of a violation of this chapter.

(2) Each retailer and each distributor shall store shell eggs awaiting sale or display eggs under clean and sanitary conditions in areas free from rodents and insects. Shell eggs must be stored up off the floor away from strong odors, pesticides, and cleaners.

(3) After being received at the point of first purchase, all graded shell eggs packed in containers for the purpose of sale to consumers shall be held and transported under refrigeration at ambient temperatures no greater than forty-five degrees Fahrenheit (seven and two-tenths degrees Celsius). This provision shall apply without limitation to retailers, institutional users, dealer/wholesalers, food han-

dlers, transportation firms, or any person who handles eggs after the point of first purchase.

(4) No invoice shall be required on eggs when packed for sale to the United States department of defense, or a component thereof, if labeled with grades promulgated by the United States secretary of agriculture. [1995 c 374 § 31; 1975 1st ex.s. c 201 § 33.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.330 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

69.25.340 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 69.30

SANITARY CONTROL OF SHELLFISH

Sections

69.30.010	Definitions.
69.30.030	Rules and regulations—Duties of state board of health.
69.30.050	Certificates of approval—Shellfish growing areas.
69.30.110	Possession or sale in violation of chapter—Enforcement—Seizure—Disposal.
69.30.120	Inspection by department—Access to regulated business or entity—Administrative inspection warrant.
69.30.140	Penalties.

69.30.010 Definitions. When used in this chapter, the following terms shall have the following meanings:

(1) "Shellfish" means all varieties of fresh and frozen oysters, mussels, clams, and scallops, either shucked or in the shell, and any fresh or frozen edible products thereof.

(2) "Sale" means to sell, offer for sale, barter, trade, deliver, consign, hold for sale, consignment, barter, trade, or delivery, and/or possess with intent to sell or dispose of in any commercial manner.

(3) "Shellfish growing areas" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantity or for sale for human consumption.

(4) "Establishment" means the buildings, together with the necessary equipment and appurtenances, used for the storage, culling, shucking, packing and/or shipping of shellfish in commercial quantity or for sale for human consumption.

(5) "Person" means any individual, partnership, firm, company, corporation, association, or the authorized agents of any such entities.

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

(7) "Secretary" means the secretary of health or his or her authorized representatives.

(8) "Commercial quantity" means any quantity exceeding: (a) Forty pounds of mussels; (b) one hundred oysters; (c) fourteen horse clams; (d) six geoducks; (e) fifty pounds of hard or soft shell clams; or (f) fifty pounds of scallops. The poundage in this subsection (8) constitutes weight with the shell.

(9) "Fish and wildlife enforcement officer" means a fisheries patrol officer or an ex officio fisheries patrol officer as defined in *RCW 75.08.011 (4) and (5) or a wildlife agent or an ex officio wildlife agent as defined in RCW

77.08.010 (5) and (6). [1995 c 147 § 1; 1991 c 3 § 303; 1989 c 200 § 1; 1985 c 51 § 1; 1979 c 141 § 70; 1955 c 144 § 1.]

***Reviser's note:** RCW 75.08.011 was amended by 1995 1st sp.s. c 2 § 6 changing subsections (4) and (5) to subsections (5) and (6), respectively.

69.30.030 Rules and regulations—Duties of state board of health. The state board of health shall cause such investigations to be made as are necessary to determine reasonable requirements governing the sanitation of shellfish, shellfish growing areas, and shellfish plant facilities and operations, in order to protect public health and carry out the provisions of this chapter; and shall adopt such requirements as rules and regulations of the state board of health. Such rules and regulations may include reasonable sanitary requirements relative to the quality of shellfish growing waters and areas, boat and barge sanitation, building construction, water supply, sewage and waste water disposal, lighting and ventilation, insect and rodent control, shell disposal, garbage and waste disposal, cleanliness of establishment, the handling, storage, construction and maintenance of equipment, the handling, storage and refrigeration of shellfish, the identification of containers, and the handling, maintenance, and storage of permits, certificates, and records regarding shellfish taken under this chapter. [1995 c 147 § 2; 1955 c 144 § 3.]

69.30.050 Certificates of approval—Shellfish growing areas. Shellfish growing areas, from which shellfish are removed in a commercial quantity or for sale for human consumption shall meet the requirements of this chapter and the state board of health; and such shellfish growing areas shall be so certified by the department. Any person desiring to remove shellfish in a commercial quantity or for sale for human consumption from a growing area in the state of Washington shall first apply to the department for a certificate of approval of the growing area. The department shall cause the shellfish growing area to be inspected and if the area meets the requirements of this chapter and the state board of health, the department shall issue a certificate of approval for that area. Such certificates shall be issued for a period not to exceed twelve months and may be revoked at any time the area is found not to be in compliance with the requirements of this chapter and the state board of health.

Shellfish growing areas from which shellfish are removed in a commercial quantity for purposes other than human consumption including but not limited to bait or seed, shall be readily subject to monitoring and inspections, and shall otherwise be of a character ensuring that shellfish harvested from such areas are not diverted for use as food. A certificate of approval issued by the department for shellfish growing areas from which shellfish are to be removed for purposes other than human consumption shall specify the date or dates and time of harvest and all applicable conditions of harvest, identification by tagging, dying, or other means, transportation, processing, sale, and other factors to ensure that shellfish harvested from such areas are not diverted for use as food. [1995 c 147 § 3; 1985 c 51 § 2; 1955 c 144 § 5.]

69.30.110 Possession or sale in violation of chapter—Enforcement—Seizure—Disposal. It is unlawful for any person to possess a commercial quantity of shellfish or to sell or offer to sell shellfish in the state which have not been grown, shucked, packed, or shipped in accordance with the provisions of this chapter. Failure of a shellfish grower to display immediately a certificate of approval issued under RCW 69.30.050 to an authorized representative of the department, a fish and wildlife enforcement officer, or an ex officio fish and wildlife enforcement officer subjects the grower to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

Failure of a shellfish processor to display a certificate of approval issued under RCW 69.30.060 to an authorized representative of the department, a fish and wildlife enforcement officer, or an ex officio fish and wildlife enforcement officer subjects the processor to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

Shellfish seized under this section shall be subject to prompt disposal by the representative or officer and may not be used for human consumption. The state board of health shall develop by rule procedures for the disposal of the seized shellfish. [1995 c 147 § 4; 1985 c 51 § 4; 1979 c 141 § 74; 1955 c 144 § 11.]

69.30.120 Inspection by department—Access to regulated business or entity—Administrative inspection warrant. The department may enter and inspect any shellfish growing area or establishment for the purposes of determining compliance with this chapter and rules adopted under this chapter. The department may inspect all shellfish, all permits, all certificates of approval and all records.

During such inspections the department shall have free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities, vehicles, and other places reasonably considered to be or to have been part of the regulated business or entity, to all ledgers, books, accounts, memorandums, or records required to be compiled or maintained under this chapter or under rules adopted pursuant to this chapter, and to any products, components, or other materials reasonably believed to be or to have been used, processed, or produced by or in connection with the regulated business or activity. In connection with such inspections the department may take such samples or specimens as may be reasonably necessary to determine whether there exists a violation of this chapter or rules adopted under this chapter.

Inspection of establishments may be conducted between eight a.m. and five p.m. on any weekday that is not a legal holiday, during any time the regulated business or entity has established as its usual business hours, at any time the regulated business or entity is open for business or is otherwise in operation, and at any other time with the consent of the owner or authorized agent of the regulated business or entity.

The department may apply for an administrative inspection warrant to a court of competent jurisdiction and an administrative inspection warrant may issue where:

(1) The department has attempted an inspection under this chapter and access to all or part of the regulated business or entity has been actually or constructively denied; or

(2) There is reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred. [1995 c 147 § 5; 1985 c 51 § 5; 1955 c 144 § 12.]

69.30.140 Penalties. Any person convicted of violating any of the provisions of this chapter shall be guilty of a gross misdemeanor. A conviction is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and shall be treated as a violation conviction for purposes of license forfeiture under RCW 75.10.120. [1995 c 147 § 6; 1985 c 51 § 6; 1955 c 144 § 14.]

Chapter 69.50

UNIFORM CONTROLLED SUBSTANCES ACT

Sections

69.50.520 Violence reduction and drug enforcement account.

69.50.520 Violence reduction and drug enforcement account. The violence reduction and drug enforcement account is created in the state treasury. All designated receipts from RCW 9.41.110(7), 66.24.210(4), 66.24.290(3), 69.50.505(h)(1), 82.08.150(5), 82.24.020(2), 82.64.020, and section 420, chapter 271, Laws of 1989 shall be deposited into the account. Expenditures from the account may be used only for funding services and programs under chapter 271, Laws of 1989 and chapter 7, Laws of 1994 sp. sess., including state incarceration costs. After July 1, 1997, at least seven and one-half percent of expenditures from the account shall be used for providing grants to community networks under chapter 70.190 RCW by the family policy council. [1995 2nd sp.s. c 18 § 920; 1994 sp.s. c 7 § 910; 1989 c 271 § 401.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Appropriation—Standards—1990 c 275 § 4; 1989 c 271 § 401: "The sum of one million eight hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the office of the administrator for the courts for the treatment alternatives to street crime program. These funds shall be used for providing services in domestic cases to children and to parents or others having custody of children under chapter 26.09, 26.10, 26.26, 26.44, or 26.50 RCW. These funds shall not be available for expenditure until January 1, 1990. The office of the administrator for the courts shall establish standards for the courts to recover the expenses of the program specified in this section from the participants, based upon the individual participant's ability to pay. All fees collected shall be remitted to the state treasurer for deposit in the drug enforcement and education account under RCW 69.50.520." [1990 c 275 § 4; 1989 c 271 § 420.]

Captions not law—1989 c 271: "Part, subpart, and section headings and the index as used in this act do not constitute any part of the law." [1989 c 271 § 605.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Title 70

PUBLIC HEALTH AND SAFETY

Chapters

- 70.02 Medical records—Health care information access and disclosure.
- 70.05 Local health departments, boards, officers—Regulations.
- 70.08 Combined city-county health departments.
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- 70.132 Beverage containers.
- 70.136 Hazardous materials incidents.
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- 70.149 Heating oil pollution liability protection act.
- 70.160 Washington clean indoor air act.
- 70.164 Low-income residential weatherization program.
- 70.170 Health data and charity care.

70.190 Family policy council.

Chapter 70.02

MEDICAL RECORDS—HEALTH CARE INFORMATION ACCESS AND DISCLOSURE

Sections

- 70.02.070 Certification of record.

70.02.070 Certification of record. Upon the request of the person requesting the record, the health care provider or facility shall certify the record furnished and may charge for such certification in accordance with RCW 36.18.016(5). No record need be certified until the fee is paid. The certification shall be affixed to the record and disclose:

- (1) The identity of the patient;
- (2) The kind of health care information involved;
- (3) The identity of the person to whom the information is being furnished;
- (4) The identity of the health care provider or facility furnishing the information;
- (5) The number of pages of the health care information;
- (6) The date on which the health care information is furnished; and
- (7) That the certification is to fulfill and meet the requirements of this section. [1995 c 292 § 20; 1991 c 335 § 206.]

Chapter 70.05

LOCAL HEALTH DEPARTMENTS, BOARDS, OFFICERS—REGULATIONS

Sections

- 70.05.030 Counties—Local health board—Jurisdiction. (*Effective January 1, 1996.*)
- 70.05.035 Home rule charter—Local board of health. (*Effective January 1, 1996.*)
- 70.05.050 Local health officer—Qualifications—Employment of personnel—Salary and expenses. (*Effective January 1, 1996.*)
- 70.05.072 Local health officer—Authority to grant waiver from on-site sewage system requirements.
- 70.05.125 County public health account—Distribution to local public health jurisdictions. (*Effective January 1, 1996.*)

70.05.030 Counties—Local health board—Jurisdiction. (*Effective January 1, 1996.*) In counties without a home rule charter, the board of county commissioners shall constitute the local board of health, unless the county is part of a health district pursuant to chapter 70.46 RCW. The jurisdiction of the local board of health shall be coextensive with the boundaries of said county. The board of county commissioners may, at its discretion, adopt an ordinance expanding the size and composition of the board of health to include elected officials from cities and towns and persons other than elected officials as members so long as persons other than elected officials do not constitute a majority. An ordinance adopted under this section shall include provisions for the appointment, term, and compensation, or reimbursement of expenses. [1995 c 43 § 6; 1993 c 492 § 235; 1967 ex.s. c 51 § 3.]

Effective dates—Contingent effective dates—1995 c 43: "(1) Sections 15 and 16 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, 1995.

(2) Sections 1 through 5, 12, and 13 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, 1995.

(3) Section 9 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 17, 1995].

(4) *Sections 6 through 8, 10, and 11 of this act take effect January 1, 1996, if funding of at least two million two hundred fifty thousand dollars, is provided by June 30, 1995, in the 1995 omnibus appropriations act or as a result of the passage of Senate Bill No. 6058, to implement the changes in public health governance as outlined in this act. If such funding is not provided, sections 6 through 8, 10, and 11 of this act shall take effect January 1, 1998." [1995 c 43 § 17.]

***Reviser's note:** The 1995 omnibus appropriations act, chapter 18, Laws of 1995 2nd sp. sess. provided two million two hundred fifty thousand dollars.

Severability—1995 c 43: See note following RCW 43.70.570.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.035 Home rule charter—Local board of health. (*Effective January 1, 1996.*) In counties with a home rule charter, the county legislative authority shall establish a local board of health and may prescribe the membership and selection process for the board. The county legislative authority may appoint to the board of health elected officials from cities and towns and persons other than elected officials as members so long as persons other than elected officials do not constitute a majority. The county legislative authority shall specify the appointment, term, and compensation or reimbursement of expenses. The jurisdiction of the local board of health shall be coextensive with the boundaries of the county. The local health officer, as described in RCW 70.05.050, shall be appointed by the official designated under the provisions of the county charter. The same official designated under the provisions of the county charter may appoint an administrative officer, as described in RCW 70.05.045. [1995 c 43 § 7; 1993 c 492 § 237.]

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.050 Local health officer—Qualifications—Employment of personnel—Salary and expenses. (*Effective January 1, 1996.*) The local health officer shall be an experienced physician licensed to practice medicine and surgery or osteopathy and surgery in this state and who is qualified or provisionally qualified in accordance with the standards prescribed in RCW 70.05.051 through 70.05.055 to hold the office of local health officer. No term of office shall be established for the local health officer but the local health officer shall not be removed until after notice is

given, and an opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal. The local health officer shall act as executive secretary to, and administrative officer for the local board of health and shall also be empowered to employ such technical and other personnel as approved by the local board of health except where the local board of health has appointed an administrative officer under RCW 70.05.040. The local health officer shall be paid such salary and allowed such expenses as shall be determined by the local board of health. In home rule counties that are part of a health district under this chapter and chapter 70.46 RCW the local health officer and administrative officer shall be appointed by the local board of health. [1995 c 43 § 8; 1993 c 492 § 238; 1984 c 25 § 5; 1983 1st ex.s. c 39 § 2; 1969 ex.s. c 114 § 1; 1967 ex.s. c 51 § 9.]

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.072 Local health officer—Authority to grant waiver from on-site sewage system requirements. The local health officer may grant a waiver from specific requirements adopted by the state board of health for on-site sewage systems if:

(1) The on-site sewage system for which a waiver is requested is for sewage flows under three thousand five hundred gallons per day;

(2) The waiver request is evaluated by the local health officer on an individual, site-by-site basis;

(3) The local health officer determines that the waiver is consistent with the standards in, and the intent of, the state board of health rules; and

(4) The local health officer submits quarterly reports to the department regarding any waivers approved or denied.

Based on review of the quarterly reports, if the department finds that the waivers previously granted have not been consistent with the standards in, and intent of, the state board of health rules, the department shall provide technical assistance to the local health officer to correct the inconsistency, and may notify the local and state boards of health of the department's concerns.

If upon further review of the quarterly reports, the department finds that the inconsistency between the waivers granted and the state board of health standards has not been corrected, the department may suspend the authority of the local health officer to grant waivers under this section until such inconsistencies have been corrected. [1995 c 263 § 1.]

70.05.125 County public health account—Distribution to local public health jurisdictions. (*Effective January 1, 1996.*) (1) The county public health account is created in the state treasury. Funds deposited in the county public health account shall be distributed by the state treasurer to each local public health jurisdiction based upon amounts certified to it by the department of community, trade, and economic development in consultation with the

Washington state association of counties. The account shall include funds distributed under RCW 82.44.110 and such funds as are appropriated to the account from the health services account under RCW 43.72.900, the public health services account under RCW 43.72.902, and such other funds as the legislature may appropriate to it.

(2) The director of the department of community, trade, and economic development shall certify the amounts to be distributed to each local public health jurisdiction using 1995 as the base year of actual city contributions to local public health. The county treasurer shall certify the actual 1995 city contribution to the department. Funds in excess of the base shall be distributed proportionately among the health jurisdictions based on incorporated population figures as last determined by the office of financial management.

(3) Moneys distributed under this section shall be expended exclusively for local public health purposes. [1995 1st sp.s. c 15 § 1.]

Effective date—1995 1st sp.s. c 15: "This act shall take effect January 1, 1996." [1995 1st sp.s. c 15 § 3.]

Chapter 70.08

COMBINED CITY-COUNTY HEALTH DEPARTMENTS

Sections

70.08.040 Director of public health—Appointment.

70.08.040 Director of public health—Appointment. Notwithstanding any provisions to the contrary contained in any city or county charter, where a combined department is established under this chapter, the director of public health under this chapter shall be appointed by the county executive of the county and the mayor of the city. The appointment shall be effective only upon a majority vote confirmation of the legislative authority of the county and the legislative authority of the city. The director may be removed by the county executive of the county, after consultation with the mayor of the city, upon filing a statement of reasons therefor with the legislative authorities of the county and the city. [1995 c 188 § 1; 1995 c 43 § 9; 1985 c 124 § 4; 1980 c 57 § 1; 1949 c 46 § 4; Rem. Supp. 1949 § 6099-33.]

Reviser's note: This section was amended by 1995 c 43 § 9 and by 1995 c 188 § 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).

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

Chapter 70.12

PUBLIC HEALTH FUNDS

Sections

70.12.070 Fund subject to audit and check by state.

70.12.070 Fund subject to audit and check by state. The public health pool fund shall be subject to audit by the state auditor and shall be subject to check by the state department of health. [1995 c 301 § 77; 1991 c 3 § 316;

1979 c 141 § 87; 1943 c 190 § 5; Rem. Supp. 1943 § 6099-5.]

Chapter 70.38

HEALTH PLANNING AND DEVELOPMENT

Sections

70.38.111 Certificates of need—Exemptions.

70.38.115 Certificates of need—Procedures—Rules—Criteria for review—Conditional certificates of need—Concurrent review—Review periods—Hearing—Adjudicative proceeding—Amended certificates of need.

70.38.111 Certificates of need—Exemptions. (1) The department shall not require a certificate of need for the offering of an inpatient tertiary health service by:

(a) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination;

(b) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination; or

(c) A health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and, on the date the application is submitted under subsection (2) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization;

if, with respect to such offering or obligation by a nursing home, the department has, upon application under subsection (2) of this section, granted an exemption from such requirement to the organization, combination of organizations, or facility.

(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under subsection (1) of this section from obtaining a certificate of need before offering a tertiary health service unless:

(a) It has submitted at least thirty days prior to the offering of services reviewable under RCW 70.38.105(4)(d) an application for such exemption; and

(b) The application contains such information respecting the organization, combination, or facility and the proposed offering or obligation by a nursing home as the department may require to determine if the organization or combination meets the requirements of subsection (1) of this section or the facility meets or will meet such requirements; and

(c) The department approves such application. The department shall approve or disapprove an application for exemption within thirty days of receipt of a completed application. In the case of a proposed health care facility (or portion thereof) which has not begun to provide tertiary health services on the date an application is submitted under this subsection with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of subsection (1) of this section when the facility first provides such services. The department shall approve an application submitted under this subsection if it determines that the applicable requirements of subsection (1) of this section are met.

(3) A health care facility (or any part thereof) with respect to which an exemption was granted under subsection (1) of this section may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired and a health care facility described in (1)(c) which was granted an exemption under subsection (1) of this section may not be used by any person other than the lessee described in (1)(c) unless:

(a) The department issues a certificate of need approving the sale, lease, acquisition, or use; or

(b) The department determines, upon application, that (i) the entity to which the facility is proposed to be sold or leased, which intends to acquire the controlling interest, or which intends to use the facility is a health maintenance organization or a combination of health maintenance organizations which meets the requirements of (1)(a)(i), and (ii) with respect to such facility, meets the requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b) (i) and (ii).

(4) In the case of a health maintenance organization, an ambulatory care facility, or a health care facility, which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the department may under the program apply its certificate of need requirements only to the offering of inpatient tertiary health services and then only to the extent that such offering is not exempt under the provisions of this section.

(5)(a) The department shall not require a certificate of need for the construction, development, or other establishment of a nursing home, or the addition of beds to an existing nursing home, that is owned and operated by a continuing care retirement community that:

(i) Offers services only to contractual members;

(ii) Provides its members a contractually guaranteed range of services from independent living through skilled nursing, including some assistance with daily living activities;

(iii) Contractually assumes responsibility for the cost of services exceeding the member's financial responsibility under the contract, so that no third party, with the exception of insurance purchased by the retirement community or its members, but including the medicaid program, is liable for costs of care even if the member depletes his or her personal resources;

(iv) Has offered continuing care contracts and operated a nursing home continuously since January 1, 1988, or has obtained a certificate of need to establish a nursing home;

(v) Maintains a binding agreement with the state assuring that financial liability for services to members, including nursing home services, will not fall upon the state;

(vi) Does not operate, and has not undertaken a project that would result in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and

(vii) Has obtained a professional review of pricing and long-term solvency within the prior five years which was fully disclosed to members.

(b) A continuing care retirement community shall not be exempt under this subsection from obtaining a certificate of need unless:

(i) It has submitted an application for exemption at least thirty days prior to commencing construction of, is submitting an application for the licensure of, or is commencing operation of a nursing home, whichever comes first; and

(ii) The application documents to the department that the continuing care retirement community qualifies for exemption.

(c) The sale, lease, acquisition, or use of part or all of a continuing care retirement community nursing home that qualifies for exemption under this subsection shall require prior certificate of need approval to qualify for licensure as a nursing home unless the department determines such sale, lease, acquisition, or use is by a continuing care retirement community that meets the conditions of (a) of this subsection.

(6) A rural hospital, as defined by the department, reducing the number of licensed beds to become a rural primary care hospital under the provisions of Part A Title XVIII of the Social Security Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction of beds licensed under chapter 70.41 RCW, increase the number of licensed beds to no more than the previously licensed number without being subject to the provisions of this chapter.

(7) A rural health care facility licensed under RCW 70.175.100 formerly licensed as a hospital under chapter 70.41 RCW may, within three years of the effective date of the rural health care facility license, apply to the department for a hospital license and not be subject to the requirements of RCW 70.38.105(4)(a) as the construction, development, or other establishment of a new hospital, provided there is no increase in the number of beds previously licensed under chapter 70.41 RCW and there is no redistribution in the

number of beds used for acute care or long-term care, the rural health care facility has been in continuous operation, and the rural health care facility has not been purchased or leased.

(8)(a) A nursing home that voluntarily reduces the number of its licensed beds to provide assisted living, licensed boarding home care, adult day care, adult day health, respite care, hospice, outpatient therapy services, congregate meals, home health, or senior wellness clinic, or to reduce to one or two the number of beds per room or to otherwise enhance the quality of life for residents in the nursing home, may convert the original facility or portion of the facility back, and thereby increase the number of nursing home beds to no more than the previously licensed number of nursing home beds without obtaining a certificate of need under this chapter, provided the facility has been in continuous operation and has not been purchased or leased. Any conversion to the original licensed bed capacity, or to any portion thereof, shall comply with the same life and safety code requirements as existed at the time the nursing home voluntarily reduced its licensed beds; unless waivers from such requirements were issued, in which case the converted beds shall reflect the conditions or standards that then existed pursuant to the approved waivers.

(b) To convert beds back to nursing home beds under this subsection, the nursing home must:

(i) Give notice of its intent to preserve conversion options to the department of health no later than thirty days after the effective date of the license reduction; and

(ii) Give notice to the department of health and to the department of social and health services of the intent to convert beds back. If construction is required for the conversion of beds back, the notice of intent to convert beds back must be given no later than two years prior to the effective date of license modification reflecting the restored beds; otherwise, the notice must be given no later than one year prior to the effective date of license modification reflecting the restored beds.

(c) Conversion of beds back under this subsection must be completed no later than four years after the effective date of the license reduction. However, for good cause shown, the four-year period for conversion may be extended by the department of health for one additional four-year period.

(d) Nursing home beds that have been voluntarily reduced under this section shall be counted as available nursing home beds for the purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long as the facility retains the ability to convert them back to nursing home use under the terms of this section.

(e) When a building owner has secured an interest in the nursing home beds, which are intended to be voluntarily reduced by the licensee under (a) of this subsection, the applicant shall provide the department with a written statement indicating the building owner's approval of the bed reduction. [1995 1st sp.s. c 18 § 71; 1993 c 508 § 5; 1992 c 27 § 2; 1991 c 158 § 2; 1989 1st ex.s. c 9 § 604; 1982 c 119 § 3; 1980 c 139 § 9.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Section captions—Conflict with federal requirements—Severability—Effective date—1993 c 508: See RCW 74.39A.900 through 74.39A.903.

70.38.115 Certificates of need—Procedures—Rules—Criteria for review—Conditional certificates of need—Concurrent review—Review periods—Hearing—Adjudicative proceeding—Amended certificates of need.

(1) Certificates of need shall be issued, denied, suspended, or revoked by the designee of the secretary in accord with the provisions of this chapter and rules of the department which establish review procedures and criteria for the certificate of need program.

(2) Criteria for the review of certificate of need applications, except as provided in subsection (3) of this section for health maintenance organizations, shall include but not be limited to consideration of the following:

(a) The need that the population served or to be served by such services has for such services;

(b) The availability of less costly or more effective alternative methods of providing such services;

(c) The financial feasibility and the probable impact of the proposal on the cost of and charges for providing health services in the community to be served;

(d) In the case of health services to be provided, (i) the availability of alternative uses of project resources for the provision of other health services, (ii) the extent to which such proposed services will be accessible to all residents of the area to be served, and (iii) the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels;

(e) In the case of a construction project, the costs and methods of the proposed construction, including the cost and methods of energy provision, and the probable impact of the construction project reviewed (i) on the cost of providing health services by the person proposing such construction project and (ii) on the cost and charges to the public of providing health services by other persons;

(f) The special needs and circumstances of osteopathic hospitals, nonallopathic services and children's hospitals;

(g) Improvements or innovations in the financing and delivery of health services which foster cost containment and serve to promote quality assurance and cost-effectiveness;

(h) In the case of health services proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;

(i) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past;

(j) In the case of hospital certificate of need applications, whether the hospital meets or exceeds the regional average level of charity care, as determined by the secretary; and

(k) In the case of nursing home applications:

(i) The availability of other nursing home beds in the planning area to be served; and

(ii) The availability of other services in the community to be served. Data used to determine the availability of other services will include but not be limited to data provided by the department of social and health services.

(3) A certificate of need application of a health maintenance organization or a health care facility which is con-

trolled, directly or indirectly, by a health maintenance organization, shall be approved by the department if the department finds:

(a) Approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll; and

(b) The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

A health care facility, or any part thereof, with respect to which a certificate of need was issued under this subsection may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired unless the department issues a certificate of need approving the sale, acquisition, or lease.

(4) Until the final expiration of the state health plan as provided under RCW 70.38.919, the decision of the department on a certificate of need application shall be consistent with the state health plan in effect, except in emergency circumstances which pose a threat to the public health. The department in making its final decision may issue a conditional certificate of need if it finds that the project is justified only under specific circumstances. The conditions shall directly relate to the project being reviewed. The conditions may be released if it can be substantiated that the conditions are no longer valid and the release of such conditions would be consistent with the purposes of this chapter.

(5) Criteria adopted for review in accordance with subsection (2) of this section may vary according to the purpose for which the particular review is being conducted or the type of health service reviewed.

(6) The department shall specify information to be required for certificate of need applications. Within fifteen days of receipt of the application, the department shall request additional information considered necessary to the application or start the review process. Applicants may decline to submit requested information through written notice to the department, in which case review starts on the date of receipt of the notice. Applications may be denied or limited because of failure to submit required and necessary information.

(7) Concurrent review is for the purpose of comparative analysis and evaluation of competing or similar projects in order to determine which of the projects may best meet identified needs. Categories of projects subject to concurrent review include at least new health care facilities, new services, and expansion of existing health care facilities. The department shall specify time periods for the submission of applications for certificates of need subject to concurrent review, which shall not exceed ninety days. Review of concurrent applications shall start fifteen days after the conclusion of the time period for submission of applications subject to concurrent review. Concurrent review periods shall be limited to one hundred fifty days, except as provided for in rules adopted by the department authorizing and

limiting amendment during the course of the review, or for an unresolved pivotal issue declared by the department.

(8) Review periods for certificate of need applications other than those subject to concurrent review shall be limited to ninety days. Review periods may be extended up to thirty days if needed by a review agency, and for unresolved pivotal issues the department may extend up to an additional thirty days. A review may be extended in any case if the applicant agrees to the extension.

(9) The department or its designee, shall conduct a public hearing on a certificate of need application if requested unless the review is expedited or subject to emergency review. The department by rule shall specify the period of time within which a public hearing must be requested and requirements related to public notice of the hearing, procedures, recordkeeping and related matters.

(10)(a) Any applicant denied a certificate of need or whose certificate of need has been suspended or revoked has the right to an adjudicative proceeding. The proceeding is governed by chapter 34.05 RCW, the Administrative Procedure Act.

(b) Any health care facility or health maintenance organization that: (i) Provides services similar to the services provided by the applicant and under review pursuant to this subsection; (ii) is located within the applicant's health service area; and (iii) testified or submitted evidence at a public hearing held pursuant to subsection (9) of this section, shall be provided an opportunity to present oral or written testimony and argument in a proceeding under this subsection: PROVIDED, That the health care facility or health maintenance organization had, in writing, requested to be informed of the department's decisions.

(c) If the department desires to settle with the applicant prior to the conclusion of the adjudicative proceeding, the department shall so inform the health care facility or health maintenance organization and afford them an opportunity to comment, in advance, on the proposed settlement.

(11) An amended certificate of need shall be required for the following modifications of an approved project:

(a) A new service requiring review under this chapter;

(b) An expansion of a service subject to review beyond that originally approved;

(c) An increase in bed capacity;

(d) A significant reduction in the scope of a nursing home project without a commensurate reduction in the cost of the nursing home project, or a cost increase (as represented in bids on a nursing home construction project or final cost estimates acceptable to the person to whom the certificate of need was issued) if the total of such increases exceeds twelve percent or fifty thousand dollars, whichever is greater, over the maximum capital expenditure approved. The review of reductions or cost increases shall be restricted to the continued conformance of the nursing home project with the review criteria pertaining to financial feasibility and cost containment.

(12) An application for a certificate of need for a nursing home capital expenditure which is determined by the department to be required to eliminate or prevent imminent safety hazards or correct violations of applicable licensure and accreditation standards shall be approved.

(13)(a) Replacement of existing nursing home beds in the same planning area by an existing licensee who has operated the beds for at least one year shall not require a certificate of need under this chapter. The licensee shall give written notice of its intent to replace the existing nursing home beds to the department and shall provide the department with information as may be required pursuant to rule. Replacement of the beds by a party other than the licensee is subject to certificate of need review under this chapter, except as otherwise permitted by subsection (14) of this section.

(b) When an entire nursing home ceases operation, the licensee or any other party who has secured an interest in the beds may reserve his or her interest in the beds for eight years or until a certificate of need to replace them is issued, whichever occurs first. However, the nursing home, licensee, or any other party who has secured an interest in the beds must give notice of its intent to retain the beds to the department of health no later than thirty days after the effective date of the facility's closure. Certificate of need review shall be required for any party who has reserved the nursing home beds except that the need criteria shall be deemed met when the applicant is the licensee who had operated the beds for at least one year, who has operated the beds for at least one year immediately preceding the reservation of the beds, and who is replacing the beds in the same planning area.

(14) In the event that a licensee, who has provided the department with notice of his or her intent to replace nursing home beds under subsection (13)(a) of this section, engages in unprofessional conduct or becomes unable to practice with reasonable skill and safety by reason of mental or physical condition, pursuant to chapter 18.130 RCW, or dies, the building owner shall be permitted to complete the nursing home bed replacement project, provided the building owner has secured an interest in the beds. [1995 1st sp.s. c 18 § 72; 1993 c 508 § 6. Prior: 1989 1st ex.s. c 9 § 605; 1989 c 175 § 126; 1984 c 288 § 22; 1983 c 235 § 8; 1980 c 139 § 8; 1979 ex.s. c 161 § 11.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Section captions—Conflict with federal requirements—Severability—Effective date—1993 c 508: See RCW 74.39A.900 through 74.39A.903.

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

Severability—1984 c 288: See note following RCW 70.38.105.

Effective date—1980 c 139: See RCW 70.38.916.

Effective dates—1979 ex.s. c 161: See RCW 70.38.915.

Chapter 70.41

HOSPITAL LICENSING AND REGULATION

Sections

70.41.030	Standards and rules.
70.41.040	Enforcement of chapter—Personnel—Merit system.
70.41.080	Fire protection.
70.41.120	Inspection of hospitals—Alterations or additions, new facilities—Coordination with social and health services.
70.41.122	Exemption from RCW 70.41.120 for hospitals accredited by the joint commission on the accreditation of health care organizations.
70.41.235	Doctor of osteopathic medicine and surgery—Discrimination based on board certification is prohibited.

70.41.300 Long-term care—Definitions.

70.41.310 Long-term care—Program information to be provided to hospitals—Information on options to be provided to patients.

70.41.320 Long-term care—Patient discharge requirements for hospitals and acute care facilities—Pilot projects.

70.41.030 Standards and rules. The department shall establish and adopt such minimum standards and rules pertaining to the construction, maintenance, and operation of hospitals, and rescind, amend, or modify such rules from time to time, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of hospitalization required for the safe and adequate care and treatment of patients. To the extent possible, the department shall endeavor to make such minimum standards and rules consistent in format and general content with the applicable hospital survey standards of the joint commission on the accreditation of health care organizations. The department shall adopt standards that are at least equal to recognized applicable national standards pertaining to medical gas piping systems. [1995 c 282 § 1; 1989 c 175 § 127; 1985 c 213 § 17; 1971 ex.s. c 189 § 9; 1955 c 267 § 3.]

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.

70.41.040 Enforcement of chapter—Personnel—Merit system. The enforcement of the provisions of this chapter and the standards, rules and regulations established under this chapter, shall be the responsibility of the department which shall cooperate with the joint commission on the accreditation of health care organizations. The department shall advise on the employment of personnel and the personnel shall be under the merit system or its successor. [1995 c 282 § 3; 1985 c 213 § 18; 1955 c 267 § 4.]

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

70.41.080 Fire protection. Standards for fire protection and the enforcement thereof, with respect to all hospitals to be licensed hereunder shall be the responsibility of the chief of the Washington state patrol, through the director of fire protection, who shall adopt, after approval by the department, such recognized standards as may be applicable to hospitals 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 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 chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make an inspection of the hospital to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as adopted pursuant to this chapter, he or she shall promptly make a written report to the hospital and to the department listing the corrective actions required and the time allowed for accomplishing such corrections. The applicant or licensee shall notify the chief of the Washington state patrol, through the director of fire protection, upon

completion of any corrections required by him or her, and the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make a reinspection of such premises. Whenever the hospital to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall submit to the department a written report approving the hospital with respect to fire protection, and such report is required before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made inspections of such hospitals at least once a year.

In cities which have in force a comprehensive building code, the provisions of which are determined by the chief of the Washington state patrol, through the director of fire protection, to be equal to the minimum standards of the code for hospitals adopted by the chief of the Washington state patrol, 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 chief of the Washington state patrol, 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. [1995 c 369 § 40; 1986 c 266 § 94; 1985 c 213 § 19; 1955 c 267 § 8.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

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

State fire protection: Chapter 48.48 RCW.

70.41.120 Inspection of hospitals—Alterations or additions, new facilities—Coordination with social and health services. The department shall make or cause to be made at least yearly an inspection of all hospitals. Every inspection of a hospital may include an inspection of every part of the premises. The department may make an examination of all phases of the hospital operation necessary to determine compliance with the law and the standards, rules and regulations adopted thereunder. Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, comply with the regulations prescribed by the department.

No hospital licensed pursuant to the provisions of this chapter shall be required to be inspected or licensed under other state laws or rules and regulations promulgated thereunder, or local ordinances, relative to hotels, restaurants, lodging houses, boarding houses, places of refreshment, nursing homes, maternity homes, or psychiatric hospitals.

To avoid unnecessary duplication in inspections, the department shall coordinate with the department of social and health services when inspecting facilities over which both agencies have jurisdiction, the facilities including but not necessarily being limited to hospitals with both acute care and skilled nursing or psychiatric nursing functions. [1995 c 282 § 4; 1985 c 213 § 21; 1955 c 267 § 12.]

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

70.41.122 Exemption from RCW 70.41.120 for hospitals accredited by the joint commission on the accreditation of health care organizations. Notwithstanding RCW 70.41.120, a hospital accredited by the joint commission on the accreditation of health care organizations is not subject to the annual inspection provided for in RCW 70.41.120 if:

(1) The department determines that the applicable survey standards of the joint commission on the accreditation of health care organizations are substantially equivalent to its own;

(2) It has been inspected by the joint commission on the accreditation of health care organizations within the previous twelve months; and

(3) The department receives directly from the joint commission on the accreditation of health care organizations or the hospital itself copies of the survey reports prepared by the joint commission on the accreditation of health care organizations demonstrating that the hospital meets applicable standards. [1995 c 282 § 6.]

70.41.235 Doctor of osteopathic medicine and surgery—Discrimination based on board certification is prohibited. A hospital that provides health care services to the general public may not discriminate against a qualified doctor of osteopathic medicine and surgery licensed under chapter 18.57 RCW, who has applied to practice with the hospital, solely because that practitioner was board certified or eligible under an approved osteopathic certifying board instead of board certified or eligible respectively under an approved medical certifying board. [1995 c 64 § 3.]

70.41.300 Long-term care—Definitions. "Cost-effective care" and "long-term care services," where used in RCW 70.41.310 and 70.41.320, shall have the same meaning as that given in RCW 74.39A.008. [1995 1st sp.s. c 18 § 4.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

70.41.310 Long-term care—Program information to be provided to hospitals—Information on options to be provided to patients. (1)(a) The department of social and health services, in consultation with hospitals and acute care facilities, shall promote the most appropriate and cost-effective use of long-term care services by developing and distributing to hospitals and other appropriate health care settings information on the various chronic long-term care programs that it administers directly or through contract. The information developed by the department of social and health services shall, at a minimum, include the following:

(i) An identification and detailed description of each long-term care service available in the state;

(ii) Functional, cognitive, and medicaid eligibility criteria that may be required for placement or admission to each long-term care service; and

(iii) A long-term care services resource manual for each hospital, that identifies the long-term care services operating within each hospital's patient service area. The long-term care services resource manual shall, at a minimum, identify the name, address, and telephone number of each entity known to be providing long-term care services; a brief

description of the programs or services provided by each of the identified entities; and the name or names of a person or persons who may be contacted for further information or assistance in accessing the programs or services at each of the identified entities.

(b) The information required in (a) of this subsection shall be periodically updated and distributed to hospitals by the department of social and health services so that the information reflects current long-term care service options available within each hospital's patient service area.

(2) To the extent that a patient will have continuing care needs, once discharged from the hospital setting, hospitals shall, during the course of the patient's hospital stay, promote each patient's family member's and/or legal representative's understanding of available long-term care service discharge options by, at a minimum:

(a) Discussing the various and relevant long-term care services available, including eligibility criteria;

(b) Making available, to patients, their family members, and/or legal representative, a copy of the most current long-term care services resource manual;

(c) Responding to long-term care questions posed by patients, their family members, and/or legal representative;

(d) Assisting the patient, their family members, and/or legal representative in contacting appropriate persons or entities to respond to the question or questions posed; and

(e) Linking the patient and family to the local, state-designated aging and long-term care network to ensure effective transitions to appropriate levels of care and ongoing support. [1995 1st sp.s. c 18 § 3.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

70.41.320 Long-term care—Patient discharge requirements for hospitals and acute care facilities—Pilot projects. (1) Hospitals and acute care facilities shall:

(a) Work cooperatively with the department of social and health services, area agencies on aging, and local long-term care information and assistance organizations in the planning and implementation of patient discharges to long-term care services.

(b) Establish and maintain a system for discharge planning and designate a person responsible for system management and implementation.

(c) Establish written policies and procedures to:

(i) Identify patients needing further nursing, therapy, or supportive care following discharge from the hospital;

(ii) Develop a documented discharge plan for each identified patient, including relevant patient history, specific care requirements, and date such follow-up care is to be initiated;

(iii) Coordinate with patient, family, caregiver, and appropriate members of the health care team;

(iv) Provide any patient, regardless of income status, written information and verbal consultation regarding the array of long-term care options available in the community, including the relative cost, eligibility criteria, location, and contact persons;

(v) Promote an informed choice of long-term care services on the part of patients, family members, and legal representatives; and

(vi) Coordinate with the department and specialized case management agencies, including area agencies on aging and other appropriate long-term care providers, as necessary, to ensure timely transition to appropriate home, community residential, or nursing facility care.

(d) Work in cooperation with the department which is responsible for ensuring that patients eligible for medicaid long-term care receive prompt assessment and appropriate service authorization.

(2) In partnership with selected hospitals, the department of social and health services shall develop and implement pilot projects in up to three areas of the state with the goal of providing information about appropriate in-home and community services to individuals and their families early during the individual's hospital stay.

The department shall not delay hospital discharges but shall assist and support the activities of hospital discharge planners. The department also shall coordinate with home health and hospice agencies whenever appropriate. The role of the department is to assist the hospital and to assist patients and their families in making informed choices by providing information regarding home and community options.

The department shall by December 12, 1995, report to the house of representatives health care committee and the senate health and long-term care committee regarding the progress and results of the pilot projects along with recommendations regarding continuation or modification of the pilot projects.

In conducting the pilot projects, the department shall:

(a) Assess and offer information regarding appropriate in-home and community services to individuals who are medicaid clients or applicants; and

(b) Offer assessment and information regarding appropriate in-home and community services to individuals who are reasonably expected to become medicaid recipients within one hundred eighty days of admission to a nursing facility. [1995 1st sp.s. c 18 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Chapter 70.46

HEALTH DISTRICTS

Sections

70.46.020 Districts of two or more counties—Health board—Membership—Chair. (*Effective January 1, 1996.*)

70.46.031 Districts of one county—Health board—Membership. (*Effective January 1, 1996.*)

70.46.020 Districts of two or more counties—Health board—Membership—Chair. (*Effective January 1, 1996.*)

Health districts consisting of two or more counties may be created whenever two or more boards of county commissioners shall by resolution establish a district for such purpose. Such a district shall consist of all the area of the combined counties. The district board of health of such a district shall consist of not less than five members for districts of two counties and seven members for districts of more than two counties, including two representatives from each county who are members of the board of county commissioners and

who are appointed by the board of county commissioners of each county within the district, and shall have a jurisdiction coextensive with the combined boundaries. The boards of county commissioners may by resolution or ordinance provide for elected officials from cities and towns and persons other than elected officials as members of the district board of health so long as persons other than elected officials do not constitute a majority. A resolution or ordinance adopted under this section must specify the provisions for the appointment, term, and compensation, or reimbursement of expenses. Any multicounty health district existing on *the effective date of this act shall continue in existence unless and until changed by affirmative action of all boards of county commissioners or one or more counties withdraws [withdraw] pursuant to RCW 70.46.090.

At the first meeting of a district board of health the members shall elect a chair to serve for a period of one year. [1995 c 43 § 10; 1993 c 492 § 247; 1967 ex.s. c 51 § 6; 1945 c 183 § 2; Rem. Supp. 1945 § 6099-11.]

*Reviser's note: For "the effective date of this act" see note following RCW 70.05.030.

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.031 Districts of one county—Health board—Membership. (*Effective January 1, 1996.*) A health district to consist of one county may be created whenever the county legislative authority of the county shall pass a resolution or ordinance to organize such a health district under chapter 70.05 RCW and this chapter.

The resolution or ordinance may specify the membership, representation on the district health board, or other matters relative to the formation or operation of the health district. The county legislative authority may appoint elected officials from cities and towns and persons other than elected officials as members of the health district board so long as persons other than elected officials do not constitute a majority.

Any single county health district existing on *the effective date of this act shall continue in existence unless and until changed by affirmative action of the county legislative authority. [1995 c 43 § 11.]

*Reviser's note: For "the effective date of this act" see note following RCW 70.05.030.

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

Chapter 70.47

BASIC HEALTH PLAN—HEALTH CARE ACCESS ACT

Sections

70.47.015 Expanded enrollment—Findings—Intent—Enrollee premium share—Expedited application and enrollment process—Commission for agents and brokers.

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- 70.47.020 Definitions (*as amended by 1995 c 266*).
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- 70.47.065 Repealed.
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70.47.015 Expanded enrollment—Findings—Intent—Enrollee premium share—Expedited application and enrollment process—Commission for agents and brokers. (1) The legislature finds that the basic health plan has been an effective program in providing health coverage for uninsured residents. Further, since 1993, substantial amounts of public funds have been allocated for subsidized basic health plan enrollment.

(2) It is the intent of the legislature that the basic health plan enrollment be expanded expeditiously, consistent with funds available in the health services account, with the goal of two hundred thousand adult subsidized basic health plan enrollees and one hundred thirty thousand children covered through expanded medical assistance services by June 30, 1997, with the priority of providing needed health services to children in conjunction with other public programs.

(3) Effective January 1, 1996, basic health plan enrollees whose income is less than one hundred twenty-five percent of the federal poverty level shall pay at least a ten-dollar premium share.

(4) No later than July 1, 1996, the administrator shall implement procedures whereby hospitals licensed under chapters 70.41 and 71.12 RCW, health carrier, rural health care facilities regulated under chapter 70.175 RCW, and community and migrant health centers funded under RCW 41.05.220, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process.

(5) No later than July 1, 1996, the administrator shall implement procedures whereby health insurance agents and brokers, licensed under chapter 48.17 RCW, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. Brokers and agents shall be entitled to receive a commission for each individual sale of the basic health plan to anyone not at anytime previously signed up and a commission for each group sale of the basic health plan. No commission shall be provided upon a renewal. Commissions shall be determined based on the estimated annual cost of the basic health plan, however, commissions shall not result in a reduction in the premium amount paid to health carriers. For purposes of this section "health carrier" is as defined in RCW 48.43.005. The health

care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process. [1995 c 265 § 1.]

Captions not law—1995 c 265: "Captions as used in this act constitute no part of the law." [1995 c 265 § 29.]

Effective date—1995 c 265: "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, 1995, except that sections 13 through 18 of this act shall take effect January 1, 1996." [1995 c 265 § 30.]

Savings—1995 c 265: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1995 c 265 § 31.]

Severability—1995 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." [1995 c 265 § 32.]

70.47.020 Definitions (as amended by 1995 c 2). As used in this chapter:

(1) "Washington basic health plan" or "plan" means the system of enrollment and payment on a prepaid capitated basis for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter.

(2) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(3) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, on a prepaid capitated basis to a defined patient population enrolled in the plan and in the managed health care system. On and after ~~(July 1)~~ December 31, 1995, "managed health care system" means a certified health plan, as defined in *RCW 43.72.010.

(4) "Subsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children, not eligible for medicare, who resides in an area of the state served by a managed health care system participating in the plan, whose gross family income at the time of enrollment does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services, who the administrator determines shall not have, or shall not have voluntarily relinquished health insurance more comprehensive than that offered by the plan as of the effective date of enrollment, and who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan.

(5) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children, not eligible for medicare, who resides in an area of the state served by a managed health care system participating in the plan, who the administrator determines shall not have, or shall not have voluntarily relinquished health insurance more comprehensive than that offered by the plan as of the effective date of enrollment, and who chooses to obtain basic health care coverage from a particular managed health care system, and who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(6) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(7) "Premium" means a periodic payment, based upon gross family income which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee or a nonsubsidized enrollee.

(8) "Rate" means the per capita amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized and nonsubsidized enrollees in the plan and in that system. [1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

***Reviser's note:** RCW 43.72.010 was repealed by 1995 c 265 § 27, effective July 1, 1995.

Effective date—1995 c 2: See note following RCW 43.72.090.

70.47.020 Definitions (as amended by 1995 c 266). As used in this chapter:

(1) "Washington basic health plan" or "plan" means the system of enrollment and payment on a prepaid capitated basis for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter.

(2) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(3) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, on a prepaid capitated basis to a defined patient population enrolled in the plan and in the managed health care system. ~~((On and after July 1, 1995, "managed health care system" means a certified health plan, as defined in RCW 43.72.010.))~~

(4) "Subsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children, not eligible for medicare, who resides in an area of the state served by a managed health care system participating in the plan, whose gross family income at the time of enrollment does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services, ~~((who the administrator determines shall not have, or shall not have voluntarily relinquished health insurance more comprehensive than that offered by the plan as of the effective date of enrollment,))~~ and who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan.

(5) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children, not eligible for medicare, who resides in an area of the state served by a managed health care system participating in the plan, ~~((who the administrator determines shall not have, or shall not have voluntarily relinquished health insurance more comprehensive than that offered by the plan as of the effective date of enrollment,))~~ and who chooses to obtain basic health care coverage from a particular managed health care system, and who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(6) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(7) "Premium" means a periodic payment, based upon gross family income which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee or a nonsubsidized enrollee.

(8) "Rate" means the per capita amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized and nonsubsidized enrollees in the plan and in that system. [1995 c 266 § 2; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

Reviser's note: RCW 70.47.020 was amended twice during the 1995 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.

Effective date—1995 c 266: See note following RCW 70.47.060.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.47.030 Basic health plan trust account—Basic health plan subscription account. (1) The basic health plan trust account is hereby established in the state treasury. Any nongeneral fund-state funds collected for this program shall be deposited in the basic health plan trust account and may be expended without further appropriation. Moneys in the account shall be used exclusively for the purposes of this

chapter, including payments to participating managed health care systems on behalf of enrollees in the plan and payment of costs of administering the plan.

During the 1995-97 fiscal biennium, the legislature may transfer funds from the basic health plan trust account to the state general fund.

(2) The basic health plan subscription account is created in the custody of the state treasurer. All receipts from amounts due from or on behalf of nonsubsidized enrollees shall be deposited into the account. Funds in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of nonsubsidized enrollees in the plan and payment of costs of administering the plan. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(3) The administrator shall take every precaution to see that none of the funds in the separate accounts created in this section or that any premiums paid either by subsidized or nonsubsidized enrollees are commingled in any way, except that the administrator may combine funds designated for administration of the plan into a single administrative account. [1995 2nd sp.s. c 18 § 913; 1993 c 492 § 210; 1992 c 232 § 907. Prior: 1991 sp.s. c 13 § 68; 1991 sp.s. c 4 § 1; 1987 1st ex.s. c 5 § 5.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1992 c 232: See note following RCW 43.33A.180.

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

Effective date—1991 sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 4 § 4.]

70.47.060 Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment (as amended by 1995 c 2). The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care, which subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for groups of subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.42.080, and such other factors as the administrator deems appropriate. On and after ~~(July 1)~~ December 31, 1995, the uniform benefits package adopted and from time to time revised by the Washington health services commission pursuant to *RCW 43.72.130 shall be implemented by the administrator as the schedule of covered basic health care services.

However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that the services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (9) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (10) of this section.

(b) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(c) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator, but in no case shall the payment made on behalf of the enrollee exceed the total premiums due from the enrollee.

(3) To design and implement a structure of copayments due a managed health care system from subsidized and nonsubsidized enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services. On and after July 1, 1995, the administrator shall endeavor to make the copayments structure of the plan consistent with enrollee point of service cost-sharing levels adopted by the Washington health services commission, giving consideration to funding available to the plan.

(4) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists.

(5) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020.

(6) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(7) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

(8) To receive periodic premiums from or on behalf of subsidized and nonsubsidized enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(9) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized or nonsubsidized enrollees, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and at least semiannually thereafter, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or,

subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If, as a result of an eligibility review, the administrator determines that a subsidized enrollee's income exceeds twice the federal poverty level and that the enrollee knowingly failed to inform the plan of such increase in income, the administrator may bill the enrollee for the subsidy paid on the enrollee's behalf during the period of time that the enrollee's income exceeded twice the federal poverty level. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

(10) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator shall require that a business owner pay at least fifty percent of the nonsubsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(11) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(12) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(13) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(14) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(15) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color. [1995 c 2 § 4; 1994 c 309 § 5; 1993 c 492 § 212; 1992 c 232 § 908. Prior: 1991 sp.s. c 4 § 2; 1991 c 3 § 339; 1987 1st ex.s. c 5 § 8.]

***Reviser's note:** RCW 43.72.130 was repealed by 1995 c 265 § 27, effective July 1, 1995.

Effective date—1995 c 2: See note following RCW 43.72.090.

70.47.060 Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment (as amended by 1995 c 266). The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care (~~(- which)~~). In addition, the administrator may offer as basic health plan services chemical dependency services, mental health services and organ transplant services; however, no one service or any combination of these three services shall increase the

actuarial value of the basic health plan benefits by more than five percent excluding inflation, as determined by the office of financial management. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for groups of subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.42.080, and such other factors as the administrator deems appropriate. ~~((On and after July 1, 1995, the uniform benefits package adopted and from time to time revised by the Washington health services commission pursuant to RCW 43.72.130 shall be implemented by the administrator as the schedule of covered basic health care services.))~~

However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that the services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (9) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (10) of this section.

(b) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(c) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator, but in no case shall the payment made on behalf of the enrollee exceed the total premiums due from the enrollee.

(d) To develop, as an offering by all health carriers providing coverage identical to the basic health plan, a model plan benefits package with uniformity in enrollee cost-sharing requirements.

(3) To design and implement a structure of ~~((copayments))~~ enrollee cost sharing due a managed health care system from subsidized and nonsubsidized enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services. ~~((On and after July 1, 1995, the administrator shall endeavor to make the copayments structure of the plan consistent with enrollee point of service cost sharing levels adopted by the Washington health services commission, giving consideration to funding available to the plan.))~~

(4) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists.

(5) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the administrator.

(6) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to

the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(7) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

(8) To receive periodic premiums from or on behalf of subsidized and nonsubsidized enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(9) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized or nonsubsidized enrollees, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and ~~((at least semiannually thereafter))~~ on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If, as a result of an eligibility review, the administrator determines that a subsidized enrollee's income exceeds twice the federal poverty level and that the enrollee knowingly failed to inform the plan of such increase in income, the administrator may bill the enrollee for the subsidy paid on the enrollee's behalf during the period of time that the enrollee's income exceeded twice the federal poverty level. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

(10) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator ~~((shall))~~ may require that a business owner pay at least ~~((fifty percent of the nonsubsidized))~~ an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(11) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(12) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance

with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(13) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(14) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(15) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color. [1995 c 266 § 1; 1994 c 309 § 5; 1993 c 492 § 212; 1992 c 232 § 908. Prior: 1991 sp.s. c 4 § 2; 1991 c 3 § 339; 1987 1st ex.s. c 5 § 8.]

Reviser's note: RCW 70.47.060 was amended twice during the 1995 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.

Effective date—1995 c 266: "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, 1995." [1995 c 266 § 5.]

Contingency—1994 c 309 §§ 5 and 6: "If a court in a permanent injunction, permanent order, or final decision determines that the amendments made by sections 5 and 6, chapter 309, Laws of 1994, must be submitted to the people for their adoption and ratification, or rejection, as a result of section 13, chapter 2, Laws of 1994, the amendments made by sections 5 and 6, chapter 309, Laws of 1994, shall be null and void." [1994 c 309 § 7.]

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1992 c 232: See note following RCW 43.33A.180.

Effective date—1991 sp.s. c 4: See note following RCW 70.47.030.

70.47.065 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.47.160 Right of individuals to receive services—Right of providers, carriers, and facilities to refuse to participate in or pay for services for reason of conscience or religion—Requirements. (1) The legislature recognizes that every individual possesses a fundamental right to exercise their religious beliefs and conscience. The legislature further recognizes that in developing public policy, conflicting religious and moral beliefs must be respected. Therefore, while recognizing the right of conscientious objection to participating in specific health services, the state shall also recognize the right of individuals enrolled with the basic health plan to receive the full range of services covered under the basic health plan.

(2)(a) No individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstances to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objection.

(b) The provisions of this section are not intended to result in an enrollee being denied timely access to any service included in the basic health plan. Each health carrier shall:

(i) Provide written notice to enrollees, upon enrollment with the plan, listing services that the carrier refuses to cover for reason of conscience or religion;

(ii) Provide written information describing how an enrollee may directly access services in an expeditious manner; and

(iii) Ensure that enrollees refused services under this section have prompt access to the information developed pursuant to (b)(ii) of this subsection.

(c) The administrator shall establish a mechanism or mechanisms to recognize the right to exercise conscience while ensuring enrollees timely access to services and to assure prompt payment to service providers.

(3)(a) No individual or organization with a religious or moral tenet opposed to a specific service may be required to purchase coverage for that service or services if they object to doing so for reason of conscience or religion.

(b) The provisions of this section shall not result in an enrollee being denied coverage of, and timely access to, any service or services excluded from their benefits package as a result of their employer's or another individual's exercise of the conscience clause in (a) of this subsection.

(c) The administrator shall define the process through which health carriers may offer the basic health plan to individuals and organizations identified in (a) and (b) of this subsection in accordance with the provisions of subsection (2)(c) of this section.

(4) Nothing in this section requires the health care authority, health carriers, health care facilities, or health care providers to provide any basic health plan service without payment of appropriate premium share or enrollee cost sharing. [1995 c 266 § 3.]

Effective date—1995 c 266: See note following RCW 70.47.060.

Chapter 70.54

MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

Sections

70.54.110 New housing for agricultural workers to comply with board of health regulations.

70.54.110 New housing for agricultural workers to comply with board of health regulations. The state board of health shall develop rules for labor camps, which shall not exceed the standards developed under the Washington industrial safety and health act in chapter 49.17 RCW as relates to temporary labor camps.

All new housing and new construction together with the land areas appurtenant thereto which shall be started on and after May 3, 1969, and is to be provided by employers, growers, management, or any other persons, for occupancy by workers or by workers and their dependents, in agriculture, shall comply with the rules and regulations of the state board of health pertaining to labor camps. Within sixty days following May 3, 1995, the board shall review all rules it has adopted under this section and modify or repeal any rules that exceed the standards developed under chapter 49.17 RCW. [1995 c 220 § 11; 1990 c 253 § 4; 1969 ex.s. c 231 § 1.]

Application—Severability—Effective date—1995 c 220: See RCW 70.114A.030, 70.114A.900, and 70.114A.901.

Legislative finding and purpose—1990 c 253: See note following RCW 43.70.330.

Inspection of housing: RCW 70.114A.060.

Rules—Compliance with federal act: RCW 70.114A.100.

Chapter 70.75

FIRE FIGHTING EQUIPMENT—STANDARDIZATION

Sections

70.75.020 Duties of chief of the Washington state patrol.

70.75.030 Duties of chief of the Washington state patrol—Notification of industrial establishments and property owners having equipment.

70.75.040 Sale of nonstandard equipment as misdemeanor—Exceptions.

70.75.020 Duties of chief of the Washington state patrol. The standardization of existing fire protection equipment in this state shall be arranged for and carried out by or under the direction of the chief of the Washington state patrol, through the director of fire protection. He or she shall provide the appliances necessary for carrying on this work, shall proceed with such standardization as rapidly as possible, and shall require the completion of such work within a period of five years from June 8, 1967: PROVIDED, That the chief of the Washington state patrol, through the director of fire protection, may exempt special purpose fire equipment and existing fire protection equipment from standardization when it is established that such equipment is not essential to the coordination of public fire protection operations. [1995 c 369 § 41; 1986 c 266 § 96; 1967 c 152 § 2.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

State fire protection: Chapter 48.48 RCW.

70.75.030 Duties of chief of the Washington state patrol—Notification of industrial establishments and property owners having equipment. The chief of the Washington state patrol, through the director of fire protection, shall notify industrial establishments and property owners having equipment, which may be necessary for fire department use in protecting the property or putting out fire, of any changes necessary to bring their equipment up to the requirements of the standard established by RCW 70.75.020, and shall render such assistance as may be available for converting substandard equipment to meet standard specifications and requirements. [1995 c 369 § 42; 1986 c 266 § 97; 1967 c 152 § 3.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.75.040 Sale of nonstandard equipment as misdemeanor—Exceptions. Any person who, without approval of the chief of the Washington state patrol, through the director of fire protection, sells or offers for sale in Washington any fire hose, fire engine or other equipment for fire protection purposes which is fitted or equipped with

other than the standard thread is guilty of a misdemeanor: PROVIDED, That fire equipment for special purposes, research, programs, forest fire fighting, or special features of fire protection equipment found appropriate for uniformity within a particular protection area may be specifically exempted from this requirement by order of the chief of the Washington state patrol, through the director of fire protection. [1995 c 369 § 43; 1986 c 266 § 98; 1967 c 152 § 4.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Chapter 70.77

STATE FIREWORKS LAW

Sections

- 70.77.111 Intent.
- 70.77.124 Definitions—"City."
- 70.77.126 Definitions—"Fireworks."
- 70.77.131 Definitions—"Special fireworks."
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- 70.77.170 Definitions—"License."
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- 70.77.200 Definitions—"Importer."
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- 70.77.250 Director of community, trade, and economic development to enforce and administer—Powers and duties (*as amended by 1995 c 61*).
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- 70.77.255 Acts prohibited without a license or permit—Minimum age for license or permit—Activities permitted without license or permit.
- 70.77.270 Governing body to grant permits—State-wide standards—Liability insurance.
- 70.77.280 Public display permit—Investigation—Governing body to grant—Conditions.
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- 70.77.305 Chief of the Washington state patrol to issue licenses—Registration of in-state agents.
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- 70.77.315 Application for license (*as amended by 1995 c 61*).
- 70.77.315 Application for license (*as amended by 1995 c 369*).
- 70.77.330 License to engage in particular act to be issued if not contrary to public safety or welfare—Transportation of fireworks authorized.
- 70.77.343 License fees—Additional.
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- 70.77.360 Denial of license for material misrepresentation or if contrary to public safety or welfare.
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- 70.77.375 Revocation of license (*as amended by 1995 c 61*).
- 70.77.375 Mandatory revocation of license (*as amended by 1995 c 369*).
- 70.77.381 Wholesalers and retailers—Liability insurance requirements.
- 70.77.386 Retailers—Purchase from licensed wholesalers.
- 70.77.395 Dates and times common fireworks may be sold or discharged.
- 70.77.401 Sale of certain fireworks prohibited.
- 70.77.415 Supervision of public displays.
- 70.77.430 Sale of stock after revocation or expiration of license.
- 70.77.435 Seizure of fireworks.
- 70.77.440 Seizure of fireworks—Proceedings for forfeiture—Disposal of confiscated fireworks.

- 70.77.455 Licensees to maintain and make available complete records—Exemption from public disclosure act (*as amended by 1995 c 61*).
- 70.77.455 Licensees to maintain and make available complete records (*as amended by 1995 c 369*).
- 70.77.460 Reports, payments deemed made when filed or paid or date mailed.
- 70.77.465 Additional and supplemental reports.
- 70.77.465 Repealed.
- 70.77.555 Local permit and license fee—Limit.
- 70.77.575 Chief of the Washington state patrol to provide list of fireworks which may be sold to public.
- 70.77.580 Retailers to post list of fireworks.

70.77.111 Intent. The legislature declares that fireworks, when purchased and used in compliance with the laws of the state of Washington, are legal. The legislature intends that this chapter is regulatory only, and not prohibitory. [1995 c 61 § 1.]

Severability—1995 c 61: "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." [1995 c 61 § 32.]

Effective date—1995 c 61: "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 immediately [April 17, 1995]." [1995 c 61 § 33.]

70.77.124 Definitions—"City." "City" means any incorporated city or town. [1995 c 61 § 2; 1994 c 133 § 2.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.126 Definitions—"Fireworks." "Fireworks" means any composition or device, in a finished state, containing any combustible or explosive substance for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and classified as common or special fireworks by the United States bureau of explosives or contained in the regulations of the United States department of transportation and designated as U.N. 0335 1.3G or U.N. 0336 1.4G as of April 17, 1995. [1995 c 61 § 3; 1984 c 249 § 1; 1982 c 230 § 1.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.131 Definitions—"Special fireworks." "Special fireworks" means any fireworks designed primarily for exhibition display by producing visible or audible effects and classified as such by the United States bureau of explosives or in the regulations of the United States department of transportation and designated as U.N. 0335 1.3G as of April 17, 1995. [1995 c 61 § 4; 1984 c 249 § 2; 1982 c 230 § 2.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.136 Definitions—"Common fireworks." "Common fireworks" means any fireworks which are designed primarily for retail sale to the public during prescribed dates and which produce visual or audible effects through combustion and are classified as common fireworks

by the United States bureau of explosives or in the regulations of the United States department of transportation and designated as U.N. 0336 1.4G as of April 17, 1995. [1995 c 61 § 5; 1984 c 249 § 3; 1982 c 230 § 3.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.146 Definitions—"Special effects." "Special effects" means any combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere, and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical, or opera production, or live entertainment. [1995 c 61 § 8; 1994 c 133 § 1; 1984 c 249 § 4; 1982 c 230 § 5.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—1994 c 133: "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." [1994 c 133 § 17.]

Effective date—1994 c 133: "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 immediately [March 28, 1994]." [1994 c 133 § 18.]

70.77.170 Definitions—"License." "License" means a nontransferable formal authorization which the chief of the Washington state patrol and the director of fire protection are permitted to issue under this chapter to engage in the act specifically designated therein. [1995 c 369 § 44; 1986 c 266 § 99; 1982 c 230 § 7; 1961 c 228 § 11.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.180 Definitions—"Permit." "Permit" means the official permission granted by a local public agency for the purpose of establishing and maintaining a place within the jurisdiction of the local agency where fireworks are manufactured, constructed, produced, packaged, stored, sold, or exchanged and the official permission granted by a local agency for a public display of fireworks. [1995 c 61 § 9; 1984 c 249 § 5; 1982 c 230 § 8; 1961 c 228 § 13.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.200 Definitions—"Importer." "Importer" includes any person who for any purpose other than personal use:

- (1) Brings fireworks into this state or causes fireworks to be brought into this state;
- (2) Procures the delivery or receives shipments of any fireworks into this state; or
- (3) Buys or contracts to buy fireworks for shipment into this state. [1995 c 61 § 10; 1961 c 228 § 17.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.205 Definitions—"Manufacturer." "Manufacturer" includes any person who manufactures, makes, constructs, fabricates, or produces any fireworks article or device but does not include persons who assemble or

fabricate sets or mechanical pieces in public displays of fireworks or persons who assemble common fireworks items or sets or packages containing common fireworks items. [1995 c 61 § 11; 1961 c 228 § 18.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.236 Definitions—"New fireworks item." (1) "New fireworks item" means any fireworks initially classified or reclassified as special or common fireworks by the United States bureau of explosives or in the regulations of the United States department of transportation after April 17, 1995.

(2) The *director of community, trade, and economic development through the director of fire protection shall classify any new fireworks item in the same manner as the item is classified by the United States bureau of explosives or in the regulations of the United States department of transportation, unless the *director of community, trade, and economic development through the director of fire protection determines, stating reasonable grounds, that the item should not be so classified. [1995 c 61 § 6.]

***Reviser's note:** Functions of the director of community, trade, and economic development relating to fire protection were transferred to the chief of the Washington state patrol by 1995 c 369.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.250 Director of community, trade, and economic development to enforce and administer—Powers and duties (as amended by 1995 c 61). (1) The director of community, trade, and economic development, through the director of fire protection, shall enforce and administer this chapter.

(2) The director of community, trade, and economic development, through the director of fire protection, shall appoint such deputies and employees as may be necessary and required to carry out the provisions of this chapter.

(3) The director of community, trade, and economic development, through the director of fire protection, may prescribe such rules relating to fireworks as may be necessary for ~~((the protection of life and property and for))~~ the implementation of this chapter.

(4) The director of community, trade, and economic development, through the director of fire protection, shall prescribe such rules as may be necessary to ensure state-wide minimum standards for the enforcement of this chapter. Counties, cities, and towns shall comply with such state rules. Any local rules adopted by local authorities that are more restrictive than state law ~~((as to the types of fireworks that may be sold))~~ shall have an effective date no sooner than one year after their adoption.

(5) The director of community, trade, and economic development, through the director of fire protection, may exercise the necessary police powers to enforce the criminal provisions of this chapter. This grant of police powers does not prevent any other state agency or local government agency having general law enforcement powers from enforcing this chapter within the jurisdiction of the agency or local government. [1995 c 61 § 12; 1986 c 266 § 100; 1984 c 249 § 7; 1982 c 230 § 12; 1961 c 228 § 27.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.250 Chief of the Washington state patrol to enforce and administer—Powers and duties (as amended by 1995 c 369). (1) The ~~((director of community development))~~ chief of the Washington state patrol, through the director of fire protection, shall enforce and administer this chapter.

(2) The ~~((director of community development))~~ chief of the Washington state patrol, through the director of fire protection, shall appoint such deputies and employees as may be necessary and required to carry out the provisions of this chapter.

(3) The ~~((director of community development))~~ chief of the Washington state patrol, through the director of fire protection, may prescribe such

rules relating to fireworks as may be necessary for the protection of life and property and for the implementation of this chapter.

(4) The (~~director of community development~~) chief of the Washington state patrol, through the director of fire protection, shall prescribe such rules as may be necessary to ensure state-wide minimum standards for the enforcement of this chapter. Counties, cities, and towns shall comply with such state rules. Any local rules adopted by local authorities that are more restrictive than state law as to the types of fireworks that may be sold shall have an effective date no sooner than one year after their adoption.

(5) The (~~director of community development~~) chief of the Washington state patrol, through the director of fire protection, may exercise the necessary police powers to enforce the criminal provisions of this chapter. This grant of police powers does not prevent any other state agency or local government agency having general law enforcement powers from enforcing this chapter within the jurisdiction of the agency or local government. [1995 c 369 § 45; 1986 c 266 § 100; 1984 c 249 § 7; 1982 c 230 § 12; 1961 c 228 § 27.]

Reviser's note: RCW 70.77.250 was amended twice during the 1995 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.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.255 Acts prohibited without a license or permit—Minimum age for license or permit—Activities permitted without license or permit. (1) Except as otherwise provided in this chapter, no person, without an appropriate state license or permit may:

(a) Manufacture, import, possess, or sell any fireworks at wholesale or retail for any use;

(b) Make a public display of fireworks; or

(c) Transport fireworks, except as a public carrier delivering to a licensee.

(2) Except as authorized by a license and permit under subsection (1)(b) of this section or as provided in RCW 70.77.311, no person may discharge special fireworks at any place.

(3) No person less than eighteen years of age may apply for or receive a license or permit under this chapter.

(4) No license or permit is required for the possession or use of common fireworks lawfully purchased at retail. [1995 c 61 § 13; 1994 c 133 § 4; 1984 c 249 § 10; 1982 c 230 § 14; 1961 c 228 § 28.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.270 Governing body to grant permits—State-wide standards—Liability insurance. (1) The governing body of a city or county shall grant an application for a permit under RCW 70.77.260(1) if the application meets the standards under this chapter, and the ordinances of the city or county.

(2) The *director of community, trade, and economic development through the director of fire protection shall prescribe uniform, state-wide standards for retail fireworks stands. All cities and counties which allow retail fireworks sales shall comply with these standards.

(3) No retail fireworks permit may be issued to any applicant unless the retail fireworks stand is covered by a liability insurance policy with coverage of not less than fifty thousand dollars and five hundred thousand dollars for bodily injury liability for each person and occurrence,

respectively, and not less than fifty thousand dollars for property damage liability for each occurrence, unless such insurance is not readily available from at least three approved insurance companies. If insurance in this amount is not offered, each fireworks permit shall be covered by a liability insurance policy in the maximum amount offered by at least three different approved insurance companies.

No wholesaler may knowingly sell or supply fireworks to any retail fireworks stand unless the wholesaler determines that the retail fireworks stand is covered by liability insurance in the same amount as provided in this subsection. [1995 c 61 § 14; 1994 c 133 § 6; 1984 c 249 § 13; 1961 c 228 § 31.]

***Reviser's note:** Functions of the director of community, trade, and economic development relating to fire protection were transferred to the chief of the Washington state patrol by 1995 c 369.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.280 Public display permit—Investigation—Governing body to grant—Conditions. The local fire official receiving an application for a permit under RCW 70.77.260(2) for a public display of fireworks shall investigate whether the character and location of the display as proposed would be hazardous to property or dangerous to any person. Based on the investigation, the official shall submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city or county. The governing body shall grant the application if it meets the requirements of this chapter and the ordinance of the city or county. [1995 c 61 § 15; 1994 c 133 § 7; 1984 c 249 § 14; 1961 c 228 § 33.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.285 Public display permit—Bond or insurance for liability. Except as provided in RCW 70.77.355, the applicant for a permit under RCW 70.77.260(2) for a public display of fireworks shall include with the application evidence of a bond issued by an authorized surety company. The bond shall be in the amount required by RCW 70.77.295 and shall be conditioned upon the applicant's payment of all damages to persons or property resulting from or caused by such public display of fireworks, or any negligence on the part of the applicant or its agents, servants, employees, or subcontractors in the presentation of the display. Instead of a bond, the applicant may include a certificate of insurance evidencing the carrying of appropriate liability insurance in the amount required by RCW 70.77.295 for the benefit of the person named therein as assured, as evidence of ability to respond in damages. The local fire official receiving the application shall approve the bond or insurance if it meets the requirements of this section. [1995 c 61 § 16; 1984 c 249 § 15; 1982 c 230 § 16; 1961 c 228 § 34.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.305 Chief of the Washington state patrol to issue licenses—Registration of in-state agents. The chief of the Washington state patrol, through the director of fire protection, has the power to issue licenses for the manufacture, importation, sale, and use of all fireworks in this state. A person may be licensed as a manufacturer, importer, or wholesaler under this chapter only if the person has a designated agent in this state who is registered with the chief of the Washington state patrol, through the director of fire protection. [1995 c 369 § 46; 1986 c 266 § 101; 1984 c 249 § 18; 1982 c 230 § 18; 1961 c 228 § 38.]

Effective date—1995 c 369: See note following RCW 43.43.930.
Severability—1986 c 266: See note following RCW 38.52.005.

70.77.311 Exemptions from licensing—Purchase of certain agricultural and wildlife fireworks by government agencies—Purchase of common fireworks by religious or private organizations. (1) No license is required for the purchase of agricultural and wildlife fireworks by government agencies if:

(a) The agricultural and wildlife fireworks are used for wildlife control or are distributed to farmers, ranchers, or growers through a wildlife management program administered by the United States department of the interior or an equivalent state or local governmental agency;

(b) The distribution is in response to a written application describing the wildlife management problem that requires use of the devices;

(c) It is of no greater quantity than necessary to control the described problem; and

(d) It is limited to situations where other means of control are unavailable or inadequate.

(2) No license is required for religious organizations or private organizations or persons to purchase or use common fireworks and such audible ground devices as firecrackers, salutes, and chasers if:

(a) Purchased from a licensed manufacturer, importer, or wholesaler;

(b) For use on prescribed dates and locations;

(c) For religious or specific purposes; and

(d) A permit is obtained from the local fire official. No fee may be charged for this permit. [1995 c 61 § 17; 1984 c 249 § 19; 1982 c 230 § 19.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.315 Application for license (as amended by 1995 c 61). Any person who desires to engage in the manufacture, importation, sale, or use of fireworks, except use as provided in RCW 70.77.255(4) and 70.77.311, shall make a written application to the director of community, trade, and economic development, through the director of fire protection, on forms provided by him or her. Such application shall be accompanied by the annual license fee as prescribed in this chapter. [1995 c 61 § 18; 1986 c 266 § 102; 1982 c 230 § 20; 1961 c 228 § 40.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.315 Application for license (as amended by 1995 c 369). Any person who desires to engage in the manufacture, importation, sale, or use of fireworks shall make a written application to the ~~(director of community development)~~ chief of the Washington state patrol, through the director of fire protection, on forms provided by him or her. Such application shall be accompanied by the annual license fee as prescribed in

this chapter. [1995 c 369 § 47; 1986 c 266 § 102; 1982 c 230 § 20; 1961 c 228 § 40.]

Reviser's note: RCW 70.77.315 was amended twice during the 1995 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.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.330 License to engage in particular act to be issued if not contrary to public safety or welfare—Transportation of fireworks authorized. If the chief of the Washington state patrol, through the director of fire protection, finds that the granting of such license would not be contrary to public safety or welfare, he or she shall issue a license authorizing the applicant to engage in the particular act or acts upon the payment of the license fee specified in this chapter. Licensees may transport the class of fireworks for which they hold a valid license. [1995 c 369 § 48; 1986 c 266 § 104; 1982 c 230 § 22; 1961 c 228 § 43.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.343 License fees—Additional. (1) License fees, in addition to the fees in RCW 70.77.340, shall be charged as follows:

Manufacturer	\$ 1,500.00
Importer	900.00
Wholesaler	1,000.00
Retailer (for each separate outlet)	30.00
Public display for special fireworks	40.00
Pyrotechnic operator for special fireworks	5.00

(2) All receipts from the license fees in this section shall be placed in the fire services trust fund and at least seventy-five percent of these receipts shall be used to fund a state-wide public education campaign developed by the *department and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks and the remaining receipts shall be used to fund state-wide enforcement efforts against the sale and use of fireworks that are illegal under this chapter. [1995 c 61 § 19; 1991 c 135 § 6.]

***Reviser's note:** Functions of the director of community, trade, and economic development relating to fire protection were transferred to the chief of the Washington state patrol by 1995 c 369.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Intent—Effective date—Severability—1991 c 135: See notes following RCW 43.43.946.

70.77.345 Duration of licenses. Every license issued shall be for the calendar year from January 1st to December 31st or for the remaining portion thereof of the calendar year for which the license application is made. [1995 c 61 § 20; 1991 c 135 § 5; 1982 c 230 § 25; 1961 c 228 § 46.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Intent—Effective date—Severability—1991 c 135: See notes following RCW 43.43.946.

70.77.360 Denial of license for material misrepresentation or if contrary to public safety or welfare. If the

chief of the Washington state patrol, through the director of fire protection, finds that an application for any license under this chapter contains a material misrepresentation or that the granting of any license would be contrary to the public safety or welfare, the chief of the Washington state patrol, through the director of fire protection, may deny the application for the license. [1995 c 369 § 49; 1986 c 266 § 106; 1984 c 249 § 22; 1982 c 230 § 27; 1961 c 228 § 49.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.365 Denial of license for failure to meet qualifications or conditions. A written report by the chief of the Washington state patrol, through the director of fire protection, or a local fire official, or any of their authorized representatives, disclosing that the applicant for a license, or the premises for which a license is to apply, do not meet the qualifications or conditions for a license constitutes grounds for the denial by the chief of the Washington state patrol, through the director of fire protection, of any application for a license. [1995 c 369 § 50; 1986 c 266 § 107; 1984 c 249 § 23; 1982 c 230 § 28; 1961 c 228 § 50.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.375 Revocation of license (as amended by 1995 c 61). The director of community, trade, and economic development, through the director of fire protection, upon reasonable opportunity to be heard, ~~shall~~ may revoke any license issued pursuant to this chapter, if he or she finds that:

(1) The licensee has violated any provisions of this chapter or any rule or regulations made by the director of community, trade, and economic development, through the director of fire protection, under and with the authority of this chapter;

(2) The licensee has created or caused a fire nuisance;

(3) Any licensee has failed or refused to file any required reports; or

(4) 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 of community, trade, and economic development, through the director of fire protection, in refusing originally to issue such license. [1995 c 61 § 21; 1986 c 266 § 108; 1982 c 230 § 30; 1961 c 228 § 52.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.375 Mandatory revocation of license (as amended by 1995 c 369). The ~~(director of community development)~~ chief of the Washington state patrol, through the director of fire protection, upon reasonable opportunity to be heard, shall revoke any license issued pursuant to this chapter, if he or she finds that:

(1) The licensee has violated any provisions of this chapter or any rule or regulations made by the ~~(director of community development)~~ chief of the Washington state patrol, through the director of fire protection, under and with the authority of this chapter;

(2) The licensee has created or caused a fire nuisance;

(3) Any licensee has failed or refused to file any required reports; or

(4) 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 of community development)~~ chief of the Washington state patrol, through the director of fire protection, in refusing originally to issue such license. [1995 c 369 § 51; 1986 c 266 § 108; 1982 c 230 § 30; 1961 c 228 § 52.]

Reviser's note: RCW 70.77.375 was amended twice during the 1995 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.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.381 Wholesalers and retailers—Liability insurance requirements. (1) Every wholesaler shall carry liability insurance for each wholesale and retail fireworks outlet it operates in the amount of not less than fifty thousand dollars and five hundred thousand dollars for bodily injury liability for each person and occurrence, respectively, and not less than fifty thousand dollars for property damage liability for each occurrence, unless such insurance is not available from at least three approved insurance companies. If insurance in this amount is not offered, each wholesale and retail outlet shall be covered by a liability insurance policy in the maximum amount offered by at least three different approved insurance companies.

(2) No wholesaler may knowingly sell or supply fireworks to any retail outlet unless the wholesaler determines that the retail outlet carries liability insurance in the same amount as provided in subsection (1) of this section. [1995 c 61 § 27.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.386 Retailers—Purchase from licensed wholesalers. Retail fireworks licensees shall purchase all fireworks from wholesalers possessing a valid wholesale license issued by the state of Washington. [1995 c 61 § 28.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.395 Dates and times common fireworks may be sold or discharged. It is legal to sell, purchase, use, and discharge common fireworks within this state from twelve o'clock noon on the twenty-eighth of June to twelve o'clock noon on the sixth of July of each year and as provided in RCW 70.77.311. However, no common fireworks may be sold or discharged between the hours of eleven o'clock p.m. and nine o'clock a.m., except on July 4th from nine o'clock a.m. through twelve o'clock midnight, and except from six o'clock p.m. on December 31st until one o'clock a.m. on January 1st of the subsequent year: PROVIDED, That a city or county may prohibit the sale or discharge of common fireworks on December 31, 1995, by enacting an ordinance prohibiting such sale or discharge within sixty days of April 17, 1995. [1995 c 61 § 22; 1984 c 249 § 24; 1982 c 230 § 31; 1961 c 228 § 56.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.401 Sale of certain fireworks prohibited. No fireworks may be sold or offered for sale to the public as common fireworks which are classified as sky rockets, or missile-type rockets, firecrackers, salutes, or chasers as defined by the United States department of transportation and the federal consumer products safety commission except as provided in RCW 70.77.311. [1995 c 61 § 7.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.415 Supervision of public displays. Every public display of fireworks shall be handled or supervised by a pyrotechnic operator licensed by the chief of the Washington state patrol, through the director of fire protection, under

RCW 70.77.255. [1995 c 369 § 52; 1986 c 266 § 109; 1984 c 249 § 25; 1982 c 230 § 33; 1961 c 228 § 60.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.430 Sale of stock after revocation or expiration of license. Notwithstanding RCW 70.77.255, following the revocation or expiration of a license, a licensee in lawful possession of a lawfully acquired stock of fireworks may sell such fireworks, but only under supervision of the chief of the Washington state patrol, through the director of fire protection. Any sale under this section shall be solely to persons who are authorized to buy, possess, sell, or use such fireworks. [1995 c 369 § 53; 1986 c 266 § 110; 1984 c 249 § 28; 1982 c 230 § 36; 1961 c 228 § 63.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.435 Seizure of fireworks. Any fireworks which are illegally sold, offered for sale, used, discharged, possessed or transported in violation of the provisions of this chapter or the rules or regulations of the *director of community, trade, and economic development, through the director of fire protection, shall be subject to seizure by the *director of community, trade, and economic development, through the director of fire protection, or his or her deputy, or by state agencies or local governments having general law enforcement authority. Any fireworks seized by legal process anywhere in the state may be disposed of by the *director of community, trade, and economic development, through the director of fire protection, or the agency conducting the seizure, by summary destruction at any time subsequent to thirty days from such seizure or ten days from the final termination of proceedings under the provisions of RCW 70.77.440, whichever is later. [1995 c 61 § 23; 1994 c 133 § 11; 1986 c 266 § 111; 1982 c 230 § 37; 1961 c 228 § 64.]

***Reviser's note:** Functions of the director of community, trade, and economic development relating to fire protection were transferred to the chief of the Washington state patrol by 1995 c 369.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.440 Seizure of fireworks—Proceedings for forfeiture—Disposal of confiscated fireworks. (1) In the event of seizure under RCW 70.77.435, proceedings for forfeiture shall be deemed commenced by the seizure. The *director of community, trade, and economic development or deputy director of community, trade, and economic development, through the director of fire protection or the agency conducting the seizure, under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the fireworks seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt

requested. Service by mail shall be deemed complete upon mailing within the fifteen-day period following the seizure.

(2) If no person notifies the *director of community, trade, and economic development, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or right to lawful possession of seized fireworks within thirty days of the seizure, the seized fireworks shall be deemed forfeited.

(3) If any person notifies the *director of community, trade, and economic development, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or possession of the fireworks within thirty days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the seized fireworks is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to have the lawful right to possession of the seized fireworks. The *director of community, trade, and economic development, through the director of fire protection or the agency conducting the seizure, shall promptly return the fireworks to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession of the fireworks.

(4) When fireworks are forfeited under this chapter the *director of community, trade, and economic development, through the director of fire protection or the agency conducting the seizure, may:

(a) Dispose of the fireworks by summary destruction; or

(b) Sell the forfeited fireworks and chemicals used to make fireworks, that are legal for use and possession under this chapter, to wholesalers or manufacturers, authorized to possess and use such fireworks or chemicals under a license issued by the *director of community, trade, and economic development, through the director of fire protection. Sale shall be by public auction after publishing a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the auction is to be held, at least three days before the date of the auction. The proceeds of the sale of the seized fireworks under this section may be retained by the agency conducting the seizure and used to offset the costs of seizure and/or storage costs of the seized fireworks. The remaining proceeds, if any, shall be deposited in the fire services trust fund and shall be used for the same purposes and in the same percentages as specified in RCW 70.77.343. [1995 c 61 § 24; 1994 c 133 § 12; 1986 c 266 § 112; 1984 c 249 § 29; 1961 c 228 § 65.]

***Reviser's note:** Functions of the director of community, trade, and economic development relating to fire protection were transferred to the chief of the Washington state patrol by 1995 c 369.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.455 Licensees to maintain and make available complete records—Exemption from public disclosure act (as amended by 1995 c 61). (1) All licensees shall maintain and make available to the director of community, trade, and economic development, through the director of fire protection, full and complete records showing all production, imports, exports, purchases, and sales (~~(and consumption)~~) of fireworks items by (~~(kind and)~~) class.

(2) All records obtained and all reports produced, as required by this chapter, are not subject to disclosure through the public disclosure act under chapter 42.17 RCW. [1995 c 61 § 25; 1986 c 266 § 114; 1982 c 230 § 38; 1961 c 228 § 68.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.455 Licensees to maintain and make available complete records (as amended by 1995 c 369). All licensees shall maintain and make available to the (~~(director of community development)~~) chief of the Washington state patrol, through the director of fire protection, full and complete records showing all production, imports, exports, purchases, sales, and consumption of fireworks items by kind and class. [1995 c 369 § 54; 1986 c 266 § 114; 1982 c 230 § 38; 1961 c 228 § 68.]

Reviser's note: RCW 70.77.455 was amended twice during the 1995 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.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.460 Reports, payments deemed made when filed or paid or date mailed. When reports on fireworks transactions or the payments of license fees or penalties are required to be made on or by specified dates, they shall be deemed to have been made at the time they are filed with or paid to the chief of the Washington state patrol, through the director of fire protection, or, if sent by mail, on the date shown by the United States postmark on the envelope containing the report or payment. [1995 c 369 § 55; 1986 c 266 § 115; 1961 c 228 § 69.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.465 Additional and supplemental reports. In addition to any other reports required under this chapter, the chief of the Washington state patrol, through the director of fire protection, may, by rule or otherwise, require additional, other, or supplemental reports from licensees and other persons and prescribe the form, including verification, of the information to be given when filing such additional, other or supplemental reports. [1995 c 369 § 56; 1986 c 266 § 116; 1961 c 228 § 70.]

Reviser's note: RCW 70.77.465 was also repealed by 1995 c 61 § 31 without cognizance of its amendment by 1995 c 369 § 56. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.465 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Reviser's note: This section was also amended by 1995 c 369 § 56 without cognizance of the repeal thereof. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

70.77.555 Local permit and license fee—Limit. A local public agency may provide by ordinance for a fee in an amount sufficient to cover all legitimate costs for all needed

permits and local licenses from application to and through processing, issuance, and inspection, but in no case to exceed one hundred dollars for any one year. [1995 c 61 § 26; 1982 c 230 § 44; 1961 c 228 § 88.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.575 Chief of the Washington state patrol to provide list of fireworks which may be sold to public. (1) The chief of the Washington state patrol, through the director of fire protection, shall adopt by rule a list of the fireworks that may be sold to the public in this state pursuant to this chapter. The chief of the Washington state patrol, through the director of fire protection, shall file the list by October 1st of each year with the code reviser for publication, unless the previously published list has remained current.

(2) The chief of the Washington state patrol, through the director of fire protection, shall provide the list adopted under subsection (1) of this section by November 1st of each year to all manufacturers, wholesalers, and importers licensed under this chapter, unless the previously distributed list has remained current. [1995 c 369 § 57; 1986 c 266 § 117; 1984 c 249 § 8.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.580 Retailers to post list of fireworks. Retailers required to be licensed under this chapter shall post prominently at each retail outlet a list of the fireworks that may be sold to the public in this state pursuant to this chapter. The posted list shall be in a form approved by the chief of the Washington state patrol, through the director of fire protection. The chief of the Washington state patrol, through the director of fire protection, shall make available the list. [1995 c 369 § 58; 1986 c 266 § 118; 1984 c 249 § 9.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Chapter 70.79

BOILERS AND UNFIRED PRESSURE VESSELS

Sections

70.79.070 Existing installations—Conformance required—Miniature hobby boilers.

70.79.070 Existing installations—Conformance required—Miniature hobby boilers. (1) All boilers and unfired pressure vessels which were in use, or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter, shall be made to conform to the rules and regulations of the board governing existing installations, and the formulae prescribed therein shall be used in determining the maximum allowable working pressure for such boilers and unfired pressure vessels.

(2) This chapter shall not be construed as in any way preventing the use or sale of boilers or unfired vessels as referred to in subsection (1) of this section, provided they

have been made to conform to the rules and regulations of the board governing existing installations, and provided, further, they have not been found upon inspection to be in an unsafe condition.

(3) A special permit may also be granted for miniature hobby boilers that do not comply with the code requirements of the American society of mechanical engineers adopted under this chapter and do not exceed any of the following limits:

- (a) Sixteen inches inside diameter of the shell;
- (b) Twenty square feet of total heating surface;
- (c) Five cubic feet of gross volume of vessel; and
- (d) One hundred fifty p.s.i.g. maximum allowable working pressure, and if the boiler is to be operated exclusively not for commercial or industrial use and the department of labor and industries finds, upon inspection, that operation of the boiler for such purposes is not unsafe. [1995 c 41 § 1; 1993 c 193 § 1; 1951 c 32 § 7.]

Chapter 70.89

SAFETY GLASS

(Formerly: Safety glazing material)

Sections

- 70.89.005 through 70.89.070 Repealed.
- 70.89.900 Repealed.
- 70.89.910 Repealed.

70.89.005 through 70.89.070 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.89.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.89.910 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 70.92

PROVISIONS IN BUILDINGS FOR AGED AND HANDICAPPED PERSONS

Sections

- 70.92.110 Buildings and structures to which standards and specifications apply—Exemptions.
- 70.92.120 Handicap symbol—Display—Signs showing location of entrance for handicapped.
- 70.92.130 Definitions.
- 70.92.150 Standards adopted by other states to be considered—Majority vote.
- 70.92.160 Waiver from compliance with standards.

70.92.110 Buildings and structures to which standards and specifications apply—Exemptions. The standards and specifications adopted under this chapter shall, as provided in this section, apply to buildings, structures, or portions thereof used primarily for group A-1 through group U-1 occupancies, except for group R-3 occupancies, as defined in the Uniform Building Code, 1994 edition, published by the International Conference of Building Officials. All such buildings, structures, or portions thereof,

which are constructed, substantially remodeled, or substantially rehabilitated after July 1, 1976, shall conform to the standards and specifications adopted under this chapter: PROVIDED, That the following buildings, structures, or portions thereof shall be exempt from this chapter:

(1) Buildings, structures, or portions thereof for which construction contracts have been awarded prior to July 1, 1976;

(2) Any building, structure, or portion thereof in respect to which the administrative authority deems, after considering all circumstances applying thereto, that full compliance is impracticable: PROVIDED, That, such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: PROVIDED FURTHER, That the board of appeals provided for in chapter 1 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein;

(3) Any building or structure used solely for dwelling purposes and which contains not more than two dwelling units;

(4) Any building or structure not used primarily for group A-1 through group U-1 occupancies, except for group R-3 occupancies, as set forth in the Uniform Building Code, 1994 edition, published by the International Conference of Building Officials; or

(5) Apartment houses with ten or fewer units. [1995 c 343 § 3; 1989 c 14 § 9; 1975 1st ex.s. c 110 § 2.]

70.92.120 Handicap symbol—Display—Signs showing location of entrance for handicapped. All buildings built in accordance with the standards and specifications provided for in this chapter, and containing facilities that are in compliance therewith, shall display the following symbol which is known as the International Symbol of Access.



Such symbol shall be white on a blue background and shall indicate the location of facilities designed for the physically disabled or elderly. When a building contains an entrance other than the main entrance which is ramped or level for use by physically disabled or elderly persons, a sign with the symbol showing its location shall be posted at or near the main entrance which shall be visible from the adjacent public sidewalk or way. [1995 c 343 § 4; 1975 1st ex.s. c 110 § 3.]

70.92.130 Definitions. As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

- (1) "Administrative authority" means the building department of each county, city, or town of this state;
- (2) "Substantially remodeled or substantially rehabilitated" means any alteration or restoration of a building or structure within any twelve-month period, the cost of which exceeds sixty percent of the value of the particular building or structure;
- (3) "Council" means the state building code council. [1995 c 343 § 5; 1975 1st ex.s. c 110 § 4.]

70.92.150 Standards adopted by other states to be considered—Majority vote. The council in adopting these minimum standards shall consider minimum standards adopted by both law and rule and regulation in other states and the government of the United States: PROVIDED, That no standards adopted by the council pursuant to RCW 70.92.100 through 70.92.160 shall take effect until July 1, 1976. The council shall adopt such standards by majority vote pursuant to the provisions of chapter 34.05 RCW. [1995 c 343 § 6; 1975 1st ex.s. c 110 § 6.]

70.92.160 Waiver from compliance with standards. The administrative authority of any jurisdiction may grant a waiver from compliance with any standard adopted hereunder for a particular building or structure if it determines that compliance with the particular standard is impractical: PROVIDED, That such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: PROVIDED FURTHER, That the board of appeals provided for in chapter 1 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein. [1995 c 343 § 7; 1975 1st ex.s. c 110 § 7.]

Chapter 70.94

WASHINGTON CLEAN AIR ACT

Sections

- 70.94.053 Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations.
- 70.94.055 Air pollution control authority may be activated by counties, when.

- 70.94.120 City selection committees—Meetings, notice, recording officer—Alternative mail balloting—Notice.
- 70.94.145 Rule-making authority—Rules exceeding federal requirements—Expiration of section.
- 70.94.222 Repealed.
- 70.94.431 Civil penalties—Excusable excess emissions.
- 70.94.457 Solid fuel burning devices—Emission performance standards.
- 70.94.460 Sale of unapproved wood stoves—Prohibited.
- 70.94.473 Limitations on burning wood for heat.
- 70.94.477 Limitations on use of solid fuel burning devices.
- 70.94.531 Transportation demand management—Requirements for employers. (*Expires June 30, 1997.*)
- 70.94.537 Transportation demand management—Commuter trip reduction task force.
- 70.94.650 Burning permits for weed abatement, fire fighting instruction, or agriculture activities—Issuance—Agricultural burning practices and research task force—Exemption for aircraft crash fire rescue training activities—Expiration of subsection.
- 70.94.656 Open burning of grasses grown for seed—Alternatives—Studies—Deposit of permit fees in special grass seed burning account—Procedures—Limitations—Report to legislature.
- 70.94.665 Silvicultural forest burning—Reduce state-wide emissions—Exemption—Monitoring program.
- 70.94.745 Limited outdoor burning—Program—Exceptions.
- 70.94.775 Outdoor burning—Fires prohibited—Exceptions.

70.94.053 Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations. (1)

In each county of the state there is hereby created an air pollution control authority, which shall bear the name of the county within which it is located. The boundaries of each authority shall be coextensive with the boundaries of the county within which it is located. An authority shall include all incorporated and unincorporated areas of the county within which it is located.

(2) Except as provided in RCW 70.94.262, all authorities which are presently activated authorities shall carry out the duties and exercise the powers provided in this chapter. Those activated authorities which encompass contiguous counties are declared to be and directed to function as a multicounty authority.

(3) All other air pollution control authorities are hereby designated as inactive authorities.

(4) The boards of those authorities designated as activated authorities by this chapter shall be comprised of such individuals as is provided in RCW 70.94.100. [1995 c 135 § 5. Prior: 1991 c 363 § 143; 1991 c 199 § 701; 1991 c 125 § 1; prior: 1987 c 505 § 60; 1987 c 109 § 34; 1979 c 141 § 120; 1967 c 238 § 4.]

Intent—1995 c 135: See note following RCW 29.04.160.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.055 Air pollution control authority may be activated by counties, when. The legislative authority of any county may activate an air pollution control authority following a public hearing on its own motion, or upon a filing of a petition signed by one hundred property owners

within the county. If the county legislative authority determines as a result of the public hearing that:

(1) Air pollution exists or is likely to occur; and

(2) The city or town ordinances, or county resolutions, or their enforcement, are inadequate to prevent or control air pollution,

it may by resolution activate an air pollution control authority or combine with a contiguous county or counties to form a multicounty air pollution control authority. [1995 c 135 § 6. Prior: 1991 c 363 § 144; 1991 c 199 § 702; 1967 c 238 § 5.]

Intent—1995 c 135: See note following RCW 29.04.160.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.120 City selection committees—Meetings, notice, recording officer—Alternative mail balloting—Notice. (1) The city selection committee of each county which is included within an authority shall meet within one month after the activation of such authority for the purpose of making its initial appointments to the board of such authority and thereafter whenever necessary for the purpose of making succeeding appointments. All meetings shall be held upon at least two weeks written notice given by the county auditor to each member of the city selection committee of each county and he shall give such notice upon request of any member of such committee. A similar notice shall be given to the general public by a publication of such notice in a newspaper of general circulation in such authority. The county auditor shall act as recording officer, maintain its records and give appropriate notice of its proceedings and actions.

(2) As an alternative to meeting in accordance with subsection (1) of this section, the county auditor may mail ballots by certified mail to the members of the city selection committee, specifying a date by which to complete the ballot, and a date by which to return the completed ballot. Each mayor who chooses to participate in the balloting shall write in the choice for appointment, sign the ballot, and return the ballot to the county auditor. Each completed ballot shall be date-stamped upon receipt by the mayor or staff of the mayor of the city or town. The timely return of completed ballots by a majority of the members of each city selection committee constitutes a quorum and the common choice by a majority of the quorum constitutes a valid appointment.

(3) Balloting shall be preceded by at least two weeks' written notice, given by the county auditor to each member of the city selection committee. A similar notice shall be given to the general public by publication in a newspaper of general circulation in the authority. [1995 c 261 § 2; 1969 ex.s. c 168 § 14; 1967 c 238 § 23; 1957 c 232 § 12.]

70.94.145 Rule-making authority—Rules exceeding federal requirements—Expiration of section. (1) After July 23, 1995, the department may adopt or amend a rule under the authority of this chapter that exceeds the requirements of the federal clean air act or regulations adopted under it or that imposes burdens or obligations before the scheduled adoption of federal regulations addressing similar

subject matter only after compliance with the procedures established in RCW 34.05.328.

(2) In fulfilling the requirements of RCW 34.05.328(1)(g)(ii), the department shall consider: (a) The differences between the proposed rule and the corresponding provisions of the federal clean air act; (b) the air quality problem that the proposed rule would address, including the sources of the problem and any factors that make the problem different in the state or in a part of the state than in other parts of the United States; and (c) the effect of the proposed rule in eliminating the problem or reducing its severity. This section shall not be interpreted to impede efforts to streamline or simplify federal air regulations that are developed with participation of the public and regulated entities.

(3) This section shall expire July 1, 1999. [1995 c 403 § 117.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

70.94.222 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.431 Civil penalties—Excusable excess emissions. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, and in addition to or as an alternative to any other penalty provided by law, any person who violates any of the provisions of chapter 70.94 RCW, chapter 70.120 RCW, or any of the rules in force under such chapters may incur a civil penalty in an amount not to exceed ten thousand dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance.

(2) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

(3) Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(4) All penalties recovered under this section by the department shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015 or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a

prior penalty for the same violation has been paid to a local authority, the penalty imposed by the department under subsection (1) of this section shall be reduced by the amount of the payment.

(5) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

(6) Public or private entities that are recipients or potential recipients of department grants, whether for air quality related activities or not, may have such grants rescinded or withheld by the department for failure to comply with provisions of this chapter.

(7) In addition to other penalties provided by this chapter, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(8) By January 1, 1992, the department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan. [1995 c 403 § 630; 1991 c 199 § 311; 1990 c 157 § 1; 1987 c 109 § 19; 1984 c 255 § 2; 1973 1st ex.s. c 176 § 2; 1969 ex.s. c 168 § 53.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.457 Solid fuel burning devices—Emission performance standards. The department of ecology shall establish by rule under chapter 34.05 RCW:

(1) State-wide emission performance standards for new solid fuel burning devices. Notwithstanding any other provision of this chapter which allows an authority to adopt more stringent emission standards, no authority shall adopt any emission standard for new solid fuel burning devices other than the state-wide standard adopted by the department under this section.

(a) After January 1, 1995, no solid fuel burning device shall be offered for sale in this state to residents of this state that does not meet the following particulate air contaminant emission standards under the test methodology of the United States environmental protection agency in effect on January 1, 1991, or an equivalent standard under any test methodology adopted by the United States environmental protection agency subsequent to such date: (i) Two and one-half grams per hour for catalytic wood stoves; and (ii) four and one-half grams per hour for all other solid fuel burning devices. For purposes of this subsection, "equivalent" shall mean the emissions limits specified in this subsection multiplied by a statistically reliable conversion factor determined by the department that compares the difference between the emission test methodology established by the United States environmental protection agency prior to May 15, 1991, with

the test methodology adopted subsequently by the agency. Subsection (a) of this subsection does not apply to fireplaces.

(b) After January 1, 1997, no fireplace, except masonry fireplaces, shall be offered for sale unless such fireplace meets the 1990 United States environmental protection agency standards for wood stoves or equivalent standard that may be established by the state building code council by rule. Prior to January 1, 1997, the state building code council shall establish by rule a methodology for the testing of factory-built fireplaces. The methodology shall be designed to achieve a particulate air emission standard equivalent to the 1990 United States environmental protection agency standard for wood stoves. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers.

(c) Prior to January 1, 1997, the state building code council shall establish by rule design standards for the construction of new masonry fireplaces in Washington state. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers. It shall be the goal of the council to develop design standards that generally achieve reductions in particulate air contaminant emissions commensurate with the reductions being achieved by factory-built fireplaces at the time the standard is established.

(d) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991.

(e) Subsection (1)(a) of this section shall not apply to fireplaces.

(f) Notwithstanding (a) of this subsection, the department is authorized to adopt, by rule, emission standards adopted by the United States environmental protection agency for new wood stoves sold at retail. For solid fuel burning devices for which the United States environmental protection agency has not established emission standards, the department may exempt or establish, by rule, state-wide standards including emission levels and test procedures for such devices and such emission levels and test procedures shall be equivalent to emission levels per pound per hour burned for other new wood stoves and fireplaces regulated under this subsection.

(2) A program to:

(a) Determine whether a new solid fuel burning device complies with the state-wide emission performance standards established in subsection (1) of this section; and

(b) Approve the sale of devices that comply with the state-wide emission performance standards. [1995 c 205 § 3; 1991 c 199 § 501; 1987 c 405 § 4.]

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.460 Sale of unapproved wood stoves—Prohibited. After July 1, 1988, no person shall sell, offer to sell, or knowingly advertise to sell a new wood stove in this state to a resident of this state unless the wood stove has

been approved by the department under the program established under RCW 70.94.457. [1995 c 205 § 4; 1987 c 405 § 7.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.473 Limitations on burning wood for heat.

(1) Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(a) Not burn wood in any solid fuel burning device whenever the department has determined under RCW 70.94.715 that any air pollution episode exists in that area;

(b) Not burn wood in any solid fuel burning device except those which are either Oregon department of environmental quality phase II or United States environmental protection agency certified or certified by the department under RCW 70.94.457(1) or a pellet stove either certified or issued an exemption by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, in the geographical area and for the period of time that a first stage of impaired air quality has been determined, by the department or any authority, for that area. A first stage of impaired air quality is reached when particulates ten microns and smaller in diameter are at an ambient level of seventy-five micrograms per cubic meter measured on a twenty-four hour average or when carbon monoxide is at an ambient level of eight parts of contaminant per million parts of air by volume measured on an eight-hour average; and

(c) Not burn wood in any solid fuel burning device in a geographical area and for the period of time that a second stage of impaired air quality has been determined by the department or any authority, for that area. A second stage of impaired air quality is reached when particulates ten microns and smaller in diameter are at an ambient level of one hundred five micrograms per cubic meter measured on a twenty-four hour average.

(2) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991. [1995 c 205 § 1; 1991 c 199 § 504; 1990 c 128 § 2; 1987 c 405 § 6.]

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.477 Limitations on use of solid fuel burning devices. (1) Unless allowed by rule, under chapter 34.05 RCW, a person shall not cause or allow any of the following materials to be burned in any residential solid fuel burning device:

- (a) Garbage;
- (b) Treated wood;
- (c) Plastics;
- (d) Rubber products;
- (e) Animals;
- (f) Asphaltic products;
- (g) Waste petroleum products;
- (h) Paints; or

(i) Any substance, other than properly seasoned fuel wood, which normally emits dense smoke or obnoxious odors.

(2) For the sole purpose of a contingency measure to meet the requirements of section 172(c)(9) of the federal clean air act, a local authority or the department may prohibit the use of solid fuel burning devices, except fireplaces as defined in RCW 70.94.453(3), wood stoves meeting the standards set forth in RCW 70.94.457 or pellet stoves either certified or issued an exemption by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, if the United States environmental protection agency, in consultation with the department and the local authority makes written findings that:

(a) The area has failed to make reasonable further progress or attain or maintain a national ambient air quality standard; and

(b) Emissions from solid fuel burning devices from a particular geographic area are a contributing factor to such failure to make reasonable further progress or attain or maintain a national ambient air quality standard.

A prohibition issued by a local authority or the department under this subsection shall not apply to a person in a residence or commercial establishment that does not have an adequate source of heat without burning wood. [1995 c 205 § 2; 1990 c 128 § 3; 1987 c 405 § 9.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.531 Transportation demand management—Requirements for employers. (Expires June 30, 1997.)

(1) Not more than six months after the adoption of the commute trip reduction plan by a jurisdiction, each major employer in that jurisdiction shall develop a commute trip reduction program and shall submit a description of that program to the jurisdiction for review. The program shall be implemented not more than six months after submission to the jurisdiction.

(2) A commute trip reduction program shall consist of, at a minimum (a) designation of a transportation coordinator and the display of the name, location, and telephone number of the coordinator in a prominent manner at each affected worksite; (b) regular distribution of information to employees regarding alternatives to single-occupant vehicle commuting; (c) an annual review of employee commuting and reporting of progress toward meeting the single-occupant vehicle reduction goals to the county, city, or town consistent with the method established in the commute trip reduction plan; and (d) implementation of a set of measures designed to achieve the applicable commute trip reduction goals adopted by the jurisdiction. Such measures may include but are not limited to:

(i) Provision of preferential parking or reduced parking charges, or both, for high occupancy vehicles;

(ii) Instituting or increasing parking charges for single-occupant vehicles;

(iii) Provision of commuter ride matching services to facilitate employee ridesharing for commute trips;

(iv) Provision of subsidies for transit fares;

(v) Provision of vans for van pools;

- (vi) Provision of subsidies for car pooling or van pooling;
- (vii) Permitting the use of the employer's vehicles for car pooling or van pooling;
- (viii) Permitting flexible work schedules to facilitate employees' use of transit, car pools, or van pools;
- (ix) Cooperation with transportation providers to provide additional regular or express service to the worksite;
- (x) Construction of special loading and unloading facilities for transit, car pool, and van pool users;
- (xi) Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;
- (xii) Provision of a program of parking incentives such as a rebate for employees who do not use the parking facility;
- (xiii) Establishment of a program to permit employees to work part or full time at home or at an alternative worksite closer to their homes;
- (xiv) Establishment of a program of alternative work schedules such as compressed work week schedules which reduce commuting;
- (xv) Establishment of proximate commuting programs by employers with multiple worksites; and
- (xvi) Implementation of other measures designed to facilitate the use of high-occupancy vehicles such as on-site day care facilities and emergency taxi services.

(3) Employers or owners of worksites may form or utilize existing transportation management associations to assist members in developing and implementing commute trip reduction programs. [1995 2nd sp.s. c 14 § 530; 1991 c 202 § 13.]

Expiration date—1995 2nd sp.s. c 14 §§ 511-523, 528-533: See note following RCW 43.105.017.

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Captions not law—**Effective date**—**Severability**—1991 c 202: See notes following RCW 47.50.010.

70.94.537 Transportation demand management—Commute trip reduction task force. (1) A twenty-three member state commute trip reduction task force shall be established as follows:

- (a) The director of the state energy office or the director's designee who shall serve as chair;
- (b) The secretary of the department of transportation or the secretary's designee;
- (c) The director of the department of ecology or the director's designee;
- (d) The director of the department of community, trade, and economic development or the director's designee;
- (e) The director of the department of general administration or the director's designee;
- (f) Three representatives from counties appointed by the governor from a list of at least six recommended by the Washington state association of counties;
- (g) Three representatives from cities and towns appointed by the governor from a list of at least six recommended by the association of Washington cities;

(h) Three representatives from transit agencies appointed by the governor from a list of at least six recommended by the Washington state transit association;

(i) Six representatives of employers at or owners of major worksites in Washington appointed by the governor from a list of at least twelve recommended by the association of Washington business; and

(j) Three citizens appointed by the governor.

Members of the commute trip reduction task force shall serve without compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Members appointed by the governor shall be compensated in accordance with RCW 43.03.220. The task force has all powers necessary to carry out its duties as prescribed by this chapter. The task force shall be dissolved on July 1, 2000.

(2) By March 1, 1992, the commute trip reduction task force shall establish guidelines for commute trip reduction plans. The guidelines are intended to ensure consistency in commute trip reduction plans and goals among jurisdictions while fairly taking into account differences in employment and housing density, employer size, existing and anticipated levels of transit service, special employer circumstances, and other factors the task force determines to be relevant. The guidelines shall include:

(a) Criteria for establishing commute trip reduction zones;

(b) Methods and information requirements for determining base year values of the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee and progress toward meeting commute trip reduction plan goals;

(c) Model commute trip reduction ordinances;

(d) Methods for assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction;

(e) An appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain a waiver or modification of those requirements and criteria for determining eligibility for waiver or modification;

(f) Methods to ensure that employers shall receive full credit for the results of transportation demand management efforts and commute trip reduction programs which have been implemented by major employers prior to the base year;

(g) Alternative commute trip reduction goals for major employers which cannot meet the goals of this chapter because of the unique nature of their business; and

(h) Alternative commute trip reduction goals for major employers whose worksites change and who contribute substantially to traffic congestion in a trip reduction zone.

(3) The task force shall assess the commute trip reduction options available to employers other than major employers and make recommendations to the legislature by October 1, 1992. The recommendations shall include the minimum size of employer who shall be required to implement trip reduction programs and the appropriate methods those employers can use to accomplish trip reduction goals.

(4) The task force shall review progress toward implementing commute trip reduction plans and programs and the costs and benefits of commute trip reduction plans and programs and shall make recommendations to the legislature by December 1, 1995, and December 1, 1999. In assessing the costs and benefits, the task force shall consider the costs of not having implemented commute trip reduction plans and programs. The task force shall examine other transportation demand management programs nationally and incorporate its findings into its recommendations to the legislature. The recommendations shall address the need for continuation, modification, or termination or any or all requirements of this chapter. The recommendations made December 1, 1995, shall include recommendations regarding extension of the requirements of this chapter to employers with fifty or more full-time employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for more than twelve continuous months. [1995 c 399 § 188; 1991 c 202 § 15.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.650 Burning permits for weed abatement, fire fighting instruction, or agriculture activities—Issuance—Agricultural burning practices and research task force—Exemption for aircraft crash fire rescue training activities—Expiration of subsection. (1) Any person who proposes to set fires in the course of:

(a) Weed abatement;

(b) Instruction in methods of fire fighting, except training to fight structural fires as provided in RCW 52.12.150 or training to fight aircraft crash rescue fires as provided in subsection (5) of this section, and except forest fire training; or

(c) Agricultural activities,

shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70.94.654. General permit criteria of state-wide applicability shall be established by the department, by rule, after consultation with the various air pollution control authorities. Permits shall be issued under this section based on seasonal operations or by individual operations, or both. All permits shall be conditioned to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. All burning permits will be designed to minimize air pollution insofar as practical. Nothing in this section shall relieve the applicant from obtaining permits, licenses, or other approvals required by any other law. An application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, weed abatement or development of physiological conditions conducive to increased crop yield, shall be acted upon within seven days from the date such application is filed. The department of ecology and local air authorities shall provide convenient methods for issuance and oversight

of agricultural burning permits. The department and local air authorities shall, through agreement, work with counties and cities to provide convenient methods for granting permission for agricultural burning, including telephone, facsimile transmission, issuance from local city or county offices, or other methods. A local air authority administering the permit program under this subsection (1)(c) shall not limit the number of days of allowable agricultural burning, but may consider the time of year, meteorological conditions, and other criteria specified in rules adopted by the department to implement this subsection (1)(c).

(2) Permit fees shall be assessed for burning under this section and shall be collected by the department of ecology, the appropriate local air authority, or a local entity delegated permitting authority pursuant to RCW 70.94.654 at the time the permit is issued. All fees collected shall be deposited in the air pollution control account created in RCW 70.94.015, except for that portion of the fee necessary to cover local costs of administering a permit issued under this section. Fees shall be set by rule by the permitting agency at the level determined by the task force created by subsection (4) of this section, but shall not exceed two dollars and fifty cents per acre to be burned. After fees are established by rule, any increases in such fees shall be limited to annual inflation adjustments as determined by the state office of the economic and revenue forecast council.

(3) Conservation districts and the Washington State University agricultural extension program in conjunction with the department shall develop public education material for the agricultural community identifying the health and environmental effects of agricultural outdoor burning and providing technical assistance in alternatives to agricultural outdoor burning.

(4) An agricultural burning practices and research task force shall be established under the direction of the department. The task force shall be composed of a representative from the department who shall serve as chair; one representative of eastern Washington local air authorities; three representatives of the agricultural community from different agricultural pursuits; one representative of the department of agriculture; two representatives from universities or colleges knowledgeable in agricultural issues; one representative of the public health or medical community; and one representative of the conservation districts. The task force shall identify best management practices for reducing air contaminant emissions from agricultural activities and provide such information to the department and local air authorities. The task force shall determine the level of fees to be assessed by the permitting agency pursuant to subsection (2) of this section, based upon the level necessary to cover the costs of administering and enforcing the permit programs, to provide funds for research into alternative methods to reduce emissions from such burning, and to the extent possible be consistent with fees charged for such burning permits in neighboring states. The fee level shall provide, to the extent possible, for lesser fees for permittees who use best management practices to minimize air contaminant emissions. The task force shall identify research needs related to minimizing emissions from agricultural burning and alternatives to such burning. Further, the task force shall make recommendations to the department on priorities for spending funds provided

through this chapter for research into alternative methods to reduce emissions from agricultural burning.

(5) A permit is not required under this section, or under RCW 70.94.743 through 70.94.780, from an air pollution control authority, the department, or any local entity with delegated permit authority, for aircraft crash rescue fire training activities meeting the following conditions:

(a) Fire fighters participating in the training fires must be limited to those who provide fire fighting support to an airport that is either certified by the federal aviation administration or operated in support of military or governmental activities;

(b) The fire training may not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715 for the area where training is to be conducted;

(c) The number of training fires allowed per year without a permit shall be the minimum number necessary to meet federal aviation administration or other federal safety requirements; and

(d) Prior to the commencement of the aircraft fire training, the organization conducting training shall notify both the: (i) Local fire district or fire department; and (ii) air pollution control authority, department of ecology, or local entity delegated permitting authority under RCW 70.94.654, having jurisdiction within the area where training is to be conducted.

Aircraft crash rescue fire training activities conducted in compliance with this subsection are not subject to the prohibition, in RCW 70.94.775(1), of outdoor fires containing petroleum products.

(6) Subsection (5) of this section shall expire on the earlier of the following dates: (a) July 1, 1998; or (b) the date upon which the North Bend fire training center is fully operational for aircraft crash rescue fire training activities. [1995 c 362 § 1; 1995 c 58 § 1; 1994 c 28 § 2; 1993 c 353 § 1; 1991 c 199 § 408; 1971 ex.s. c 232 § 1.]

Reviser's note: This section was amended by 1995 c 58 § 1 and by 1995 c 362 § 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).

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.656 Open burning of grasses grown for seed—Alternatives—Studies—Deposit of permit fees in special grass seed burning account—Procedures—Limitations—Report to legislature. It is hereby declared to be the policy of this state that strong efforts should be made to minimize adverse effects on air quality from the open burning of field and turf grasses grown for seed. To such end this section is intended to promote the development of economical and practical alternate agricultural practices to such burning, and to provide for interim regulation of such burning until practical alternates are found.

(1) The department shall approve of a study or studies for the exploration and identification of economical and practical alternate agricultural practices to the open burning of field and turf grasses grown for seed. Any study conducted pursuant to this section shall be conducted by Washington State University. The university may not charge more than eight percent for administrative overhead. Prior to the issuance of any permit for such burning under RCW

70.94.650, there shall be collected a fee not to exceed one dollar per acre of crop to be burned. Any such fees received by any authority shall be transferred to the department of ecology. The department of ecology shall deposit all such acreage fees in a special grass seed burning research account, hereby created, in the state treasury.

(2) The department shall allocate moneys annually from this account for the support of any approved study or studies as provided for in subsection (1) of this section. Whenever the department of ecology shall conclude that sufficient reasonably available alternates to open burning have been developed, and at such time as all costs of any studies have been paid, the grass seed burning research account shall be dissolved, and any money remaining therein shall revert to the general fund. The fee collected under subsection (1) of this section shall constitute the research portion of fees required under RCW 70.94.650 for open burning of grass grown for seed.

(3) Whenever on the basis of information available to it, the department after public hearings have been conducted wherein testimony will be received and considered from interested parties wishing to testify shall conclude that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed, the department shall, by order, certify approval of such alternate. Thereafter, in any case which any such approved alternate is reasonably available, the open burning of field and turf grasses grown for seed shall be disallowed and no permit shall issue therefor.

(4) Until approved alternates become available, the department or the authority may limit the number of acres on a pro rata basis among those affected for which permits to burn will be issued in order to effectively control emissions from this source.

(5) Permits issued for burning of field and turf grasses may be conditioned to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions.

(6) By November 1, 1996, and every two years thereafter until grass seed burning is prohibited, Washington State University shall submit to the appropriate standing committees of the legislature a brief report assessing the potential of the university's research to result in economical and practical alternatives to grass seed burning. [1995 c 261 § 1; 1991 sp.s. c 13 § 28; 1991 c 199 § 413; 1990 c 113 § 1; 1985 c 57 § 69; 1973 1st ex.s. c 193 § 7.]

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

Finding—1991 c 199: See note following RCW 70.94.011.

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

Grass burning research advisory committee: Chapter 43.21E RCW.

70.94.665 Silvicultural forest burning—Reduce state-wide emissions—Exemption—Monitoring program.

(1) The department of natural resources shall administer a program to reduce state-wide emissions from silvicultural forest burning so as to achieve the following minimum objectives:

(a) Twenty percent reduction by December 31, 1994 providing a ceiling for emissions until December 31, 2000; and

(b) Fifty percent reduction by December 31, 2000 providing a ceiling for emissions thereafter.

Reductions shall be calculated from the average annual emissions level from calendar years 1985 to 1989, using the same methodology for both reduction and base year calculations.

(2) The department of natural resources, within twelve months after May 15, 1991, shall develop a plan, based upon the existing smoke management agreement to carry out the programs as described in this section in the most efficient, cost-effective manner possible. The plan shall be developed in consultation with the department of ecology, public and private landowners engaged in silvicultural forest burning, and representatives of the public.

The plan shall recognize the variations in silvicultural forest burning including, but not limited to, a landowner's responsibility to abate an extreme fire hazard under chapter 76.04 RCW and other objectives of burning, including abating and preventing a fire hazard, geographic region, climate, elevation and slope, proximity to populated areas, and diversity of land ownership. The plan shall establish priorities that the department of natural resources shall use to allocate allowable emissions, including but not limited to, silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. The plan shall also recognize the real costs of the emissions program and recommend equitable fees to cover the costs of the program.

The emission reductions in this section are to apply to all forest lands including those owned and managed by the United States. If the United States does not participate in implementing the plan, the departments of natural resources and ecology shall use all appropriate and available methods or enforcement powers to ensure participation.

The plan shall include a tracking system designed to measure the degree of progress toward the emission reductions goals set in this section. The department of natural resources shall report annually to the department of ecology and the legislature on the status of the plan, emission reductions and progress toward meeting the objectives specified in this section, and the goals of this chapter and chapter 76.04 RCW.

(3) If the December 31, 1994, emission reductions targets in this section are not met, the department of natural resources, in consultation with the department of ecology, shall use its authority granted in this chapter and chapter 76.04 RCW to immediately limit emissions from such burning to the 1994 target levels and limit silvicultural forest burning in subsequent years to achieve equal annual incremental reductions so as to achieve the December 31, 2000, target level. If, as a result of the program established in this section, the emission reductions are met in 1994, but are not met by December 31, 2000, the department of natural resources in consultation with the department of ecology shall immediately limit silvicultural forest burning to reduce emissions from such burning to the December 31, 2000, target level in all subsequent years.

(4) Emissions from silvicultural burning in eastern Washington that is conducted for the purpose of restoring forest health or preventing the additional deterioration of forest health are exempt from the reduction targets and calculations in this section if the following conditions are met:

(a) The landowner submits a written request to the department identifying the location of the proposed burning and the nature of the forest health problem to be corrected. The request shall include a brief description of alternatives to silvicultural burning and reasons why the landowner believes the alternatives not to be appropriate.

(b) The department determines that the proposed silvicultural burning operation is being conducted to restore forest health or prevent additional deterioration to forest health; meets the requirements of the state smoke management plan to protect public health, visibility, and the environment; and will not be conducted during an air pollution episode or during periods of impaired air quality in the vicinity of the proposed burn.

(c) Upon approval of the request by the department and before burning, the landowner is encouraged to notify the public in the vicinity of the burn of the general location and approximate time of ignition.

(5) The department of ecology may conduct a limited, seasonal ambient air quality monitoring program to measure the effects of forest health burning conducted under subsection (4) of this section. The monitoring program may be developed in consultation with the department of natural resources, private and public forest landowners, academic experts in forest health issues, and the general public. [1995 c 143 § 1; 1991 c 199 § 403.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.745 Limited outdoor burning—Program—Exceptions. (1) It shall be the responsibility and duty of the department of natural resources, department of ecology, department of agriculture, fire districts, and local air pollution control authorities to establish, through regulations, ordinances, or policy, a limited burning permit program.

(2) The permit program shall apply to residential and land clearing burning in the following areas:

(a) In the nonurban areas of any county with an unincorporated population of greater than fifty thousand; and

(b) In any city and urban growth area that is not otherwise prohibited from burning pursuant to RCW 70.94.743.

(3) The permit program shall apply only to land clearing burning in the nonurban areas of any county with an unincorporated population of less than fifty thousand.

(4) The permit program may be limited to a general permit by rule, or by verbal, written, or electronic approval by the permitting entity.

(5) Notwithstanding any other provision of this section, neither a permit nor the payment of a fee shall be required for outdoor burning for the purpose of disposal of tumbleweeds blown by wind. Such burning shall not be conducted during an air pollution episode or any stage of impaired air quality declared under *RCW 70.94.714. This subsection (5) shall only apply within counties with a population less than two hundred fifty thousand.

(6) Burning shall be prohibited in an area when an alternate technology or method of disposing of the organic refuse is available, reasonably economical, and less harmful to the environment. It is the policy of this state to foster and encourage development of alternate methods or technology for disposing of or reducing the amount of organic refuse.

(7) Incidental agricultural burning must be allowed without applying for any permit and without the payment of any fee if:

(a) The burning is incidental to commercial agricultural activities;

(b) The operator notifies the local fire department within the area where the burning is to be conducted;

(c) The burning does not occur during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715; and

(d) Only the following items are burned:

(i) Orchard prunings;

(ii) Organic debris along fence lines or irrigation or drainage ditches; or

(iii) Organic debris blown by wind.

(8) As used in this section, "nonurban areas" are unincorporated areas within a county that is not designated as an urban growth area under chapter 36.70A RCW.

(9) Nothing in this section shall require fire districts to enforce air quality requirements related to outdoor burning, unless the fire district enters into an agreement with the department of ecology, department of natural resources, a local air pollution control authority, or other appropriate entity to provide such enforcement. [1995 c 206 § 1; 1991 c 199 § 401; 1972 ex.s. c 136 § 2.]

***Reviser's note:** The reference to RCW 70.94.714 appears erroneous. Reference to RCW 70.94.715 was apparently intended.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.775 Outdoor burning—Fires prohibited—Exceptions. Except as provided in RCW 70.94.650(5), no person shall cause or allow any outdoor fire:

(1) Containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation that normally emits dense smoke or obnoxious odors. Agricultural heating devices that otherwise meet the requirements of this chapter shall not be considered outdoor fires under this section;

(2) During a forecast, alert, warning or emergency condition as defined in RCW 70.94.715 or impaired air quality condition as defined in RCW 70.94.473. [1995 c 362 § 2; 1991 c 199 § 410; 1974 ex.s. c 164 § 1; 1973 2nd ex.s. c 11 § 1; 1973 1st ex.s. c 193 § 9.]

Finding—1991 c 199: See note following RCW 70.94.011.

Chapter 70.95

SOLID WASTE MANAGEMENT—REDUCTION AND RECYCLING

Sections

- 70.95.260 Duties of department—State solid waste management plan—Assistance—Coordination—Tire recycling.
70.95.265 Department to cooperate with public and private departments, agencies and associations.
70.95.810 Composting food and yard wastes—Grants and study.

70.95.260 Duties of department—State solid waste management plan—Assistance—Coordination—Tire recycling. The department shall in addition to its other powers and duties:

(1) Cooperate with the appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out the provisions of this chapter.

(2) Coordinate the development of a solid waste management plan for all areas of the state in cooperation with local government, the department of community, trade, and economic development, and other appropriate state and regional agencies. The plan shall relate to solid waste management for twenty years in the future and shall be reviewed biennially, revised as necessary, and extended so that perpetually the plan shall look to the future for twenty years as a guide in carrying out a state coordinated solid waste management program. The plan shall be developed into a single integrated document and shall be adopted no later than October 1990. The plan shall be revised regularly after its initial completion so that local governments revising local comprehensive solid waste management plans can take advantage of the data and analysis in the state plan.

(3) Provide technical assistance to any person as well as to cities, counties, and industries.

(4) Initiate, conduct, and support research, demonstration projects, and investigations, and coordinate research programs pertaining to solid waste management systems.

(5) Develop state-wide programs to increase public awareness of and participation in tire recycling, and to stimulate and encourage local private tire recycling centers and public participation in tire recycling.

(6) May, under the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended, from time to time promulgate such rules and regulations as are necessary to carry out the purposes of this chapter. [1995 c 399 § 189; 1989 c 431 § 9. Prior: 1985 c 345 § 8; 1985 c 6 § 23; 1969 ex.s. c 134 § 26.]

Study—1989 c 431: "The institute for urban and local studies at Eastern Washington State University shall conduct a study of enforcement of solid waste management laws and regulations as a component of the 1990 state solid waste management plan. This study shall include, but shall not be limited to:

(1) A review of current state and local solid waste rules, requirements, policies, and resources devoted to state and local solid waste enforcement, and of the effectiveness of these programs in promoting environmental health and public safety;

(2) An examination of federal regulations and the latest proposed amendments to the Resource Conservation and Recovery Act, in subtitle D of the code of federal regulations;

(3) A review of regulatory approaches used by other states;

(4) A review and evaluation of educational and technical assistance programs related to enforcement;

(5) An inventory of regulatory compliance for all processing and disposal facilities handling mixed solid waste;

(6) A review of the role and effectiveness of other enforcement jurisdictions;

(7) An evaluation of the need for redefining institutional roles and responsibilities for enforcement of solid waste management laws and regulations in order to establish public confidence in solid waste management systems and ensure public protection; and

(8) An evaluation of possible benefits in separating the solid waste planning and technical assistance responsibilities from the enforcement responsibilities within the department." [1989 c 431 § 96.]

70.95.265 Department to cooperate with public and private departments, agencies and associations. The department shall work closely with the department of community, trade, and economic development, the department of general administration, and with other state departments and agencies, the Washington state association of counties, the association of Washington cities, and business associations, to carry out the objectives and purposes of chapter 41, Laws of 1975-'76 2nd ex. sess. [1995 c 399 § 190; 1985 c 466 § 69; 1975-'76 2nd ex.s. c 41 § 6.]

Effective date—Severability—1985 c 466: See notes following RCW 43.31.085.

70.95.810 Composting food and yard wastes—Grants and study. (1) In order to establish the feasibility of composting food and yard wastes, the department shall provide funds, as available, to local governments submitting a proposal to compost such wastes.

(2) The department, in cooperation with the department of community, trade, and economic development, may approve an application if the project can demonstrate the essential parameters for successful composting, including, but not limited to, cost-effectiveness, handling and safety requirements, and current and potential markets.

(3) The department shall periodically report to the appropriate standing committees of the legislature on the need for, and feasibility of, composting systems for food and yard wastes. [1995 c 399 § 191; 1989 c 431 § 97.]

Chapter 70.95B

DOMESTIC WASTE TREATMENT PLANTS—OPERATORS

Sections

70.95B.020	Definitions.
70.95B.040	Administration of chapter—Rules and regulations—Director's duties.
70.95B.070	Repealed.
70.95B.071	Ad hoc advisory committees.
70.95B.100	Certificates—Revocation procedures.

70.95B.020 Definitions. As used in this chapter unless context requires another meaning:

(1) "Director" means the director of the department of ecology.

(2) "Department" means the department of ecology.

(3) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

(4) "Wastewater treatment plant" means a facility used to treat any liquid or waterborne waste of domestic origin or a combination of domestic, commercial or industrial origin, and which by its design requires the presence of an operator for its operation. It shall not include any facility used exclusively by a single family residence, septic tanks with subsoil absorption, industrial wastewater treatment plants, or wastewater collection systems.

(5) "Operator in responsible charge" means an individual who is designated by the owner as the person on-site in responsible charge of the routine operation of a wastewater treatment plant.

[1995 RCW Supp—page 832]

(6) "Nationally recognized association of certification authorities" shall mean that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and wastewater facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(7) "Wastewater collection system" means any system of lines, pipes, manholes, pumps, liftstations, or other facilities used for the purpose of collecting and transporting wastewater.

(8) "Operating experience" means routine performance of duties, on-site in a wastewater treatment plant, that affects plant performance or effluent quality.

(9) "Owner" means in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chairman of the county legislative authority or the chairman's designee; in the case of a sewer district, board of public utilities, association, municipality or other public body, the president or chairman of the body or the president's or chairman's designee; in the case of a privately owned wastewater treatment plant, the legal owner.

(10) "Wastewater certification program coordinator" means an employee of the department who administers the wastewater treatment plant operators' certification program. [1995 c 269 § 2901; 1987 c 357 § 1; 1973 c 139 § 2.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95B.040 Administration of chapter—Rules and regulations—Director's duties. The director shall adopt and enforce such rules and regulations as may be necessary for the administration of this chapter. The rules and regulations shall include, but not be limited to, provisions for the qualification and certification of operators for different classifications of wastewater treatment plants. [1995 c 269 § 2902; 1987 c 357 § 3; 1973 c 139 § 4.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95B.070 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.95B.071 Ad hoc advisory committees. The director, in cooperation with the secretary of health, may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance regarding the examination and certification of operators of wastewater treatment plants. [1995 c 269 § 2908.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95B.100 Certificates—Revocation procedures. The director may, after conducting a hearing, revoke a certificate found to have been obtained by fraud or deceit, or

for gross negligence in the operation of a waste treatment plant, or for violating the requirements of this chapter or any lawful rule, order or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for one year from the effective date of this final order or revocation. [1995 c 269 § 2903; 1973 c 139 § 10.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Chapter 70.95D

SOLID WASTE INCINERATOR AND LANDFILL OPERATORS

Sections

70.95D.010	Definitions.
70.95D.050	Repealed.
70.95D.051	Ad hoc advisory committees.
70.95D.060	Revocation of certification.

70.95D.010 Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

(1) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

(2) "Department" means the department of ecology.

(3) "Director" means the director of ecology.

(4) "Incinerator" means a facility which has the primary purpose of burning or which is designed with the primary purpose of burning solid waste or solid waste derived fuel, but excludes facilities that have the primary purpose of burning hog fuel.

(5) "Landfill" means a landfill as defined under RCW 70.95.030.

(6) "Owner" means, in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chief elected official of the county legislative authority or the chief elected official's designee; in the case of a board of public utilities, association, municipality, or other public body, the president or chief elected official of the body or the president's or chief elected official's designee; in the case of a privately owned landfill or incinerator, the legal owner.

(7) "Solid waste" means solid waste as defined under RCW 70.95.030. [1995 c 269 § 2801; 1989 c 431 § 65.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95D.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.95D.051 Ad hoc advisory committees. The director may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance on the certification of solid waste incinerator and landfill operators. [1995 c 269 § 2804.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95D.060 Revocation of certification. (1) The director may revoke a certificate:

(a) If it were found to have been obtained by fraud or deceit;

(b) For gross negligence in the operation of a solid waste incinerator or landfill;

(c) For violating the requirements of this chapter or any lawful rule or order of the department; or

(d) If the facility operated by the certified employee is operated in violation of state or federal environmental laws.

(2) A person whose certificate is revoked under this section shall not be eligible to apply for a certificate for one year from the effective date of the final order of revocation. [1995 c 269 § 2802; 1989 c 431 § 70.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Chapter 70.95E

HAZARDOUS WASTE FEES

Sections

70.95E.010	Definitions.
70.95E.020	Hazardous waste generation—Fee.
70.95E.050	Administration of fees.
70.95E.090	Technical assistance and compliance education—Grants.

70.95E.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Dangerous waste" shall have the same definition as set forth in RCW 70.105.010(5) and shall include those wastes designated as dangerous by rules adopted pursuant to chapter 70.105 RCW.

(2) "Department" means the department of ecology.

(3) "EPA/state identification number" means the number assigned by the EPA (environmental protection agency) or by the department of ecology to each generator and/or transporter and treatment, storage, and/or disposal facility.

(4) "Extremely hazardous waste" shall have the same definition as set forth in RCW 70.105.010(6) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW.

(5) "Fee" means the annual fees imposed under this chapter.

(6) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation.

(7) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes but for the purposes of this chapter excludes all radioactive wastes or substances composed of both radioactive and hazardous components.

(8) "Hazardous waste generator" means all persons whose primary business activities are identified by the department to generate any quantity of hazardous waste in the calendar year for which the fee is imposed.

(9) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government including any agency or officer thereof, and any Indian tribe or authorized tribal organization.

(10) "Price deflator" means the United States department of commerce bureau of economic analysis, "Implicit Price Deflator for Gross National Product" for "Government Purchases of Goods and Services," for "State and Local Government."

(11) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include: (a) Use constituting disposal; (b) incineration; or (c) use as a fuel.

(12) "Waste generation site" means any geographical area that has been assigned an EPA/state identification number. [1995 c 207 § 1; 1994 c 136 § 1; 1990 c 114 § 11.]

Effective date—1995 c 207: "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 immediately [May 3, 1995]." [1995 c 207 § 5.]

70.95E.020 Hazardous waste generation—Fee. A fee is imposed for the privilege of generating hazardous waste in the state. The annual amount of the fee shall be thirty-five dollars upon every hazardous waste generator doing business in Washington in the current calendar year or any part thereof. This fee shall be collected by the department or its designee. A hazardous waste generator shall be exempt from the fee imposed under this section if the value of products, gross proceeds of sales, or gross income of the business, from all business activities of the hazardous waste generator, is less than twelve thousand dollars in the current calendar year. The department shall, subject to appropriation, use the funds collected from the fees assessed in this subsection to support the activities of the office of waste reduction as specified in RCW 70.95C.030. The fee imposed pursuant to this section is due annually by July 1 of the year following the calendar year for which the fee is imposed. [1995 c 207 § 2. Prior: 1994 sp.s. c 2 § 3; 1994 c 136 § 2; 1990 c 114 § 12.]

Effective date—1995 c 207: See note following RCW 70.95E.010.

Effective date—1994 sp.s. c 2: See note following RCW 82.04.4451.

70.95E.050 Administration of fees. In administration of this chapter for the enforcement and collection of the fees due and owing under RCW 70.95E.020 and 70.95E.030, the department may apply RCW 43.17.240. [1995 c 207 § 3; 1994 c 136 § 4; 1990 c 114 § 15.]

Effective date—1995 c 207: See note following RCW 70.95E.010.

70.95E.090 Technical assistance and compliance education—Grants. The department may use funds in the hazardous waste assistance account to provide technical assistance and compliance education assistance to hazardous substance users and waste generators, to provide grants to local governments, and for administration of this chapter.

Technical assistance may include the activities authorized under chapter 70.95C RCW and RCW 70.105.170 to encourage hazardous waste reduction and hazardous use reduction and the assistance provided for by RCW 70.105.100(2).

Compliance education may include the activities authorized under RCW 70.105.100(2) to train local agency officials and to inform hazardous substance users and hazardous waste generators and owners and operators of hazardous waste management facilities of the requirements of chapter 70.105 RCW and related federal laws and regulations. To the extent practicable, the department shall contract with private businesses to provide compliance education.

Grants to local governments shall be used for small quantity generator technical assistance and compliance education components of their moderate risk waste plans as required by RCW 70.105.220. [1995 c 207 § 4; 1990 c 114 § 19.]

Effective date—1995 c 207: See note following RCW 70.95E.010.

Chapter 70.95H

CLEAN WASHINGTON CENTER

Sections

70.95H.007	Center created.
70.95H.020	Policy board.
70.95H.050	Funding.

70.95H.007 Center created. There is created the clean Washington center within the department of community, trade, and economic development. As used in this chapter, "center" means the clean Washington center. [1995 c 399 § 192; 1991 c 319 § 202.]

70.95H.020 Policy board. (1) The center's activities shall be conducted with the assistance of a policy board. Except as otherwise provided, policy board members shall be appointed by the directors of the department of community, trade, and economic development and department of ecology as follows:

(a) Two representatives of the legislature, one appointed by the speaker of the house of representatives and one appointed by the president of the senate;

(b) One member to represent cities;

(c) One member to represent counties;

(d) Five private sector members to represent the end users and marketers of postconsumer recovered materials, including one member to represent recycling businesses;

(e) The directors of the departments of community, trade, and economic development and ecology shall represent the executive branch as nonvoting members; and

(f) Nonvoting, temporary appointments to the board can be made by the chair where specific expertise is needed.

(2) The initial appointments of the five private sector members will be two members with three-year terms and three members with two-year terms. Thereafter, members shall serve two-year renewable terms. Vacancies shall be filled by the chair with majority consent from the members.

(3) Members of the board, exclusive of those representing the legislative or executive branches, shall be reimbursed

for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) The board shall meet at least quarterly.

(5) The chair shall be elected from among the members by a simple majority vote.

(6) The board may adopt and exercise bylaws for the regulation of its business for the purposes of this chapter. [1995 c 399 § 193; 1991 c 319 § 204.]

70.95H.050 Funding. The center shall solicit financial contributions and support from manufacturing industries and other private sector sources, foundations, and grants from governmental sources to assist in conducting its activities. It may also use separately appropriated funds of the department of community, trade, and economic development for the center's activities. [1995 c 399 § 194; 1991 c 319 § 207.]

Chapter 70.96A

TREATMENT FOR ALCOHOLISM, INTOXICATION, AND DRUG ADDICTION

(Formerly: Uniform alcoholism and intoxication treatment)

Sections

70.96A.090	Standards for treatment programs—Enforcement procedures—Penalties—Evaluation of treatment of children.
70.96A.095	Age of consent for treatment program—Involuntary admission of minor children.
70.96A.097	Review of admission and treatment of children—Medical assistance eligibility.
70.96A.140	Involuntary commitment of persons incapacitated by chemical dependency.
70.96A.400	Opiate substitution treatment—Declaration of regulation by state.
70.96A.410	Opiate substitution treatment—Counties may restrict or limit—Definition of opiate substitution treatment.
70.96A.420	State-wide treatment and operating standards for opiate substitution programs—Evaluation and reports.
70.96A.500	Fetal alcohol screening and assessment services.
70.96A.510	Interagency agreement on fetal alcohol exposure programs.

70.96A.090 Standards for treatment programs—Enforcement procedures—Penalties—Evaluation of treatment of children. (1) The department shall adopt rules establishing standards for approved treatment programs, the process for the review and inspection program applying to the department for certification as an approved treatment program, and fixing the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

(2) The department may suspend, revoke, limit, restrict, or modify an approval, or refuse to grant approval, for failure to meet the provisions of this chapter, or the standards adopted under this chapter. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(3) No treatment program may advertise or represent itself as an approved treatment program if approval has not been granted, has been denied, suspended, revoked, or canceled.

(4) Certification as an approved treatment program is effective for one calendar year from the date of issuance of the certificate. The certification shall specify the types of services provided by the approved treatment program that meet the standards adopted under this chapter. Renewal of certification shall be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

(5) Approved treatment programs shall not provide alcoholism or other drug addiction treatment services for which the approved treatment program has not been certified. Approved treatment programs may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

(6) The department periodically shall inspect approved public and private treatment programs at reasonable times and in a reasonable manner.

(7) The department shall maintain and periodically publish a current list of approved treatment programs.

(8) Each approved treatment program shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved treatment program that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment programs, and its certification revoked or suspended.

(9) The department shall use the data provided in subsection (8) of this section to evaluate each program that admits children to inpatient treatment upon application of their parents. The evaluation shall be done at least once every twelve months. In addition, the department shall randomly select and review the information on individual children who are admitted on application of the child's parent for the purpose of determining whether the child was appropriately placed into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.

(10) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him or her to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment program refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter. [1995 c 312 § 46; 1990 c 151 § 5. Prior: 1989 c 270 § 19; 1989 c 175 § 131; 1972 ex.s. c 122 § 9.]

Short title—1995 c 312: See note following RCW 13.32A.010.

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

70.96A.095 Age of consent for treatment program—Involuntary admission of minor children. (1) Any person thirteen years of age or older may give consent for himself or herself to the furnishing of counseling, care, treatment, or rehabilitation by a treatment program or by any person. Consent of the parent, parents, or legal guardian of a person less than eighteen years of age is not necessary to authorize the care, except that the person shall not become a resident of the treatment program without such permission except as

provided in RCW 70.96A.120 or 70.96A.140. The parent, parents, or legal guardian of a person less than eighteen years of age are not liable for payment of care for such persons pursuant to this chapter, unless they have joined in the consent to the counseling, care, treatment, or rehabilitation.

(2) The parent of any minor child may apply to an approved treatment program for the admission of his or her minor child for purposes authorized in this chapter. The consent of the minor child shall not be required for the application or admission. The approved treatment program shall accept the application and evaluate the child for admission. The ability of a parent to apply to an approved treatment program for the involuntary admission of his or her minor child does not create a right to obtain or benefit from any funds or resources of the state. However, the state may provide services for indigent minors to the extent that funds are available therefor. [1995 c 312 § 47; 1991 c 364 § 9; 1989 c 270 § 24.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

70.96A.097 Review of admission and treatment of children—Medical assistance eligibility. (1) The admission of any child under RCW 70.96A.095 may be reviewed by the county-designated chemical dependency specialist between fifteen and thirty days following admission. The county-designated chemical dependency specialist may undertake the review on his or her own initiative and may seek reimbursement from the parents, their insurance, or medicaid for the expense of the review.

(2) The department shall ensure a review is conducted no later than sixty days following admission to determine whether it is medically appropriate to continue the child's treatment on an inpatient basis. The department may, subject to available funds, contract with a county for the conduct of the review conducted under this subsection and may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

If the county-designated chemical dependency specialist determines that continued inpatient treatment of the child is no longer medically appropriate, the specialist shall notify the facility, the child, the child's parents, and the department of the finding within twenty-four hours of the determination.

(3) For purposes of eligibility for medical assistance under chapter 74.09 RCW, children in inpatient mental health or chemical dependency treatment shall be considered to be part of their parent's or legal guardian's household, unless the child has been assessed by the department of social and health services or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the child's parents are found to not be exercising responsibility for care and control of the child. Payment for such care by the department of social and health services shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department. [1995 c 312 § 48.]

Short title—1995 c 312: See note following RCW 13.32A.010.

70.96A.140 Involuntary commitment of persons incapacitated by chemical dependency. (1) When a designated chemical dependency specialist receives information alleging that a person is incapacitated as a result of chemical dependency, the designated chemical dependency specialist, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court or district court.

If a petition for commitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the designated chemical dependency specialist's report.

If the designated chemical dependency specialist finds that the initial needs of such person would be better served by placement within the mental health system, the person shall be referred to an evaluation and treatment facility as defined in RCW 71.05.020 or 71.34.020. If placement in a chemical dependency program is available and deemed appropriate, the petition shall allege that: The person is chemically dependent and is incapacitated by alcohol or drug addiction, or that the person has twice before in the preceding twelve months been admitted for detoxification or chemical dependency treatment pursuant to RCW 70.96A.110, and is in need of a more sustained treatment program, or that the person is chemically dependent and has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment, by itself, does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within five days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the licensed physician's findings in support of the allegations of the petition. A physician employed by the petitioning program or the department is eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than two and no more than seven days after the date the petition was filed unless the person petitioned against is presently being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or 71.34.050, in which case the hearing shall be held within seventy-two hours of the filing of the petition: PROVIDED, HOWEVER, That the above specified seventy-two hours shall be computed by excluding Saturdays, Sundays, and holidays: PROVIDED FURTHER, That, the court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his or her counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served by the designated chemical dependency specialist on the person whose commitment is sought, his or her next of kin, a parent or his or her legal guardian if he or she is a minor, and any other person the

court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony, which may be telephonic, of at least one licensed physician who has examined the person whose commitment is sought. Communications otherwise deemed privileged under the laws of this state are deemed to be waived in proceedings under this chapter when a court of competent jurisdiction in its discretion determines that the waiver is necessary to protect either the detained person or the public. The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person, or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical, nursing, or psychological records of detained persons so long as the requirements of RCW 5.45.020 are met, except that portions of the record that contain opinions as to whether the detained person is chemically dependent shall be deleted from the records unless the person offering the opinions is available for cross-examination. The person shall be present unless the court believes that his or her presence is likely to be injurious to him or her; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him or her throughout the proceeding. If deemed advisable, the court may examine the person out of courtroom. If the person has refused to be examined by a licensed physician, he or she shall be given an opportunity to be examined by a court appointed licensed physician. If he or she refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him or her to the department for a period of not more than five days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by clear, cogent, and convincing proof, it shall make an order of commitment to an approved treatment program. It shall not order commitment of a person unless it determines that an approved treatment program is available and able to provide adequate and appropriate treatment for him or her.

(5) A person committed under this section shall remain in the program for treatment for a period of sixty days unless sooner discharged. At the end of the sixty-day period, he or she shall be discharged automatically unless the program, before expiration of the period, files a petition for his or her recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days unless sooner discharged.

If a petition for recommitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file

notice with the court and provide a copy of the treatment progress report.

If a person has been committed because he or she is chemically dependent and likely to inflict physical harm on another, the program shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) Upon the filing of a petition for recommitment under subsection (5) of this section, the court shall fix a date for hearing no less than two and no more than seven days after the date the petition was filed: PROVIDED, That, the court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment program on the person whose commitment is sought, his or her next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for recommitment, one of his or her parents or his or her legal guardian if he or she is a minor, and his or her attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3) of this section.

(7) The approved treatment program shall provide for adequate and appropriate treatment of a person committed to its custody. A person committed under this section may be transferred from one approved public treatment program to another if transfer is medically advisable.

(8) A person committed to the custody of a program for treatment shall be discharged at any time before the end of the period for which he or she has been committed and he or she shall be discharged by order of the court if either of the following conditions are met:

(a) In case of a chemically dependent person committed on the grounds of likelihood of infliction of physical harm upon himself, herself, or another, the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of a chemically dependent person committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists.

(9) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

(11) The venue for proceedings under this section is the county in which person to be committed resides or is present.

(12) When in the opinion of the professional person in charge of the program providing involuntary treatment under this chapter, the committed patient can be appropriately served by less restrictive treatment before expiration of the period of commitment, then the less restrictive care may be required as a condition for early release for a period which, when added to the initial treatment period, does not exceed the period of commitment. If the program designated to provide the less restrictive treatment is other than the program providing the initial involuntary treatment, the program so designated must agree in writing to assume such responsibility. A copy of the conditions for early release shall be given to the patient, the designated chemical dependency specialist of original commitment, and the court of original commitment. The program designated to provide less restrictive care may modify the conditions for continued release when the modifications are in the best interests of the patient. If the program providing less restrictive care and the designated chemical dependency specialist determine that a conditionally released patient is failing to adhere to the terms and conditions of his or her release, or that substantial deterioration in the patient's functioning has occurred, then the designated chemical dependency specialist shall notify the court of original commitment and request a hearing to be held no less than two and no more than seven days after the date of the request to determine whether or not the person should be returned to more restrictive care. The designated chemical dependency specialist shall file a petition with the court stating the facts substantiating the need for the hearing along with the treatment recommendations. The patient shall have the same rights with respect to notice, hearing, and counsel as for the original involuntary treatment proceedings. The issues to be determined at the hearing are whether the conditionally released patient did or did not adhere to the terms and conditions of his or her release to less restrictive care or that substantial deterioration of the patient's functioning has occurred and whether the conditions of release should be modified or the person should be returned to a more restrictive program. The hearing may be waived by the patient and his or her counsel and his or her guardian or conservator, if any, but may not be waived unless all such persons agree to the waiver. Upon waiver, the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions. [1995 c 312 § 49; 1993 c 362 § 1; 1991 c 364 § 10; 1990 c 151 § 3; 1989 c 271 § 307; 1987 c 439 § 14; 1977 ex.s. c 129 § 1; 1974 ex.s. c 175 § 2; 1972 ex.s. c 122 § 14.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Purpose—Construction—1993 c 362: "The purpose of this act is solely to provide authority for the involuntary commitment of persons suffering from chemical dependency within available funds and current programs and facilities. Nothing in this act shall be construed to require the addition of new facilities nor affect the department of social and health services' authority for the uses of existing programs and facilities authorized by law." [1993 c 362 § 2.]

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

[1995 RCW Supp—page 838]

Severability—1989 c 271: See note following RCW 9.94A.310.

70.96A.400 Opiate substitution treatment—Declaration of regulation by state. The state of Washington declares that there is no fundamental right to opiate substitution treatment. The state of Washington further declares that while methadone and other like pharmacological drugs, used in the treatment of opiate dependency are addictive substances, that they nevertheless have several legal, important, and justified uses and that one of their appropriate and legal uses is, in conjunction with other required therapeutic procedures, in the treatment of persons addicted to or habituated to opioids.

Because methadone and other like pharmacological drugs, used in the treatment of opiate dependency are addictive and are listed as a schedule II controlled substance in chapter 69.50 RCW, the state of Washington and authorizing counties on behalf of their citizens have the legal obligation and right to regulate the use of opiate substitution treatment. The state of Washington declares its authority to control and regulate carefully, in cooperation with the authorizing counties, all clinical uses of methadone and other pharmacological drugs used in the treatment of opiate addiction.

Further, the state declares that the primary goal of opiate substitution treatment is total abstinence from chemical dependency for the individuals who participate in the treatment program. The state recognizes that a small percentage of persons who participate in opiate substitute [substitution] treatment programs require treatment for an extended period of time. Opiate substitution treatment programs shall provide a comprehensive transition program to eliminate chemical dependency; including opiate and opiate substitute addiction of program participants. [1995 c 321 § 1; 1989 c 270 § 20.]

70.96A.410 Opiate substitution treatment—Counties may restrict or limit—Definition of opiate substitution treatment. (1) A county legislative authority may prohibit opiate substitution treatment in that county. The department shall not certify an opiate substitution treatment program in a county where the county legislative authority has prohibited opiate substitution treatment. If a county legislative authority authorizes opiate substitution treatment programs, it shall limit by ordinance the number of opiate substitution treatment programs operating in that county by limiting the number of licenses granted in that county. If a county has authorized opiate substitution treatment programs in that county, it shall only license opiate substitution treatment programs that comply with the department's operating and treatment standards under this section and RCW 70.96A.420. A county that authorizes opiate substitution treatment may operate the programs directly or through a local health department or health district or it may authorize certified opiate substitution treatment programs that the county licenses to provide the services within the county. Counties shall monitor opiate substitution treatment programs for compliance with the department's operating and treatment regulations under this section and RCW 70.96A.420.

(2) A county that authorizes opiate substitution treatment programs shall develop and enact by ordinance licensing

standards, consistent with this chapter and the operating and treatment standards adopted under this chapter, that govern the application for, issuance of, renewal of, and revocation of the licenses. Certified programs existing before May 18, 1987, applying for renewal of licensure in subsequent years, that maintain certification and meet all other requirements for licensure, shall be given preference.

(3) In certifying programs, the department shall not discriminate against an opiate substitution treatment program on the basis of its corporate structure. In licensing programs, the county shall not discriminate against an opiate substitution treatment program on the basis of its corporate structure.

(4) A program applying for certification from the department and a program applying for a contract from a state agency that has been denied the certification or contract shall be provided with a written notice specifying the rationale and reasons for the denial. A program applying for a license or a contract from a county that has been denied the license or contract shall be provided with a written notice specifying the rationale and reasons for the denial.

(5) A license is effective for one calendar year from the date of issuance. The license shall be renewed in accordance with the provisions of this section for initial approval; the goals for treatment programs under RCW 70.96A.400; the standards set forth in RCW 70.96A.420; and the rules adopted by the secretary.

(6) For the purpose of this chapter, opiate substitution treatment means dispensing an opiate substitution drug approved by the federal drug administration for the treatment of opiate addiction and providing a comprehensive range of medical and rehabilitative services. [1995 c 321 § 2; 1989 c 270 § 21.]

70.96A.420 State-wide treatment and operating standards for opiate substitution programs—Evaluation and reports. (1) The department, in consultation with opiate substitution treatment service providers and counties authorizing opiate substitution treatment programs, shall establish state-wide treatment standards for opiate substitution treatment programs. The department and counties that authorize opiate substitution treatment programs shall enforce these treatment standards. The treatment standards shall include, but not be limited to, reasonable provisions for all appropriate and necessary medical procedures, counseling requirements, urinalysis, and other suitable tests as needed to ensure compliance with this chapter. A opiate substitution treatment program shall not have a caseload in excess of three hundred fifty persons.

(2) The department, in consultation with opiate substitution treatment programs and counties authorizing opiate substitution treatment programs, shall establish state-wide operating standards for opiate substitution treatment programs. The department and counties that authorize opiate substitution treatment programs shall enforce these operating standards. The operating standards shall include, but not be limited to, reasonable provisions necessary to enable the department and authorizing counties to monitor certified and licensed opiate substitution treatment programs for compliance with this chapter and the treatment standards authorized by this chapter and to minimize the impact of the opiate

substitution treatment programs upon the business and residential neighborhoods in which the program is located.

(3) The department shall establish criteria for evaluating the compliance of opiate substitute [substitution] treatment programs with the goals and standards established under this chapter. As a condition of certification, opiate substitution programs shall submit an annual report to the department and county legislative authority, including data as specified by the department necessary for outcome analysis. The department shall analyze and evaluate the data submitted by each treatment program and take corrective action where necessary to ensure compliance with the goals and standards enumerated under this chapter. Before January 1 of each year, the department shall submit an annual report to the legislature, including the outcome analysis of each treatment program. [1995 c 321 § 3; 1989 c 270 § 22.]

70.96A.500 Fetal alcohol screening and assessment services. (1) The department shall contract with the University of Washington fetal alcohol syndrome clinic to provide fetal alcohol exposure screening and assessment services. The University indirect charges shall not exceed ten percent of the total contract amount. The contract shall require the University of Washington fetal alcohol syndrome clinic to provide the following services:

(a) Training for health care staff in community-based fetal alcohol exposure clinics to ensure the accurate diagnosis of individuals with fetal alcohol exposure and the development and implementation of appropriate service referral plans;

(b) Development of written or visual educational materials for the individuals diagnosed with fetal alcohol exposure and their families or caregivers;

(c) Systematic information retrieval from each community clinic to (i) maintain diagnostic accuracy and reliability across all community clinics, (ii) facilitate the development of effective and efficient screening tools for population-based identification of individuals with fetal alcohol exposure, (iii) facilitate identification of the most clinically efficacious and cost-effective educational, social, vocational, and health service interventions for individuals with fetal alcohol exposure;

(d) Based on available funds, establishment of a network of community-based fetal alcohol exposure clinics across the state to meet the demand for fetal alcohol exposure diagnostic and referral services; and

(e) Preparation of an annual report for submission to the department of health, the department of social and health services, the department of corrections, and the office of the superintendent of public instruction which includes the information retrieved under subsection (1)(c) of this section.

(2) The department shall submit to the legislature, by January 1, 1996, a copy of the governor's fetal alcohol syndrome advisory board report. [1995 c 54 § 2.]

Findings—Purpose—1995 c 54: "The legislature finds that fetal alcohol exposure is among the leading known causes of mental retardation in the children of our state. The legislature further finds that individuals with undiagnosed fetal alcohol exposure suffer substantially from secondary disabilities such as child abuse and neglect, separation from families, multiple foster placements, depression, aggression, school failure, juvenile detention, and job instability. These secondary disabilities come at a high cost to the individuals, their family, and society. The legislature finds that

these problems can be reduced substantially by early diagnosis and receipt of appropriate, effective intervention.

The purpose of this act is to support current public and private efforts directed at the early identification of and intervention into the problems associated with fetal alcohol exposure through the creation of a fetal alcohol exposure clinical network." [1995 c 54 § 1.]

70.96A.510 Interagency agreement on fetal alcohol exposure programs. The department of social and health services, the department of health, the department of corrections, and the office of the superintendent of public instruction shall execute an interagency agreement to ensure the coordination of identification, prevention, and intervention programs for children who have fetal alcohol exposure, and for women who are at high risk of having children with fetal alcohol exposure.

The interagency agreement shall provide a process for community advocacy groups to participate in the review and development of identification, prevention, and intervention programs administered or contracted for by the agencies executing this agreement. [1995 c 54 § 3.]

Findings—Purpose—1995 c 54: See note following RCW 70.96A.500.

Chapter 70.105

HAZARDOUS WASTE MANAGEMENT

Sections

70.105.080 Violations—Civil penalties.

70.105.080 Violations—Civil penalties. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, every person who fails to comply with any provision of this chapter or of the rules adopted thereunder shall be subjected to a penalty in an amount of not more than ten thousand dollars per day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed pursuant to the procedures in RCW 43.21B.300. [1995 c 403 § 631; 1987 c 109 § 12; 1983 c 172 § 2; 1975-'76 2nd ex.s. c 101 § 8.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1983 c 172: See note following RCW 70.105.097.

Chapter 70.105D

HAZARDOUS WASTE CLEANUP—MODEL TOXICS CONTROL ACT

Sections

70.105D.020 Definitions.
70.105D.030 Department's powers and duties.

[1995 RCW Supp—page 840]

70.105D.020 Definitions. (1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070(2)(d)(xi).

(2) "Department" means the department of ecology.

(3) "Director" means the director of ecology or the director's designee.

(4) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(5) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(6) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(7) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(8) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary

market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(9) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests include[s], mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also include[s] assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(10) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(11) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility; or

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (12) (e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release.

The exemption in this subsection (11)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release.

(12) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(13) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(14) "Policing activities" means actions the holder takes to insure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(15) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(16) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to clean up releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (11)(b)(ii) of this section.

(17) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.

(18) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropri-

ate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(19) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(20) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(21) "Security interest" means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(22) "Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(23) "Workout activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower. [1995 c 70 § 1; 1994 c 254 § 2; 1989 c 2 § 2 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.030 Department's powers and duties. (1) The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or wilful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020(7) and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include deed restrictions where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing a deed restriction under this subsection, the department shall notify and seek comment from a city or county department with land use planning authority for real property subject to a deed restriction;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment;

(h) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW 70.105D.020(11)(b)(ii)(C); and

(i) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropri-

ate. The department shall adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) the establishment of regional citizen's advisory committees, (ii) public notice of the development of investigative plans or remedial plans for releases or threatened releases, and (iii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;

(d) Publish and periodically update minimum cleanup standards for remedial actions at least as stringent as the cleanup standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and

(e) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection shall ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) Before November 1st of each even-numbered year, the department shall develop, with public notice and hearing, and submit to the ways and means and appropriate standing environmental committees of the senate and house of representatives a ranked list of projects and expenditures recommended for appropriation from both the state and local toxics control accounts. The department shall also provide the legislature and the public each year with an accounting of the department's activities supported by appropriations from the state toxics control account, including a list of known hazardous waste sites and their hazard rankings, actions taken and planned at each site, how the department is meeting its top two management priorities under RCW 70.105.150, and all funds expended under this chapter.

(4) The department shall establish a scientific advisory board to render advice to the department with respect to the hazard ranking system, cleanup standards, remedial actions, deadlines for remedial actions, monitoring, the classification of substances as hazardous substances for purposes of RCW 70.105D.020(7) and the classification of substances or products as hazardous substances for purposes of RCW 82.21.020(1). The board shall consist of five independent members to serve staggered three-year terms. No members may be employees of the department. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites. [1995 c 70 § 2. Prior: 1994 c 257 § 11; 1994 c 254 § 3; 1989 c 2 § 3 (Initiative Measure No. 97, approved November 8, 1988).]

Severability—1994 c 257: See note following RCW 36.70A.270.

Chapter 70.108

OUTDOOR MUSIC FESTIVALS

Sections

70.108.040 Application for permit—Contents—Filing.

70.108.040 Application for permit—Contents—

Filing. Application for an outdoor music festival permit shall be in writing and filed with the clerk of the issuing authority wherein the festival is to be held. Said application shall be filed not less than ninety days prior to the first scheduled day of the festival and shall be accompanied with a permit fee in the amount of two thousand five hundred dollars. Said application shall include:

(1) The name of the person or other legal entity on behalf of whom said application is made: **PROVIDED**, That a natural person applying for such permit shall be eighteen years of age or older;

(2) A financial statement of the applicant;

(3) The nature of the business organization of the applicant;

(4) Names and addresses of all individuals or other entities having a ten percent or more proprietary interest in the festival;

(5) The principal place of business of applicant;

(6) A legal description of the land to be occupied, the name and address of the owner thereof, together with a document showing the consent of said owner to the issuance of a permit, if the land be owned by a person other than the applicant;

(7) The scheduled performances and program;

(8) Written confirmation from the local health officer that he or she has reviewed and approved plans for site and development in accordance with rules, regulations and standards adopted by the state board of health. Such rules and regulations shall include criteria as to the following and such other matters as the state board of health deems necessary to protect the public's health:

(a) Submission of plans

(b) Site

(c) Water supply

(d) Sewage disposal

(e) Food preparation facilities

(f) Toilet facilities

(g) Solid waste

(h) Insect and rodent control

(i) Shelter

(j) Dust control

(k) Lighting

(l) Emergency medical facilities

(m) Emergency air evacuation

(n) Attendant physicians

(o) Communication systems

(9) A written confirmation from the appropriate law enforcement agency from the area where the outdoor music festival is to take place, showing that traffic control and crowd protection policing have been contracted for or otherwise provided by the applicant meeting the following conditions:

(a) One person for each two hundred persons reasonably expected to be in attendance at any time during the event for purposes of traffic and crowd control.

(b) The names and addresses of all traffic and crowd control personnel shall be provided to the appropriate law enforcement authority: **PROVIDED**, That not less than twenty percent of the traffic and crowd control personnel shall be commissioned police officers or deputy sheriffs: **PROVIDED FURTHER**, That on and after February 25, 1972 any commissioned police officer or deputy sheriff who is employed and compensated by the promoter of an outdoor music festival shall not be eligible and shall not receive any benefits whatsoever from any public pension or disability plan of which he or she is a member for the time he is so employed or for any injuries received during the course of such employment.

(c) During the hours that the festival site shall be open to the public there shall be at least one regularly commissioned police officer employed by the jurisdiction wherein the festival site is located for every one thousand persons in attendance and said officer shall be on duty within the confines of the actual outdoor music festival site.

(d) All law enforcement personnel shall be charged with enforcing the provisions of this chapter and all existing statutes, ordinances and regulations.

(10) A written confirmation from the appropriate law enforcement authority that sufficient access roads are available for ingress and egress to the parking areas of the outdoor music festival site and that parking areas are available on the actual site of the festival or immediately adjacent thereto which are capable of accommodating one auto for every four persons in estimated attendance at the outdoor music festival site.

(11) A written confirmation from the department of natural resources, where applicable, and the chief of the Washington state patrol, through the director of fire protection, that all fire prevention requirements have been complied with.

(12) A written statement of the applicant that all state and local law enforcement officers, fire control officers and other necessary governmental personnel shall have free access to the site of the outdoor music festival.

(13) A statement that the applicant will abide by the provisions of this chapter.

(14) The verification of the applicant warranting the truth of the matters set forth in the application to the best of the applicant's knowledge, under the penalty of perjury. [1995 c 369 § 59; 1986 c 266 § 120; 1972 ex.s. c 123 § 1; 1971 ex.s. c 302 § 23.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Chapter 70.114A

TEMPORARY WORKER HOUSING—HEALTH
AND SAFETY REGULATION

Sections

70.114A.010	Findings—Intent.
70.114A.020	Definitions.
70.114A.030	Application of chapter.
70.114A.040	Responsibilities of department.
70.114A.050	Housing on rural worksites.
70.114A.060	Inspection of housing.
70.114A.070	Technical assistance.
70.114A.080	Temporary worker housing code.
70.114A.090	Report to legislature.
70.114A.100	Rules—Compliance with federal act.
70.114A.900	Severability—1995 c 220.
70.114A.901	Effective date—1995 c 220.

70.114A.010 Findings—Intent. The legislature finds that there is an inadequate supply of temporary and permanent housing for migrant and seasonal workers in this state. The legislature also finds that unclear, complex regulations related to the development, construction, and permitting of worker housing inhibit the development of this much needed housing. The legislature further finds that as a result, many workers are forced to obtain housing that is unsafe and unsanitary.

Therefore, it is the intent of the legislature to encourage the development of temporary and permanent housing for workers that is safe and sanitary by: Establishing a clear and concise set of regulations for temporary housing; establishing a streamlined permitting and administrative process that will be locally administered and encourage the development of such housing; and by providing technical assistance to organizations or individuals interested in the development of worker housing. [1995 c 220 § 1.]

70.114A.020 Definitions. The definitions in this section apply throughout this chapter.

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

(2) "Dwelling unit" means a shelter, building, or portion of a building, that may include cooking and eating facilities, that is:

(a) Provided and designated by the operator as either a sleeping area, living area, or both, for occupants; and

(b) Physically separated from other sleeping and common-use areas.

(3) "Facility" means a sleeping place, drinking water, toilet, sewage disposal, food handling installation, or other installations required for compliance with this chapter.

(4) "Occupant" means a temporary worker or a person who resides with a temporary worker at the housing site.

(5) "Operator" means a person holding legal title to the land on which temporary worker housing is located. However, if the legal title and the right to possession are in different persons, "operator" means a person having the lawful control or supervision over the temporary worker housing under a lease or other arrangement.

(6) "Temporary worker" means a person employed intermittently and not residing year-round at the same site.

(7) "Temporary worker housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an employer for his or her employees or by

another person, including a temporary worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy, and includes "labor camps" under RCW 70.54.110. [1995 c 220 § 2.]

70.114A.030 Application of chapter. Chapter 220, Laws of 1995, applies to temporary worker housing that consists of five or more dwelling units, or any combination of dwelling units, dormitories, or spaces that house ten or more occupants. [1995 c 220 § 3.]

70.114A.040 Responsibilities of department. The department is designated the single state agency responsible for encouraging the development of additional temporary worker housing, and shall be responsible for coordinating the activities of the various state and local agencies to assure a seamless, nonduplicative system for the development and operation of temporary worker housing. [1995 c 220 § 4.]

70.114A.050 Housing on rural worksites. Temporary worker housing located on a rural worksite, and used for workers employed on the worksite, shall be considered a permitted use at the rural worksite for the purposes of zoning or other land use review processes, subject only to height, setback, and road access requirements of the underlying zone. [1995 c 220 § 5.]

70.114A.060 Inspection of housing. The secretary of the department or authorized representative may inspect housing covered by chapter 220, Laws of 1995, to enforce temporary worker housing rules adopted by the state board of health, or when the secretary or representative has reasonable cause to believe that a violation of temporary worker housing rules adopted by the state board of health is occurring or is being maintained. If the buildings or premises are occupied as a residence, a reasonable effort shall be made to obtain permission from the resident. If the premises or building is unoccupied, a reasonable effort shall be made to locate the owner or other person having charge or control of the building or premises and request entry. If consent for entry is not obtained, for whatever reason, the secretary or representative shall have recourse to every remedy provided by law to secure entry. [1995 c 220 § 6.]

70.114A.070 Technical assistance. The department of community, trade, and economic development shall contract with private, nonprofit corporations to provide technical assistance to any private individual or nonprofit organization wishing to construct temporary or permanent worker housing. The assistance may include information on state and local application and approval procedures, information or assistance in applying for federal, state, or local financial assistance, including tax incentives, information on cost-effective housing designs, or any other assistance the department of community, trade, and economic development may deem helpful in obtaining the active participation of private individuals or groups in constructing or operating temporary or permanent worker housing. [1995 c 220 § 7.]

70.114A.080 Temporary worker housing code. By December 1, 1996, the state building code council shall develop a temporary worker housing code, in conformance with the temporary worker housing standards developed under the Washington industrial safety and health act, chapter 49.17 RCW, the rules adopted by the state board of health under RCW 70.54.110, and the following guidelines:

(1) The code shall provide construction standards for shelter and associated facilities that are safe, secure, and capable of withstanding the stresses and loads associated with their designated use, and to which they are likely to be subjected by the elements.

(2) The code shall permit and facilitate designs and formats that allow for maximum affordability, consistent with the provision of decent, safe, and sanitary housing.

(3) In developing the code the council shall consider: (a) The need for dormitory type housing for groups of unrelated individuals; and (b) the need for housing to accommodate families.

(4) The code shall include construction standards for a variety of formats, including, but not limited to: (a) Tents and tent platforms; and (b) hard-shell, single exterior wall structures.

(5) The code shall include standards for temporary worker housing that is to be used only during periods when no auxiliary heat is required.

In developing the temporary worker housing code, it is the intent of the legislature that the building code council make exceptions to the codes listed in RCW 19.27.031, and chapter 19.27A RCW, in keeping with the guidelines set forth in this section.

The building code council shall appoint a technical advisory committee to assist in the development of the temporary worker housing code, which shall include representatives of industries that most frequently supply temporary housing to their employees. [1995 c 220 § 8.]

70.114A.090 Report to legislature. The department shall submit a report to the legislature containing short-term and long-term recommendations for the development of an adequate supply and continuous improvement of temporary worker housing. The report shall include recommendations for optimum roles for state and local administration of temporary worker housing, including strategies for the development of a locally administered application, permitting, and compliance system. The report shall identify incentives for the development of temporary worker housing, including but not limited to:

(1) Facility design options that are economical and appropriate for the worksite and length of seasonal employment but do not compromise health and safety of workers;

(2) Streamlined, single-service-point permit application and review process;

(3) Utilization of manufactured shelter units;

(4) Appropriate building standards;

(5) Financial incentives for operators;

(6) Community-financed temporary worker housing; and

(7) Shared housing arrangements among operators.

The report shall include recommendations for appropriate compliance strategies.

A preliminary report shall be submitted by December 1, 1995, together with any recommendations for legislation necessary to implement the findings and recommendations of the department at that point.

A final report, including recommendations for legislation, shall be submitted by December 1, 1996. [1995 c 220 § 9.]

70.114A.100 Rules—Compliance with federal act. Any rules adopted under chapter 220, Laws of 1995, pertaining to an employer who is subject to the migrant and seasonal agricultural worker protection act (96 Stat. 2583; 29 U.S.C. Sec. 1801 et seq.), must comply with the housing provisions of that federal act. [1995 c 220 § 10.]

70.114A.900 Severability—1995 c 220. 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. [1995 c 220 § 13.]

70.114A.901 Effective date—1995 c 220. 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 immediately [May 3, 1995]. [1995 c 220 § 14.]

Chapter 70.116

PUBLIC WATER SYSTEM COORDINATION ACT OF 1977

Sections

70.116.050	Development of water system plans for critical water supply service areas.
70.116.060	Approval of coordinated water system plan— Limitations following approval—Dispute resolution mechanism—Update or revision of plan.
70.116.070	Service area boundaries within critical water supply area.

70.116.050 Development of water system plans for critical water supply service areas. (1) Each purveyor within the boundaries of a critical water supply service area shall develop a water system plan for the purveyor's future service area if such a plan has not already been developed: PROVIDED, That nonmunicipally owned public water systems are exempt from the planning requirements of this chapter, except for the establishment of service area boundaries if they have no plans for water service beyond their existing service area: PROVIDED FURTHER, That if the county legislative authority permits a change in development that will increase the demand for water service of such a system beyond the existing system's ability to provide minimum water service, the purveyor shall develop a water system plan in accordance with this section. The establishment of future service area boundaries shall be in accordance with RCW 70.116.070.

(2) After the boundaries of a critical water supply service area have been established pursuant to RCW 70.116.040, the committee established in RCW 70.116.040 shall participate in the development of a coordinated water

system plan for the designated area. Such a plan shall incorporate all water system plans developed pursuant to subsection (1) of this section. The plan shall provide for maximum integration and coordination of public water system facilities consistent with the protection and enhancement of the public health and well-being. Decisions of the committee shall be by majority vote of those present at meetings of the committee.

(3) Those portions of a critical water supply service area not yet served by a public water system shall have a coordinated water system plan developed by existing purveyors based upon permitted densities in county plans, ordinances, and/or growth policies for a minimum of five years beyond the date of establishment of the boundaries of the critical water supply service area.

(4) To insure that the plan incorporates the proper designs to protect public health, the secretary shall adopt regulations pursuant to chapter 34.05 RCW concerning the scope and content of coordinated water system plans, and shall ensure, as minimum requirements, that such plans:

(a) Are reviewed by the appropriate local governmental agency to insure that the plan is not inconsistent with the land use plans, shoreline master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects.

(b) Recognize all water resource plans, water quality plans, and water pollution control plans which have been adopted by units of local, regional, and state government.

(c) Incorporate the fire protection standards developed pursuant to RCW 70.116.080.

(d) Identify the future service area boundaries of the public water system or systems included in the plan within the critical water supply service area.

(e) Identify feasible emergency inter-ties between adjacent purveyors.

(f) Include satellite system management requirements consistent with RCW 70.116.134.

(g) Include policies and procedures that generally address failing water systems for which counties may become responsible under RCW 43.70.195.

(5) If a "water general plan" for a critical water supply service area or portion thereof has been prepared pursuant to chapter 36.94 RCW and such a plan meets the requirements of subsections (1) and (4) of this section, such a plan shall constitute the coordinated water system plan for the applicable geographical area.

(6) The committee established in RCW 70.116.040 may develop and utilize a mechanism for addressing disputes that arise in the development of the coordinated water system plan.

(7) Prior to the submission of a coordinated water system plan to the secretary for approval pursuant to RCW 70.116.060, the legislative authorities of the counties in which the critical water supply service area is located shall hold a public hearing thereon and shall determine the plan's consistency with subsection (4) of this section. If within sixty days of receipt of the plan, the legislative authorities find any segment of a proposed service area of a purveyor's plan or any segment of the coordinated water system plan to be inconsistent with any current land use plans, shoreline

master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects, the secretary shall not approve that portion of the plan until the inconsistency is resolved between the local government and the purveyor. If no comments have been received from the legislative authorities within sixty days of receipt of the plan, the secretary may consider the plan for approval.

(8) Any county legislative authority may adopt an abbreviated plan for the provision of water supplies within its boundaries that includes provisions for service area boundaries, minimum design criteria, and review process. The elements of the abbreviated plan shall conform to the criteria established by the department under subsection (4) of this section and shall otherwise be consistent with other adopted land use and resource plans. The county legislative authority may, in lieu of the committee required under RCW 70.116.040, and the procedures authorized in this section, utilize an advisory committee that is representative of the water utilities and local governments within its jurisdiction to assist in the preparation of the abbreviated plan, which may be adopted by resolution and submitted to the secretary for approval. Purveyors within the boundaries covered by the abbreviated plan need not develop a water system plan, except to the extent required by the secretary or state board of health under other authority. Any abbreviated plan adopted by a county legislative authority pursuant to this subsection shall be subject to the same provisions contained in RCW 70.116.060 for coordinated water system plans that are approved by the secretary. [1995 c 376 § 7; 1977 ex.s. c 142 § 5.]

Findings—1995 c 376: See note following RCW 70.116.060.

70.116.060 Approval of coordinated water system plan—Limitations following approval—Dispute resolution mechanism—Update or revision of plan. (1) A coordinated water system plan shall be submitted to the secretary for design approval within two years of the establishment of the boundaries of a critical water supply service area.

(2) The secretary shall review the coordinated water system plan and, to the extent the plan is consistent with the requirements of this chapter and regulations adopted hereunder, shall approve the plan, provided that the secretary shall not approve those portions of a coordinated water system plan that fail to meet the requirements for future service area boundaries until any boundary dispute is resolved as set forth in RCW 70.116.070.

(3) Following the approval of a coordinated water system plan by the secretary:

(a) All purveyors constructing or proposing to construct public water system facilities within the area covered by the plan shall comply with the plan.

(b) No other purveyor shall establish a public water system within the area covered by the plan, unless the local legislative authority determines that existing purveyors are unable to provide the service in a timely and reasonable manner, pursuant to guidelines developed by the secretary. An existing purveyor is unable to provide the service in a timely manner if the water cannot be provided to an applicant for water within one hundred twenty days unless specified otherwise by the local legislative authority. If such

a determination is made, the local legislative authority shall require the new public water system to be constructed in accordance with the construction standards and specifications embodied in the coordinated water system plan approved for the area. The service area boundaries in the coordinated plan for the affected utilities shall be revised to reflect the decision of the local legislative authority.

(4) The secretary may deny proposals to establish or to expand any public water system within a critical water supply service area for which there is not an approved coordinated water system plan at any time after two years of the establishment of the critical water supply service area: PROVIDED, That service connections shall not be considered expansions.

(5) The affected legislative authorities may develop and utilize a mechanism for addressing disputes that arise in the implementation of the coordinated water system plan after the plan has been approved by the secretary.

(6) After adoption of the initial coordinated water system plan, the local legislative authority or the secretary may determine that the plan should be updated or revised. The legislative authority may initiate an update at any time, but the secretary may initiate an update no more frequently than once every five years. The update may encompass all or a portion of the plan, with the scope of the update to be determined by the secretary and the legislative authority. The process for the update shall be the one prescribed in RCW 70.116.050.

(7) The provisions of subsection (3) of this section shall not apply in any county for which a coordinated water system plan has not been approved under subsection (2) of this section.

(8) If the secretary initiates an update or revision of a coordinated water system plan, the state shall pay for the cost of updating or revising the plan. [1995 c 376 § 2; 1977 ex.s. c 142 § 6.]

Findings—1995 c 376: "The legislature finds that:

(1) Protection of the state's water resources, and utilization of such resources for provision of public water supplies, requires more efficient and effective management than is currently provided under state law;

(2) The provision of public water supplies to the people of the state should be undertaken in a manner that is consistent with the planning principles of the growth management act and the comprehensive plans adopted by local governments under the growth management act;

(3) Small water systems have inherent difficulties with proper planning, operation, financing, management and maintenance. The ability of such systems to provide safe and reliable supplies to their customers on a long-term basis needs to be assured through proper management and training of operators;

(4) New water quality standards and operational requirements for public water systems will soon generate higher rates for the customers of those systems, which may be difficult for customers to afford to pay. It is in the best interest of the people of this state that small systems maintain themselves in a financially viable condition;

(5) The drinking water 2000 task force has recommended maintaining a strong and properly funded state-wide drinking water program, retaining primary responsibility for administering the federal safe drinking water act in Washington. The task force has further recommended delegation of as many water system regulatory functions as possible to local governments, with provision of adequate resources and elimination of barriers to such delegation. In order to achieve these objectives, the state shall provide adequate funding from both general state funds and funding directly from the regulated water system;

(6) The public health services improvement plan recommends that the principal public health functions in Washington, including regulation of public water systems, should be fully funded by state revenues and undertaken by local jurisdictions with the capacity to perform them; and

(7) State government, local governments, water suppliers, and other interested parties should work for continuing economic growth of the state by maximizing the use of existing water supply management alternatives, including regional water systems, satellite management, and coordinated water system development." [1995 c 376 § 1.]

70.116.070 Service area boundaries within critical water supply area. (1) The proposed service area boundaries of public water systems within the critical water supply service area that are required to submit water system plans under this chapter shall be identified in the system's plan. The local legislative authority, or its planning department or other designee, shall review the proposed boundaries to determine whether the proposed boundaries of one or more systems overlap. The boundaries determined by the local legislative authority not to overlap shall be incorporated into the coordinated water system plan. Where any overlap exists, the local legislative authority may attempt to resolve the conflict through procedures established under RCW 70.116.060(5).

(2) Any final decision by a local legislative authority regarding overlapping service areas, or any unresolved disputes regarding service area boundaries, may be appealed or referred to the secretary in writing for resolution. After receipt of an appeal or referral, the secretary shall hold a public hearing thereon. The secretary shall provide notice of the hearing by certified mail to each purveyor involved in the dispute, to each county legislative authority having jurisdiction in the area and to the public. The secretary shall provide public notice pursuant to the provisions of chapter 65.16 RCW. Such notice shall be given at least twenty days prior to the hearing. The hearing may be continued from time to time and, at the termination thereof, the secretary may restrict the expansion of service of any purveyor within the area if the secretary finds such restriction is necessary to provide the greatest protection of the public health and well-being. [1995 c 376 § 13; 1977 ex.s. c 142 § 7.]

Findings—1995 c 376: See note following RCW 70.116.060.

Chapter 70.119

PUBLIC WATER SUPPLY SYSTEMS—OPERATORS

Sections

70.119.020	Definitions.
70.119.030	Certified operators required for certain public water systems.
70.119.050	Rules and regulations—Secretary to adopt.
70.119.080	Repealed.
70.119.081	Ad hoc advisory committees.
70.119.110	Certificates—Grounds for revocation.

70.119.020 Definitions. As used in this chapter unless context requires another meaning:

(1) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met the requirements for the specified operator classification of the certification program.

(2) "Certified operator" means an individual holding a valid certificate and employed or appointed by any county, water district, municipality, public or private corporation, company, institution, person, or the state of Washington and

who is designated by the employing or appointing officials as the person responsible for active daily technical operation.

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

(4) "Distribution system" means that portion of a public water system which stores, transmits, pumps and distributes water to consumers.

(5) "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with:

(a) Significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as giardia lamblia; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(6) "Group A water system" means a system with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections. Group A water system does not include a system serving fewer than fifteen single-family residences, regardless of the number of people.

(7) "Nationally recognized association of certification authorities" shall mean an organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and waste water facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(8) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system.

(9) "Purification plant" means that portion of a public water system which treats or improves the physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards.

(10) "Secretary" means the secretary of the department of health.

(11) "Service" means a connection to a public water system designed to serve a single-family residence, dwelling unit, or equivalent use. If the facility has group home or barracks-type accommodations, three persons will be considered equivalent to one service.

(12) "Surface water" means all water open to the atmosphere and subject to surface runoff. [1995 c 269 § 2904; 1991 c 305 § 2; 1991 c 3 § 369; 1983 c 292 § 2; 1977 ex.s. c 99 § 2.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Public water supply systems to comply with water quality standards: RCW 70.142.050.

70.119.030 Certified operators required for certain public water systems. (1) A public water system shall have a certified operator if:

(a) It is a group A water system; or

(b) It is a public water system using a surface water source or a ground water source under the direct influence of surface water.

(2) The certified operators shall be in charge of the technical direction of a water system's operation, or an operating shift of such a system, or a major segment of a system necessary for monitoring or improving the quality of water. The operator shall be certified as provided in RCW 70.119.050.

(3) A certified operator may provide required services to more than one system or to a group of systems. The amount of time that a certified operator shall be required to be present at any given system shall be based upon the time required to properly operate and maintain the public water system as designed and constructed in accordance with RCW 43.20.050. The employing or appointing officials shall designate the position or positions requiring mandatory certification within their individual systems and shall assure that such certified operators are responsible for the system's technical operation.

(4) The department shall, in establishing by rule or otherwise the requirements for public water systems with fewer than one hundred connections, phase in such requirements in order to assure that (a) an adequate number of certified operators are available to serve the additional systems, (b) the systems have adequate notice and time to plan for securing the services of a certified operator, (c) the department has the additional data and other administrative capacity, (d) adequate training is available to certify additional operators as necessary, and (e) any additional requirements under federal law are satisfied. The department shall not require a certified operator for a system with fewer than one hundred connections unless that system is determined by the department to be in significant noncompliance with monitoring, or water quality standards which would put the public health at risk, as defined by the department by rule, or has, or is required to have, water treatment facilities other than simple disinfection.

(5) Any examination required by the department as a prerequisite for the issuance of a certificate under this chapter shall be offered in each region where the department has a regional office.

(6) Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [1995 c 376 § 6; 1991 c 305 § 3; 1983 c 292 § 3; 1977 ex.s. c 99 § 3.]

Findings—1995 c 376: See note following RCW 70.116.060.

70.119.050 Rules and regulations—Secretary to adopt. The secretary shall adopt such rules and regulations as may be necessary for the administration of this chapter and shall enforce such rules and regulations. The rules and regulations shall include provisions establishing minimum qualifications and procedures for the certification of opera-

tors, criteria for determining the kind and nature of continuing educational requirements for renewal of certification under RCW 70.119.100(2), and provisions for classifying water purification plants and distribution systems.

Rules and regulations adopted under the provisions of this section shall be adopted in accordance with the provisions of chapter 34.05 RCW. [1995 c 269 § 2905; 1983 c 292 § 4; 1977 ex.s. c 99 § 5.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.119.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.119.081 Ad hoc advisory committees. The secretary, in cooperation with the director of ecology, may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance regarding the development of rules implementing this chapter and on the examination and certification of operators of water systems. [1995 c 269 § 2909.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.119.110 Certificates—Grounds for revocation. The secretary may after conducting a hearing revoke a certificate found to have been obtained by fraud or deceit; or for gross negligence in the operation of a purification plant or distribution system; or for an intentional violation of the requirements of this chapter or any lawful rules, order, or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for one year from the effective date of the final order of revocation. [1995 c 269 § 2906; 1991 c 305 § 7; 1983 c 292 § 9; 1977 ex.s. c 99 § 11.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Chapter 70.119A

PUBLIC WATER SYSTEMS—PENALTIES AND COMPLIANCE

Sections

70.119A.040	Additional or alternative penalty—Informal resolution unless a public health emergency.
70.119A.060	Public water systems—Mandate—Conditions for approval or creation of new public water system—Department and local health jurisdiction duties.
70.119A.130	Local government authority.
70.119A.160	Water supply advisory committee—Report to the legislature.
70.119A.170	Drinking water assistance account.

70.119A.040 Additional or alternative penalty—Informal resolution unless a public health emergency. (1)(a) In addition to or as an alternative to any other penalty or action allowed by law, a person who violates a law or rule regulating public water systems and administered by the department of health is subject to a penalty of not more than

five thousand dollars per day for every such violation, or, in the case of a violation that has been determined to be a public health emergency, a penalty of not more than ten thousand dollars per day for every such violation. Every such violation shall be a separate and distinct offense. The amount of fine shall reflect the health significance of the violation and the previous record of compliance on the part of the public water supplier. In case of continuing violation, every day's continuance shall be a separate and distinct violation.

(b) In addition, a person who constructs, modifies, or expands a public water system or who commences the construction, modification, or expansion of a public water system without first obtaining the required departmental approval is subject to penalties of not more than five thousand dollars per service connection, or, in the case of a system serving a transient population, a penalty of not more than four hundred dollars per person based on the highest average daily population the system serves or is anticipated to serve may be imposed. The total penalty that may be imposed pursuant to this subsection (1)(b) is five hundred thousand dollars. For the purpose of computing the penalty under this subsection, a service connection shall include any new service connection actually constructed, any anticipated service connection the system has been designed to serve, and, in the case of a system modification not involving expansions, each existing service connection that benefits or would benefit from the modification.

(c) Every person who, through an act of commission or omission, procures, aids, or abets a violation is considered to have violated the provisions of this section and is subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil penalty is assessed and shall describe the violation. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for an adjudicative proceeding is filed as provided in subsection (3) of this section.

(3) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

(4) A penalty imposed by a final administrative order is due upon service of the final administrative order. A person who fails to pay a penalty assessed by a final administrative order within thirty days of service of the final administrative order shall pay, in addition to the amount of the penalty, interest at the rate of one percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid, commencing with the month in which the notice of penalty was served and such reasonable attorney's fees as are incurred in securing the final administrative order.

(5) A person who institutes proceedings for judicial review of a final administrative order assessing a civil penalty under this chapter shall place the full amount of the penalty in an interest bearing account in the registry of the reviewing court. At the conclusion of the proceeding the

court shall, as appropriate, enter a judgment on behalf of the department and order that the judgment be satisfied to the extent possible from moneys paid into the registry of the court or shall enter a judgment in favor of the person appealing the penalty assessment and order return of the moneys paid into the registry of the court together with accrued interest to the person appealing. The judgment may award reasonable attorney's fees for the cost of the attorney general's office in representing the department.

(6) If no appeal is taken from a final administrative order assessing a civil penalty under this chapter, the department may file a certified copy of the final administrative order with the clerk of the superior court in which the public water system is located or in Thurston county, and the clerk shall enter judgment in the name of the department and in the amount of the penalty assessed in the final administrative order.

(7) A judgment entered under subsection (5) or (6) of this section shall have the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(8) All penalties imposed under this section shall be payable to the state treasury and credited to the safe drinking water account, and shall be used by the department to provide training and technical assistance to system owners and operators.

(9) Except in cases of public health emergencies, the department may not impose monetary penalties under this section unless a prior effort has been made to resolve the violation informally. [1995 c 376 § 8; 1993 c 305 § 2; 1990 c 133 § 8; 1989 c 175 § 135; 1986 c 271 § 4.]

Findings—1995 c 376: See note following RCW 70.116.060.

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

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

70.119A.060 Public water systems—Mandate—Conditions for approval or creation of new public water system—Department and local health jurisdiction duties.

(1) In order to assure safe and reliable public drinking water and to protect the public health, public water systems shall:

(a) Protect the water sources used for drinking water;

(b) Provide treatment adequate to assure that the public health is protected;

(c) Provide and effectively operate and maintain public water system facilities;

(d) Plan for future growth and assure the availability of safe and reliable drinking water;

(e) Provide the department with the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system, including any changes to this information, and provide to users the name and twenty-four hour telephone number of an emergency contact person; and

(f) Take whatever investigative or corrective action is necessary to assure that a safe and reliable drinking water supply is continuously available to users.

(2) No new public water system may be approved or created unless: (a) It is owned or operated by a satellite system management agency established under RCW

70.116.134 and the satellite system management system complies with financial viability requirements of the department; or (b) a satellite management system is not available and it is determined that the new system has sufficient management and financial resources to provide safe and reliable service. The approval of any new system that is not owned by a satellite system management agency shall be conditioned upon future management or ownership by a satellite system management agency, if such management or ownership can be made with reasonable economy and efficiency, or upon periodic review of the system's operational history to determine its ability to meet the department's financial viability and other operating requirements. The department and local health jurisdictions shall enforce this requirement under authority provided under this chapter, chapter 70.116, or 70.05 RCW, or other authority governing the approval of new water systems by the department or a local jurisdiction.

(3) The department and local health jurisdictions shall carry out the rules and regulations of the state board of health adopted pursuant to RCW 43.20.050(2)(a) and other rules adopted by the department relating to public water systems. [1995 c 376 § 3; 1991 c 304 § 4; 1990 c 132 § 4; 1989 c 422 § 3.]

Findings—1995 c 376: See note following RCW 70.116.060.

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

Legislative findings—Severability—1990 c 132: See notes following RCW 43.20.240.

70.119A.130 Local government authority. Local governments may establish separate operating permit requirements for public water systems provided the operating permit requirements have been approved by the department. The department shall not approve local operating permit requirements unless the local system will result in an increased level of service to the public water system. There shall not be duplicate operating permit requirements imposed by local governments and the department. [1995 c 376 § 9; 1991 c 304 § 7.]

Effective date—1995 c 376 § 9: "Section 9 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 376 § 17.]

Findings—1995 c 376: See note following RCW 70.116.060.

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.160 Water supply advisory committee—Report to the legislature. The department shall create a water supply advisory committee. Membership on the committee shall reflect a broad range of interests in the regulation of public water supplies, including water utilities of all sizes, local governments, business groups, special purpose districts, local health jurisdictions, other state and federal agencies, financial institutions, environmental organizations, the legislature, and other groups substantially affected by the department's role in implementing state and federal requirements for public water systems. Members shall be appointed for fixed terms of no less than two years, and may be reappointed. Any members of an existing advisory committee to the drinking water program may

remain as members of the water supply advisory committee. The committee shall provide advice to the department on the organization, functions, service delivery methods, and funding of the drinking water program. The committee shall also review the adequacy and necessity of the current and prospective funding for the drinking water program, and the results of the committees' review shall be forwarded to the department for inclusion in a report to the appropriate standing committees of the legislature no later than November 1, 1996. The report shall include a discussion of the extent to which the drinking water program has progressed toward achieving the objectives of the public health improvement plan, and an assessment of any changes to the program necessitated by modifications to the federal safe drinking water act. [1995 c 376 § 4.]

Findings—1995 c 376: See note following RCW 70.116.060.

70.119A.170 Drinking water assistance account. A drinking water assistance account is created in the state treasury. The purpose of the account is to allow the state to take advantage of any federal funds that become available for safe drinking water. Expenditures from the account may only be made by the secretary or the public works board after appropriation. Moneys in the account may only be used to assist water systems to provide safe drinking water through a program administered through the department of health and the public works board. Money may be placed in the account from the proceeds of bonds when authorized by the legislature, transfers from other state funds or accounts, federal capitalization grants or other financial assistance, all repayments of moneys borrowed from the account, all interest payments made by borrowers from the account or otherwise earned on the account, or any other lawful source. Expenditures from the account may only be made by the secretary or the public works board after appropriation. Moneys in the account may only be used to assist local governments and water systems to provide safe and reliable drinking water and to administer the program. [1995 c 376 § 10.]

Findings—1995 c 376: See note following RCW 70.116.060.

Chapter 70.128

ADULT FAMILY HOMES

Sections

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70.128.007	Purpose.
70.128.010	Definitions.
70.128.040	Adoption of rules and standards.
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70.128.060	License—Generally.
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70.128.150	Adult family homes to work with local quality assurance projects—Interference with representative of ombudsman program—Penalty.
70.128.160	Department authority to take actions in response to noncompliance or violations.
70.128.175	Definitions.
70.128.180	Report to legislature on siting review—Model ordinance.
70.128.200	Toll-free telephone number for complaints—Discrimination or retaliation prohibited.

70.128.005 Finding—Intent. The legislature finds that adult family homes are an important part of the state's long-term care system. Adult family homes provide an alternative to institutional care and promote a high degree of independent living for residents. Persons with functional limitations have broadly varying service needs. Adult family homes that can meet those needs are an essential component of a long-term system. The legislature further finds that different populations living in adult family homes, such as the developmentally disabled and the elderly, often have significantly different needs and capacities from one another.

It is the legislature's intent that department rules and policies relating to the licensing and operation of adult family homes recognize and accommodate the different needs and capacities of the various populations served by the homes. Furthermore, the development and operation of adult family homes that can provide quality personal care and special care services should be encouraged. [1995 c 260 § 1; 1989 c 427 § 14.]

70.128.007 Purpose. The purposes of this chapter are to:

(1) Encourage the establishment and maintenance of adult family homes that provide a humane, safe, and home-like environment for persons with functional limitations who need personal and special care;

(2) Establish standards for regulating adult family homes that adequately protect residents;

(3) Encourage consumers, families, providers, and the public to become active in assuring their full participation in development of adult family homes that provide high quality and cost-effective care;

(4) Provide for appropriate care of residents in adult family homes by requiring that each resident have a care plan that promotes the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice; and

(5) Accord each resident the right to participate in the development of the care plan and in other major decisions involving the resident and their care. [1995 1st sp.s. c 18 § 19; 1989 c 427 § 15.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

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

(1) "Adult family home" means a regular family abode in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

(2) "Provider" means any person who is licensed under this chapter to operate an adult family home. For the purposes of this section, "person" means any individual, partnership, corporation, association, or limited liability company.

(3) "Department" means the department of social and health services.

(4) "Resident" means an adult in need of personal or special care in an adult family home who is not related to the provider.

(5) "Adults" means persons who have attained the age of eighteen years.

(6) "Home" means an adult family home.

(7) "Imminent danger" means serious physical harm to or death of a resident has occurred, or there is a serious threat to resident life, health, or safety.

(8) "Special care" means care beyond personal care as defined by the department, in rule.

(9) "Capacity" means the maximum number of persons in need of personal or special care permitted in an adult family home at a given time. This number shall include related children or adults in the home and who received special care. [1995 c 260 § 2; 1989 c 427 § 16.]

70.128.040 Adoption of rules and standards. (1)

The department shall adopt rules and standards with respect to adult family homes and the operators thereof to be licensed under this chapter to carry out the purposes and requirements of this chapter. The rules and standards relating to applicants and operators shall address the differences between individual providers and providers that are partnerships, corporations, associations, or companies. The rules and standards shall also recognize and be appropriate to the different needs and capacities of the various populations served by adult family homes such as but not limited to the developmentally disabled and the elderly. In developing rules and standards the department shall recognize the residential family-like nature of adult family homes and not develop rules and standards which by their complexity serve as an overly restrictive barrier to the development of the adult family homes in the state. Procedures and forms established by the department shall be developed so they are easy to understand and comply with. Paper work requirements shall be minimal. Easy to understand materials shall be developed for applicants and providers explaining licensure requirements and procedures.

(2) In developing the rules and standards, the department shall consult with all divisions and administrations within the department serving the various populations living in adult family homes, including the division of developmental disabilities and the aging and adult services administration. Involvement by the divisions and administration shall be for the purposes of assisting the department to develop rules and standards appropriate to the different needs and capacities of the various populations served by adult family homes. During the initial stages of development of proposed rules, the department shall provide notice of development of the rules to organizations representing adult family homes and their residents, and other groups that the department finds appropriate. The notice shall state the subject of the

rules under consideration and solicit written recommendations regarding their form and content.

(3) Except where provided otherwise, chapter 34.05 RCW shall govern all department rule-making and adjudicative activities under this chapter. [1995 c 260 § 3; 1989 c 427 § 18.]

70.128.057 Operating without a license—Injunction or civil penalty. 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, civil penalty, or other process against a person to restrain or prevent the operation or maintenance of an adult family home without a license under this chapter. [1995 1st sp.s. c 18 § 20; 1991 c 40 § 2.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

70.128.058 Operating without a license—Application of consumer protection act. The legislature finds that the operation of an adult family home without a license in violation of this chapter is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an adult family home without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation 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. [1995 1st sp.s. c 18 § 21.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

70.128.060 License—Generally. (1) An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires.

(2) The department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter, unless (a) the applicant has prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past five years that resulted in revocation or nonrenewal of a license; or (b) the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating to the provision of care or services to vulnerable adults or to children.

(3) The license fee shall be submitted with the application.

(4) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial.

(5) The department shall not issue a license to a provider if the department finds that the provider or any partner, officer, director, managerial employee, or owner of five percent or more if the provider has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children.

(6) The department shall license an adult family home for the maximum level of care that the adult family home may provide. The department shall define, in rule, license levels based upon the education, training, and caregiving experience of the licensed provider or staff.

(7) The department shall establish, by rule, standards used to license nonresident providers and multiple facility operators.

(8) The department shall establish, by rule, for multiple facility operators educational standards substantially equivalent to recognized national certification standards for residential care administrators.

(9) The license fee shall be set at fifty dollars per year for each home. A fifty dollar processing fee shall also be charged each home when the home is initially licensed. [1995 c 260 § 4; 1989 c 427 § 20.]

70.128.070 License—Renewal—Inspections—Correction of violations. (1) A license shall be valid for one year.

(2) At least sixty days prior to expiration of the license, the provider shall submit an application for renewal of a license. The department shall send the provider an application for renewal prior to this time. The department shall have the authority to investigate any information included in the application for renewal of a license.

(3)(a) Homes applying for a license shall be inspected at the time of licensure.

(b) Homes licensed by the department shall be inspected at least every eighteen months, subject to available funds.

(c) The department may make an unannounced inspection of a licensed home at any time to assure that the home and provider are in compliance with this chapter and the rules adopted under this chapter.

(4) If the department finds that the home is not in compliance with this chapter, it shall require the home to correct any violations as provided in this chapter. If the department finds that the home is in compliance with this chapter and the rules adopted under this chapter, the department shall renew the license of the home. [1995 1st sp.s. c 18 § 22; 1989 c 427 § 22.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

70.128.080 License and inspection report—Availability for review. An adult family home shall have readily available for review by the department, residents, and the public:

(1) Its license to operate; and

(2) A copy of each inspection report received by the home from the department for the past three years. [1995 1st sp.s. c 18 § 23; 1989 c 427 § 21.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

70.128.090 Inspections—Generally. (1) During inspections of an adult family home, the department shall have access and authority to examine areas and articles in the home used to provide care or support to residents, including residents' records, accounts, and the physical premises, including the buildings, grounds, and equipment. The department also shall have the authority to interview the provider and residents of an adult family home.

(2) Whenever an inspection is conducted, the department shall prepare a written report that summarizes all information obtained during the inspection, and if the home is in violation of this chapter, serve a copy of the inspection report upon the provider at the same time as a notice of violation. If the home is not in violation of this chapter, a copy of the inspection report shall be mailed to the provider within ten days of the inspection of the home. All inspection reports shall be made available to the public at the department during business hours.

(3) The provider shall develop corrective measures for any violations found by the department's inspection. The department may provide consultation and technical assistance to assist the provider in developing effective corrective measures. The department shall include a statement of the provider's corrective measures in the department's inspection report. [1995 1st sp.s. c 18 § 24; 1989 c 427 § 30.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

70.128.120 Adult family home provider—Minimum qualifications. An adult family home provider shall have the following minimum qualifications:

(1) Twenty-one years of age or older;

(2) Good moral and responsible character and reputation;

(3) Literacy;

(4) Management and administrative ability to carry out the requirements of this chapter;

(5) Satisfactory completion of department-approved initial training and continuing education training as specified by the department in rule;

(6) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;

(7) Not been convicted of any crime listed in RCW 43.43.830 and 43.43.842; and

(8) Effective July 1, 1996, registered with the department of health. [1995 1st sp.s. c 18 § 117; 1995 c 260 § 5; 1989 c 427 § 24.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

70.128.122 Adult family homes licensed by Indian tribes. The legislature recognizes that adult family homes located within the boundaries of a federally recognized Indian reservation may be licensed by the Indian tribe. The department may pay for care for persons residing in such homes, if there has been a tribal or state criminal background check of the provider and any staff, and the client is otherwise eligible for services administered by the department. [1995 1st sp.s. c 18 § 25.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

70.128.130 Adult family homes—Requirements. (1) Adult family homes shall be maintained internally and externally in good repair and condition. Such homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home.

(2) Adult family homes shall be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.

(3) Adult family homes shall develop a fire drill plan for emergency evacuation of residents, shall have smoke detectors in each bedroom where a resident is located, shall have fire extinguishers on each floor of the home, and shall not keep nonambulatory patients above the first floor of the home.

(4) Adult family homes shall have clean, functioning, and safe household items and furnishings.

(5) Adult family homes shall provide a nutritious and balanced diet and shall recognize residents' needs for special diets.

(6) Adult family homes shall establish health care procedures for the care of residents including medication administration and emergency medical care.

(a) Adult family home residents shall be permitted to self-administer medications.

(b) Adult family home providers may administer medications and deliver special care only to the extent authorized by law.

(7) Adult family home providers shall either: (a) Reside at the adult family home; or (b) employ or otherwise contract with a qualified resident manager to reside at the adult family home. The department may exempt, for good cause, a provider from the requirements of this subsection by rule.

(8) A provider will ensure that any volunteer, student, employee, or person residing within the adult family home who will have unsupervised access to any resident shall not have been convicted of a crime listed under RCW 43.43.830 or 43.43.842. Except that a person may be conditionally employed pending the completion of a criminal conviction background inquiry.

(9) A provider shall offer activities to residents under care as defined by the department in rule.

(10) An adult family home provider shall ensure that staff are competent and receive necessary training to perform assigned tasks. [1995 c 260 § 6; 1989 c 427 § 26.]

70.128.140 Compliance with local codes and state and local fire safety regulations. Each adult family home shall meet applicable local licensing, zoning, building, and housing codes, and state and local fire safety regulations as they pertain to a single-family residence. It is the responsibility of the home to check with local authorities to ensure all local codes are met. [1995 1st sp.s. c 18 § 26; 1989 c 427 § 27.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

70.128.150 Adult family homes to work with local quality assurance projects—Interference with representa-

tive of ombudsman program—Penalty. Whenever possible adult family homes are encouraged to contact and work with local quality assurance projects such as the volunteer ombudsman with the goal of assuring high quality care is provided in the home.

An adult family home may not willfully interfere with a representative of the long-term care ombudsman program in the performance of official duties. The department shall impose a penalty of not more than one thousand dollars for any such willful interference. [1995 1st sp.s. c 18 § 27; 1989 c 427 § 28.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

70.128.160 Department authority to take actions in response to noncompliance or violations. (1) The department is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that an adult family home provider has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated an adult family home without a license or under a revoked license;

(c) Knowingly or with reason to know made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a license;

(b) Impose reasonable conditions on a license, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a license; or

(e) Suspend admissions to the adult family home by imposing stop placement.

(3) When the department orders stop placement, the facility shall not admit any person until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain adequate care and service.

(4) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing license suspension, stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue in effect pending any hearing. [1995 1st sp.s. c 18 § 28; 1989 c 427 § 31.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

70.128.175 Definitions. (1) Unless the context clearly requires otherwise, these definitions shall apply throughout

this section and RCW 35.63.140, 35A.63.149, 36.70.755, 35.22.680, and 36.32.560:

(a) "Adult family home" means a regular family abode of a person or persons providing personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

(b) "Residential care facility" means a facility that cares for at least five, but not more than fifteen functionally disabled persons, that is not licensed pursuant to chapter 70.128 RCW.

(c) "Department" means the department of social and health services.

(2) An adult family home shall be considered a residential use of property for zoning purposes. Adult family homes shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single family dwellings. [1995 1st sp.s. c 18 § 29; 1989 1st ex.s. c 9 § 815.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.128.180 Report to legislature on siting review—Model ordinance.

Reviser's note: RCW 70.128.180 was amended by 1995 c 399 § 196 without reference to its repeal by 1995 1st sp.s. c 18 § 31. It has been decodified for publication purposes pursuant to RCW 1.12.025.

70.128.200 Toll-free telephone number for complaints—Discrimination or retaliation prohibited. (1) The department shall maintain a toll-free telephone number for receiving complaints regarding adult family homes.

(2) An adult family home shall post in a place and manner clearly visible to residents and visitors the department's toll-free complaint telephone number.

(3) No adult family home shall discriminate or retaliate in any manner against a resident on the basis or for the reason that such resident or any other person made a complaint to the department or the long-term care ombudsman or cooperated with the investigation of such a complaint. [1995 1st sp.s. c 18 § 30.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Chapter 70.129

LONG-TERM CARE RESIDENT RIGHTS

Sections

70.129.040 Protection of resident's funds—Financial affairs rights.

70.129.040 Protection of resident's funds—Financial affairs rights. (1) The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

(2) Upon written authorization of a resident, if the facility agrees to manage the resident's personal funds, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as specified in this section.

[1995 RCW Supp—page 856]

(a) The facility must deposit a resident's personal funds in excess of one hundred dollars in an interest-bearing account or accounts that is separate from any of the facility's operating accounts, and that credits all interest earned on residents' funds to that account. In pooled accounts, there must be a separate accounting for each resident's share.

(b) The facility must maintain a resident's personal funds that do not exceed one hundred dollars in a non-interest-bearing account, interest-bearing account, or petty cash fund.

(3) The facility must establish and maintain a system that assures a full and complete and separate accounting of each resident's personal funds entrusted to the facility on the resident's behalf.

(a) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(b) The individual financial record must be available on request to the resident or his or her legal representative.

(4) Upon the death of a resident with a personal fund deposited with the facility the facility must convey within forty-five days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate; but in the case of a resident who received long-term care services paid for by the state, the funds and accounting shall be sent to the state of Washington, department of social and health services, office of financial recovery. The department shall establish a release procedure for use for burial expenses. [1995 1st sp.s. c 18 § 66; 1994 c 214 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Chapter 70.132

BEVERAGE CONTAINERS

Sections

70.132.050 Penalty.

70.132.050 Penalty. Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, any person who violates any provision of this chapter or any rule adopted under this chapter is subject to a civil penalty not exceeding five hundred dollars for each violation. Each day of a continuing violation is a separate violation. [1995 c 403 § 632; 1982 c 113 § 5.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Chapter 70.136

HAZARDOUS MATERIALS INCIDENTS

Sections

70.136.030 Incident command agencies—Designation by political subdivisions.

70.136.030 Incident command agencies—Designation by political subdivisions. The governing body

of each applicable political subdivision of this state shall designate a hazardous materials incident command agency within its respective boundaries, and file this designation with the director of community, trade, and economic development. In designating an incident command agency, the political subdivision shall consider the training, manpower, expertise, and equipment of various available agencies as well as the Uniform Fire Code and other existing codes and regulations. Along state and interstate highway corridors, the Washington state patrol shall be the designated incident command agency unless by mutual agreement that role has been assumed by another designated incident command agency. If a political subdivision has not designated an incident command agency within six months after July 26, 1987, the Washington state patrol shall then assume the role of incident command agency by action of the chief until a designation has been made. [1995 c 399 § 197; 1987 c 238 § 2; 1986 c 266 § 50; 1985 c 7 § 132; 1984 c 165 § 1; 1982 c 172 § 4.]

Severability—1986 c 266: See note following RCW 38.52.005.

**Chapter 70.138
INCINERATOR ASH RESIDUE**

Sections

70.138.040 Civil penalties.

70.138.040 Civil penalties. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, any person who violates any provision of a department regulation or regulatory order relating to the management of special incinerator ash shall incur in addition to any other penalty provided by law, a penalty in an amount up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department, describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, giving consideration to the degree of hazard associated with the violation, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper.

(3) Any penalty imposed by this section shall become due and payable thirty days after receipt of a notice impos-

ing the same unless application for remission or mitigation is made or petition for review by the hearings board is filed. When such an application for remission or mitigation is made, any penalty incurred pursuant to this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter. [1995 c 403 § 633; 1987 c 528 § 4.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

**Chapter 70.146
WATER POLLUTION CONTROL FACILITIES
FINANCING**

Sections

70.146.020 Definitions.
70.146.030 Water quality account—Progress report.

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

(1) "Account" means the water quality account in the state treasury.

(2) "Department" means the department of ecology.

(3) "Eligible cost" means the cost of that portion of a water pollution control facility that can be financed under this chapter excluding any portion of a facility's cost attributable to capacity that is in excess of that reasonably required to address one hundred ten percent of the applicant's needs for water pollution control existing at the time application is submitted for assistance under this chapter.

(4) "Water pollution control facility" or "facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers.

(5) "Water pollution control activities" means actions taken by a public body for the following purposes: (a) To prevent or mitigate pollution of underground water; (b) to control nonpoint sources of water pollution; (c) to restore the

water quality of fresh water lakes; and (d) to maintain or improve water quality through the use of water pollution control facilities or other means. During the 1995-1997 fiscal biennium, "water pollution control activities" includes activities by state agencies to protect public drinking water supplies and sources.

(6) "Public body" means the state of Washington or any agency, county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, and those Indian tribes now or hereafter recognized as such by the federal government.

(7) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(8) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to, atmospheric deposition, surface water runoff from agricultural lands, urban areas, and forest lands, subsurface or underground sources, and discharges from boats or other marine vessels.

(9) "Sole source aquifer" means the sole or principal source of public drinking water for an area designated by the administrator of the environmental protection agency pursuant to Public Law 93-523, Sec. 1424(b). [1995 2nd sp.s. c 18 § 920; 1993 sp.s. c 24 § 923; 1987 c 436 § 5; 1986 c 3 § 2.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.165.070.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.030 Water quality account—Progress report.

(1) The water quality account is hereby created in the state treasury. Moneys in the account may be used only in a manner consistent with this chapter. Moneys deposited in the account shall be administered by the department of ecology and shall be subject to legislative appropriation. Moneys placed in the account shall include tax receipts as provided in RCW 82.24.027, 82.26.025, and 82.32.390, principal and interest from the repayment of any loans granted pursuant to this chapter, and any other moneys appropriated to the account by the legislature.

(2) The department may use or permit the use of any moneys in the account to make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other funds are made available on a cost-sharing basis, for water pollution control facilities and activities, or for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW

70.150.060, within the purposes of this chapter and for related administrative expenses. No more than three percent of the moneys deposited in the account may be used by the department to pay for the administration of the grant and loan program authorized by this chapter.

(3) The department shall present a progress report each biennium on the use of moneys from the account to the chairs of the committees on ways and means of the senate and house of representatives, including one copy to the staff of each of the committees.

(4) During the fiscal biennium ending June 30, 1997, moneys in the account may be transferred by the legislature to the water right permit processing account. [1995 2nd sp.s. c 18 § 921; 1991 sp.s. c 13 § 61. Prior: 1987 c 505 § 64; 1987 c 436 § 6; 1986 c 3 § 3.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

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

Effective dates—1986 c 3: See note following RCW 82.24.027.

Chapter 70.148

UNDERGROUND PETROLEUM STORAGE TANKS

Sections

70.148.025	Reinsurance for heating oil pollution liability protection program. (<i>Expires June 1, 2001.</i>)
70.148.050	Powers and duties of director. (<i>Expires June 1, 2001.</i>)
70.148.900	Expiration of chapter.

70.148.025 Reinsurance for heating oil pollution liability protection program. (*Expires June 1, 2001.*) The director shall provide reinsurance through the pollution liability insurance program trust account to the heating oil pollution liability protection program under Chapter 70.149 RCW. [1995 c 20 § 12.]

Severability—1995 c 20: See RCW 70.149.901.

70.148.050 Powers and duties of director. (*Expires June 1, 2001.*) The director has the following powers and duties:

(1) To design and from time to time revise a reinsurance contract providing coverage to an insurer meeting the requirements of this chapter. Before initially entering into a reinsurance contract, the director shall provide a report to the chairs of the senate ways and means, senate financial institutions, house of representatives revenue, and house of representatives financial institutions committees and shall include an actuarial report describing the various reinsurance methods considered by the director and describing each method's costs. In designing the reinsurance contract the director shall consider common insurance industry reinsurance contract provisions and shall design the contract in accordance with the following guidelines:

(a) The contract shall provide coverage to the insurer for the liability risks of owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action that are underwritten by the insurer.

(b) In the event of an insolvency of the insurer, the reinsurance contract shall provide reinsurance payable directly to the insurer or to its liquidator, receiver, or successor on the basis of the liability of the insurer in accordance with the reinsurance contract. In no event may the program be liable for or provide coverage for that portion of any covered loss that is the responsibility of the insurer whether or not the insurer is able to fulfill the responsibility.

(c) The total limit of liability for reinsurance coverage shall not exceed one million dollars per occurrence and two million dollars annual aggregate for each policy underwritten by the insurer less the ultimate net loss retained by the insurer as defined and provided for in the reinsurance contract.

(d) Disputes between the insurer and the insurance program shall be settled through arbitration.

(2) To design and implement a structure of periodic premiums due the director from the insurer that takes full advantage of revenue collections and projected revenue collections to ensure affordable premiums to the insured consistent with sound actuarial principles.

(3) To periodically review premium rates for reinsurance to determine whether revenue appropriations supporting the program can be reduced without substantially increasing the insured's premium costs.

(4) To solicit bids from insurers and select an insurer to provide pollution liability insurance to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action.

(5) To monitor the activities of the insurer to ensure compliance with this chapter and protect the program from excessive loss exposure resulting from claims mismanagement by the insurer.

(6) To monitor the success of the program and periodically make such reports and recommendations to the legislature as the director deems appropriate, and to annually publish a financial report on the pollution liability insurance program trust account showing, among other things, administrative and other expenses paid from the fund.

(7) To annually report the financial and loss experience of the insurer as to policies issued under the program and the financial and loss experience of the program to the legislature.

(8) To evaluate the effects of the program upon the private market for liability insurance for owners and operators of underground storage tanks and make recommendations to the legislature on the necessity for continuing the program to ensure availability of such coverage.

(9) To enter into contracts with public and private agencies to assist the director in his or her duties to design, revise, monitor, and evaluate the program and to provide technical or professional assistance to the director.

(10) To examine the affairs, transactions, accounts, records, documents, and assets of insurers as the director deems advisable. [1995 c 12 § 1; 1990 c 64 § 6; 1989 c 383 § 6.]

Effective date—1995 c 12: "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 immediately [April 12, 1995]." [1995 c 12 § 3.]

70.148.900 Expiration of chapter. This chapter shall expire June 1, 2001. [1995 c 12 § 2; 1989 c 383 § 13.]

Effective date—1995 c 12: See note following RCW 70.148.050.

Chapter 70.149

HEATING OIL POLLUTION LIABILITY PROTECTION ACT

Sections

70.149.010	Intent—Findings. (<i>Expires June 1, 2001.</i>)
70.149.020	Short title. (<i>Expires June 1, 2001.</i>)
70.149.030	Definitions. (<i>Expires June 1, 2001.</i>)
70.149.040	Duties of director. (<i>Expires June 1, 2001.</i>)
70.149.050	Selection of insurer to provide pollution liability insurance—Eligibility for coverage. (<i>Expires June 1, 2001.</i>)
70.149.060	Exemptions from Title 48 RCW—Exceptions. (<i>Expires June 1, 2001.</i>)
70.149.070	Heating oil pollution liability trust account. (<i>Expires June 1, 2001.</i>)
70.149.080	Pollution liability insurance fee. (<i>Expires June 1, 2001.</i>)
70.149.090	Certain information confidential and exempt from chapter 42.17 RCW—Exceptions. (<i>Expires June 1, 2001.</i>)
70.149.100	Application of RCW 19.86.020 through 19.86.060. (<i>Expires June 1, 2001.</i>)
70.149.110	Reports to the legislature. (<i>Expires June 1, 2001.</i>)
70.149.900	Expiration of chapter.
70.149.901	Severability—1995 c 20.

70.149.010 Intent—Findings. (*Expires June 1, 2001.*) It is the intent of the legislature to establish a temporary regulatory program to assist owners and operators of heating oil tanks. The legislature finds that it is in the best interests of all citizens for heating oil tanks to be operated safely and for tank leaks or spills to be dealt with expeditiously. The legislature further finds that it is necessary to protect tank owners from the financial hardship related to damaged heating oil tanks. The problem is especially acute because owners and operators of heating oil tanks used for space heating have been unable to obtain pollution liability insurance or insurance has been unaffordable. [1995 c 20 § 1.]

70.149.020 Short title. (*Expires June 1, 2001.*) This chapter may be known and cited as the Washington state heating oil pollution liability protection act. [1995 c 20 § 2.]

70.149.030 Definitions. (*Expires June 1, 2001.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accidental release" means a sudden or nonsudden release of heating oil, occurring after July 23, 1995, from operating a heating oil tank that results in bodily injury, property damage, or a need for corrective action, neither expected nor intended by the owner or operator.

(2) "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from the injury, sickness, or disease.

(3)(a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation,

directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

(i) Replacement or repair of heating oil tanks or other receptacles; or

(ii) Replacement or repair of piping, connections, and valves of tanks or other receptacles.

(4) "Defense costs" include the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(a) The United States, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(b) A third party for bodily injury or property damage caused by an accidental release.

(5) "Director" means the director of the Washington state pollution liability insurance agency or the director's appointed representative.

(6) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(7) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not include a decommissioned or abandoned heating oil tank, or a tank used solely for industrial process heating purposes or generation of electrical energy.

(8) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from a heating oil tank.

(9) "Owner or operator" means a person in control of, or having responsibility for, the daily operation of a heating oil tank.

(10) "Pollution liability insurance agency" means the Washington state pollution liability insurance agency.

(11) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(12) "Release" means a spill, leak, emission, escape, or leaching into the environment.

(13) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action.

(14) "Tank" means a stationary device, designed to contain an accumulation of heating oil, that is constructed primarily of nonearthen materials such as concrete, steel, fiberglass, or plastic that provides structural support.

(15) "Third-party liability" means the liability of a heating oil tank owner to another person due to property damage or personal injury that results from a leak or spill. [1995 c 20 § 3.]

70.149.040 Duties of director. (*Expires June 1, 2001.*) The director shall:

(1) Design a program for providing pollution liability insurance for heating oil tanks that provides sixty thousand dollars per occurrence coverage and aggregate limits, and protects the state of Washington from unwanted or unanticipated liability for accidental release claims;

(2) Administer, implement, and enforce the provisions of this chapter. To assist in administration of the program, the director is authorized to appoint up to two employees who are exempt from the civil service law, chapter 41.06 RCW, and who shall serve at the pleasure of the director;

(3) Administer the heating oil pollution liability trust account, as established under RCW 70.149.070;

(4) Employ and discharge, at his or her discretion, agents, attorneys, consultants, companies, organizations, and employees as deemed necessary, and to prescribe their duties and powers, and fix their compensation;

(5) Adopt rules under chapter 34.05 RCW as necessary to carry out the provisions of this chapter;

(6) Design and from time to time revise a reinsurance contract providing coverage to an insurer or insurers meeting the requirements of this chapter. The director is authorized to provide reinsurance through the *pollution liability insurance agency trust account;

(7) Solicit bids from insurers and select an insurer to provide pollution liability insurance for third-party bodily injury and property damage, and corrective action to owners and operators of heating oil tanks;

(8) Register, and design a means of accounting for, operating heating oil tanks. [1995 c 20 § 4.]

***Reviser's note:** The reference to "pollution liability insurance agency trust account" apparently should be to the "pollution liability insurance program trust account" established in RCW 70.148.020.

70.149.050 Selection of insurer to provide pollution liability insurance—Eligibility for coverage. (*Expires June 1, 2001.*)

(1) In selecting an insurer to provide pollution liability insurance coverage to owners and operators of heating oil tanks used for space heating, the director shall evaluate bids based upon criteria established by the director that shall include:

(a) The insurer's ability to underwrite pollution liability insurance;

(b) The insurer's ability to settle pollution liability claims quickly and efficiently;

(c) The insurer's estimate of underwriting and claims adjustment expenses;

(d) The insurer's estimate of premium rates for providing coverage;

(e) The insurer's ability to manage and invest premiums; and

(f) The insurer's ability to provide risk management guidance to insureds.

(2) The director shall select the bidder most qualified to provide insurance consistent with this chapter and need not select the bidder submitting the least expensive bid. The director may consider bids by groups of insurers and management companies who propose to act in concert in providing coverage and who otherwise meet the requirements of this chapter.

(3) Owners and operators of heating oil tanks, or sites containing heating oil tanks where a preexisting release has been identified or where the owner or operator knows of a preexisting release are eligible for coverage under the program subject to the following conditions:

(a) The owner or operator must have a plan for proceeding with corrective action; and

(b) If the owner or operator files a claim with the insurer, the owner or operator has the burden of proving that the claim is not related to a preexisting release until the owner or operator demonstrates to the satisfaction of the director that corrective action has been completed. [1995 c 20 § 5.]

70.149.060 Exemptions from Title 48 RCW—Exceptions. (Expires June 1, 2001.) (1) The activities and operations of the program are exempt from the provisions and requirements of Title 48 RCW and to the extent of their participation in the program, the activities and operations of the insurer selected by the director to provide liability insurance coverage to owners and operators of heating oil tanks are exempt from the requirements of Title 48 RCW except for:

- (a) Chapter 48.03 RCW pertaining to examinations;
- (b) RCW 48.05.250 pertaining to annual reports;
- (c) Chapter 48.12 RCW pertaining to assets and liabilities;
- (d) Chapter 48.13 RCW pertaining to investments;
- (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices; and
- (f) Chapter 48.92 RCW pertaining to liability risk retention.

(2) To the extent of their participation in the program, the insurer selected by the director to provide liability insurance coverage to owners and operators of heating oil tanks shall not participate in the Washington insurance guaranty association nor shall the association be liable for coverage provided to owners and operators of heating oil tanks issued in connection with the program. [1995 c 20 § 6.]

70.149.070 Heating oil pollution liability trust account. (Expires June 1, 2001.) (1) The heating oil pollution liability trust account is created in the custody of the state treasurer. All receipts from the pollution liability insurance fee collected under RCW 70.149.080 and reinsurance premiums shall be deposited into the account. Expenditures from the account may be used only for the purposes set out under this chapter. Only the director or the director's designee may authorize expenditures from the account. The

account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Any residue in the account shall be transferred at the end of the biennium to the *pollution liability insurance agency trust account.

(2) Money in the account may be used by the director for the following purposes:

- (a) Corrective action costs;
- (b) Third-party liability claims;
- (c) Costs associated with claims administration;
- (d) Purchase of an insurance policy to cover all registered heating oil tanks, and reinsurance of the policy; and
- (e) Administrative expenses of the program, including personnel, equipment, and supplies. [1995 c 20 § 7.]

***Reviser's note:** The reference to "pollution liability insurance agency trust account" apparently should be to the "pollution liability insurance program trust account" established in RCW 70.148.020.

70.149.080 Pollution liability insurance fee. (Expires June 1, 2001.) (1) A pollution liability insurance fee of six-tenths of one cent per gallon of heating oil purchased within the state shall be imposed on every special fuel dealer, as the term is defined in chapter 82.38 RCW, making sales of heating oil to a user or consumer.

(2) The pollution liability insurance fee shall be remitted by the special fuel dealer to the department of licensing with payment of the special fuel dealer tax.

(3) The fee proceeds shall be used for the specific regulatory purposes of this chapter.

(4) The fee imposed by this section shall not apply to heating oil exported or sold for export from the state. [1995 c 20 § 8.]

70.149.090 Certain information confidential and exempt from chapter 42.17 RCW—Exceptions. (Expires June 1, 2001.) The following shall be confidential and exempt under chapter 42.17 RCW, subject to the conditions set forth in this section:

(1) All examination and proprietary reports and information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected by the director may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) All information obtained by the director or the director's staff related to registration of heating oil tanks to be insured may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(3) The director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

- (a) The Washington state insurance commissioner;
- (b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and
- (c) The attorney general in his or her role as legal advisor to the director. [1995 c 20 § 9.]

70.149.100 Application of RCW 19.86.020 through 19.86.060. (*Expires June 1, 2001.*) Nothing contained in this chapter shall authorize any commercial conduct which is prohibited by RCW 19.86.020 through 19.86.060, and no section of this chapter shall be deemed to be an implied repeal of any of those sections of the Revised Code of Washington. [1995 c 20 § 10.]

70.149.110 Reports to the legislature. (*Expires June 1, 2001.*) The director shall report by December 31 of each year to the legislature on the status of the regulatory program under this chapter. [1995 c 20 § 11.]

70.149.900 Expiration of chapter. Sections 1 through 11 of this act shall expire June 1, 2001. [1995 c 20 § 14.]

70.149.901 Severability—1995 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. [1995 c 20 § 16.]

Chapter 70.160

WASHINGTON CLEAN INDOOR AIR ACT

Sections

70.160.060 Intent of chapter as applied to certain private workplaces.

70.160.060 Intent of chapter as applied to certain private workplaces. This chapter is not intended to regulate smoking in a private enclosed workplace, within a public place, even though such workplace may be visited by nonsmokers, excepting places in which smoking is prohibited by the chief of the Washington state patrol, through the director of fire protection, or by other law, ordinance, or regulation. [1995 c 369 § 60; 1986 c 266 § 121; 1985 c 236 § 6.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Chapter 70.164

LOW-INCOME RESIDENTIAL WEATHERIZATION PROGRAM

Sections

70.164.020 Definitions.

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

(1) "Department" means the department of community, trade, and economic development.

(2) "Energy assessment" means an analysis of a dwelling unit to determine the need for cost-effective energy conservation measures as determined by the department.

(3) "Household" means an individual or group of individuals living in a dwelling unit as defined by the department.

(4) "Low income" means household income that is at or below one hundred twenty-five percent of the federally established poverty level.

(5) "Nonutility sponsor" means any sponsor other than a public service company, municipality, public utility district, mutual or cooperative, furnishing gas or electricity used to heat low-income residences.

(6) "Residence" means a dwelling unit as defined by the department.

(7) "Sponsor" means any entity that submits a proposal under RCW 70.164.040, including but not limited to any local community action agency, community service agency, or any other participating agency or any public service company, municipality, public utility district, mutual or cooperative, or any combination of such entities that jointly submits a proposal.

(8) "Sponsor match" means the share, if any, of the cost of weatherization to be paid by the sponsor.

(9) "Weatherization" means materials or measures, and their installation, that are used to improve the thermal efficiency of a residence.

(10) "Weatherizing agency" means any approved department grantee or any public service company, municipality, public utility district, mutual or cooperative, or other entity that bears the responsibility for ensuring the performance of weatherization of residences under this chapter and has been approved by the department. [1995 c 399 § 199; 1987 c 36 § 2.]

Chapter 70.170

HEALTH DATA AND CHARITY CARE

Sections

70.170.020	Definitions.
70.170.030	Repealed.
70.170.040	Repealed.
70.170.100	through 70.170.140 Repealed.

70.170.020 Definitions. As used in this chapter:

(1) "Department" means department of health.

(2) "Hospital" means any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW.

(3) "Secretary" means secretary of health.

(4) "Charity care" means necessary hospital health care rendered to indigent persons, to the extent that the persons are unable to pay for the care or to pay deductibles or co-insurance amounts required by a third-party payer, as determined by the department.

(5) "Sliding fee schedule" means a hospital-determined, publicly available schedule of discounts to charges for persons deemed eligible for charity care; such schedules shall be established after consideration of guidelines developed by the department.

(6) "Special studies" means studies which have not been funded through the department's biennial or other legislative appropriations. [1995 c 269 § 2203; 1989 1st ex.s. c 9 § 502.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.170.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.170.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.170.100 through 70.170.140 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 70.190 FAMILY POLICY COUNCIL

Sections

70.190.010 Definitions.

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

(1) "Comprehensive plan" means a two-year plan that examines available resources and unmet needs for a county or multicounty area, barriers that limit the effective use of resources, and a plan to address these issues that is broadly supported.

(2) "Participating state agencies" means the office of the superintendent of public instruction, the department of social and health services, the department of health, the employment security department, the department of community, trade, and economic development, and such other departments as may be specifically designated by the governor.

(3) "Family policy council" or "council" means the superintendent of public instruction, the secretary of social and health services, the secretary of health, the commissioner of the employment security department, and the director of the department of community, trade, and economic development or their designees, one legislator from each caucus of the senate and house of representatives, and one representative of the governor.

(4) "Outcome based" means defined and measurable outcomes and indicators that make it possible for communities to evaluate progress in meeting their goals and whether systems are fulfilling their responsibilities.

(5) "Matching funds" means an amount no less than twenty-five percent of the amount budgeted for a consortium's project. Up to half of the consortium's matching funds may be in-kind goods and services. Funding sources allowable for match include appropriate federal or local levy funds, private charitable funding, and other charitable giving. Basic education funds shall not be used as a match.

(6) "Consortium" means a diverse group of individuals that includes at least representatives of local service providers, service recipients, local government administering or funding children or family service programs, participating state agencies, school districts, existing children's commissions, ethnic and racial minority populations, and other interested persons organized for the purpose of designing and

providing collaborative and coordinated services under this chapter. Consortiums shall represent a county, multicounty, or municipal service area. In addition, consortiums may represent Indian tribes applying either individually or collectively. [1995 c 399 § 200; 1992 c 198 § 3.]

Title 71 MENTAL ILLNESS

Chapters

71.09 Sexually violent predators.
71.12 Private establishments.
71.24 Community mental health services act.
71.34 Mental health services for minors.

Chapter 71.09

SEXUALLY VIOLENT PREDATORS

Sections

71.09.020 Definitions.
 71.09.025 Notice to prosecuting attorney prior to release.
 71.09.030 Sexually violent predator petition—Filing.
 71.09.040 Sexually violent predator petition—Probable cause hearing—Judicial determination—Transfer for evaluation.
 71.09.050 Trial—Rights of parties.
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 71.09.092 Conditional release to less restrictive alternative—Findings.
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 71.09.098 Conditional release to less restrictive alternative—Hearing on revocation or modification—Authority to apprehend conditionally released person.
 71.09.100 Repealed.
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 71.09.130 Notice of escape or disappearance.
 71.09.140 Notice of conditional release or unconditional discharge—Notice of escape and recapture.
 71.09.200 Escorted leave—Definitions.
 71.09.210 Escorted leave—Conditions.
 71.09.220 Escorted leave—Notice.
 71.09.230 Escorted leave—Rules.

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

(1) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(2) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(3) "Likely to engage in predatory acts of sexual violence" means that the person more probably than not will engage in such acts. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(4) "Predatory" means acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization.

(5) "Recent overt act" means any act that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm.

(6) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to chapter 71.09 RCW, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

(7) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement.

(8) "Secretary" means the secretary of social and health services or his or her designee. [1995 c 216 § 1; 1992 c 145 § 17; 1990 1st ex.s. c 12 § 2; 1990 c 3 § 1002.]

Effective date—1990 1st ex.s. c 12: See note following RCW 13.40.020.

71.09.025 Notice to prosecuting attorney prior to release. (1)(a) When it appears that a person may meet the criteria of a sexually violent predator as defined in RCW 71.09.020(1), the agency with jurisdiction shall refer the person in writing to the prosecuting attorney of the county where that person was charged, three months prior to:

(i) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense;

(ii) The anticipated release from total confinement of a person found to have committed a sexually violent offense as a juvenile;

(iii) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to RCW 10.77.090(3); or

(iv) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to RCW 10.77.020(3).

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(b) The agency shall provide the prosecutor with all relevant information including but not limited to the following information:

(i) A complete copy of the institutional records compiled by the department of corrections relating to the person, and any such out-of-state department of corrections' records, if available;

(ii) A complete copy, if applicable, of any file compiled by the indeterminate sentence review board relating to the person;

(iii) All records relating to the psychological or psychiatric evaluation and/or treatment of the person;

(iv) A current record of all prior arrests and convictions, and full police case reports relating to those arrests and convictions; and

(v) A current mental health evaluation or mental health records review.

(2) This section applies to acts committed before, on, or after March 26, 1992.

(3) The agency, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(4) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services. [1995 c 216 § 2; 1992 c 45 § 3.]

Severability—Application—1992 c 45: See notes following RCW 9.94A.151.

71.09.030 Sexually violent predator petition—Filing.

When it appears that: (1) A person who at any time previously has been convicted of a sexually violent offense is about to be released from total confinement on, before, or after July 1, 1990; (2) a person found to have committed a sexually violent offense as a juvenile is about to be released from total confinement on, before, or after July 1, 1990; (3) a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial is about to be released, or has been released on, before, or after July 1, 1990, pursuant to RCW 10.77.090(3); (4) a person who has been found not guilty by reason of insanity of a sexually violent offense is about to be released, or has been released on, before, or after July 1, 1990, pursuant to RCW 10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or (5) a person who at any time previously has been convicted of a sexually violent offense and has since been released from total confinement and has committed a recent overt act; and it appears that the person may be a sexually violent predator, the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney may file a petition alleging that the person is a "sexually violent predator" and stating sufficient facts to support such allegation. [1995 c 216 § 3; 1992 c 45 § 4; 1990 1st ex.s. c 12 § 3; 1990 c 3 § 1003.]

Severability—Application—1992 c 45: See notes following RCW 9.94A.151.

Effective date—1990 1st ex.s. c 12: See note following RCW 13.40.020.

71.09.040 Sexually violent predator petition—Probable cause hearing—Judicial determination—Transfer for evaluation. (1) Upon the filing of a petition under RCW 71.09.030, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made the judge shall direct that the person be taken into custody.

(2) Within seventy-two hours after a person is taken into custody pursuant to subsection (1) of this section, the court shall provide the person with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the person is a sexually violent predator. At this hearing, the court shall (a) verify the person's identity, and (b) determine whether probable cause exists to believe that the person is a sexually violent predator. At the probable cause hearing, the state may rely upon the petition and certification for determination of probable cause filed pursuant to RCW 71.09.030. The state may supplement this with additional documentary evidence or live testimony.

(3) At the probable cause hearing, the person shall have the following rights in addition to the rights previously specified: (a) To be represented by counsel; (b) to present evidence on his or her behalf; (c) to cross-examine witnesses who testify against him or her; (d) to view and copy all petitions and reports in the court file.

(4) If the probable cause determination is made, the judge shall direct that the person be transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of social and health services. In adopting such rules, the department of social and health services shall consult with the department of health and the department of corrections. In no event shall the person be released from confinement prior to trial. [1995 c 216 § 4; 1990 c 3 § 1004.]

71.09.050 Trial—Rights of parties. (1) Within forty-five days after the completion of any hearing held pursuant to RCW 71.09.040, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings under this chapter, any person subject to this chapter shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist him or her. The person shall be confined in a secure facility for the duration of the trial.

(2) Whenever any person is subjected to an examination under this chapter, he or she may retain experts or professional persons to perform an examination on their behalf. When the person wishes to be examined by a qualified expert or professional person of his or her own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon

the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

(3) The person, the prosecuting attorney or attorney general, or the judge shall have the right to demand that the trial be before a twelve-person jury. If no demand is made, the trial shall be before the court. [1995 c 216 § 5; 1990 c 3 § 1005.]

71.09.060 Trial—Determination—Commitment procedures. (1) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. When the determination is made by a jury, the verdict must be unanimous.

If, on the date that the petition is filed, the person was living in the community after release from custody, the state must also prove beyond a reasonable doubt that the person had committed a recent overt act. If the state alleges that the prior sexually violent offense that forms the basis for the petition for commitment was an act that was sexually motivated as provided in RCW 71.09.020(6)(c), the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated as defined in RCW 9.94A.030. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of social and health services for placement in a secure facility operated by the department of social and health services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe either (a) to be at large, or (b) to be released to a less restrictive alternative as set forth in RCW 71.09.092. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

(2) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to or has been released pursuant to RCW 10.77.090(3), and his or her commitment is sought pursuant to subsection (1) of this section, the court shall first hear evidence and determine whether the person did commit the act or acts charged if the court did not enter a finding prior to dismissal under RCW 10.77.090(3) that the person committed the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his or her own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, it shall enter a final order, appealable by the person,

on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

(3) The state shall comply with RCW 10.77.220 while confining the person pursuant to this chapter, except that during all court proceedings the person shall be detained in a secure facility. The facility shall not be located on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population. [1995 c 216 § 6; 1990 1st ex.s. c 12 § 4; 1990 c 3 § 1006.]

Effective date—1990 1st ex.s. c 12: See note following RCW 13.40.020.

71.09.070 Annual examinations of persons committed under chapter. Each person committed under this chapter shall have a current examination of his or her mental condition made at least once every year. The annual report shall include consideration of whether conditional release to a less restrictive alternative is in the best interest of the person and will adequately protect the community. The person may retain, or if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her, and such expert or professional person shall have access to all records concerning the person. The periodic report shall be provided to the court that committed the person under this chapter. [1995 c 216 § 7; 1990 c 3 § 1007.]

71.09.080 Rights of persons committed under this chapter. (1) Any person subjected to restricted liberty as a sexually violent predator pursuant to this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter.

(2) Any person committed pursuant to this chapter has the right to adequate care and individualized treatment. The department of social and health services shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations made pursuant to this chapter. All such records and reports shall be made available upon request only to: The committed person, his or her attorney, the prosecuting attorney, the court, the protection and advocacy agency, or another expert or professional person who, upon proper showing, demonstrates a need for access to such records.

(3) At the time a person is taken into custody or transferred into a facility pursuant to a petition under this chapter, the professional person in charge of such facility or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the persons detained or transferred. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this subsection, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without consent of the patient or order of the court.

(4) Nothing in this chapter prohibits a person presently committed from exercising a right presently available to him or her for the purpose of obtaining release from confinement, including the right to petition for a writ of habeas corpus.

(5) No indigent person may be conditionally released or unconditionally discharged under this chapter without suitable clothing, and the secretary shall furnish the person with such sum of money as is required by RCW 72.02.100 for persons without ample funds who are released from correctional institutions. As funds are available, the secretary may provide payment to the indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules to do so. [1995 c 216 § 8; 1990 c 3 § 1008.]

71.09.090 Petition for conditional release to less restrictive alternative or unconditional discharge—Procedures. (1) If the secretary determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to engage in predatory acts of sexual violence if conditionally released to a less restrictive alternative or unconditionally discharged, the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative or unconditional discharge. The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall within forty-five days order a hearing. The prosecuting attorney or the attorney general, if requested by the county, shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of his or her choice. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney or attorney general. The burden of proof shall be upon the prosecuting attorney or attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if conditionally released to a less restrictive alternative or unconditionally discharged is likely to engage in predatory acts of sexual violence.

(2) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for conditional release to a less restrictive alternative or unconditional discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she is safe to be conditionally released to a less restrictive alternative or unconditionally discharged. The committed person shall have a right to have an attorney represent him or her at the show cause hearing but the person is not entitled to be present at the show cause hearing. If the court at the show

cause hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is not likely to engage in predatory acts of sexual violence if conditionally released to a less restrictive alternative or unconditionally discharged, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting attorney or the attorney general if requested by the county shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is likely to engage in predatory acts of sexual violence if conditionally released to a less restrictive alternative or unconditionally discharged.

(3) The jurisdiction of the court over a person civilly committed pursuant to this chapter continues until such time as the person is unconditionally discharged. [1995 c 216 § 9; 1992 c 45 § 7; 1990 c 3 § 1009.]

Severability—Application—1992 c 45: See notes following RCW 9.94A.151.

71.09.092 Conditional release to less restrictive alternative—Findings. Before the court may enter an order directing conditional release to a less restrictive alternative, it must find the following: (1) The person will be treated by a treatment provider who is qualified to provide such treatment in the state of Washington under chapter 18.155 RCW; (2) the treatment provider has presented a specific course of treatment and has agreed to assume responsibility for such treatment and will report progress to the court on a regular basis, and will report violations immediately to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center; (3) housing exists that is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center if the person leaves the housing to which he or she has been assigned without authorization; (4) the person is willing to comply with the treatment provider and all requirements imposed by the treatment provider and by the court; and (5) the person is willing to comply with supervision requirements imposed by the department of corrections. [1995 c 216 § 10.]

71.09.094 Conditional release to less restrictive alternative—Verdict. (1) Upon the conclusion of the evidence in a hearing held pursuant to RCW 71.09.090, if the court finds that there is no legally sufficient evidentiary basis for a reasonable jury to find that the conditions set

forth in RCW 71.09.092 have been met, the court shall grant a motion by the state for a judgment as a matter of law on the issue of conditional release to a less restrictive alternative.

(2) Whenever the issue of conditional release to a less restrictive alternative is submitted to the jury, the court shall instruct the jury to return a verdict in substantially the following form: Has the state proved beyond a reasonable doubt that the proposed less restrictive alternative is not in the best interests of respondent or will not adequately protect the community? Answer: Yes or No. [1995 c 216 § 11.]

71.09.096 Conditional release to less restrictive environment—Judgment—Conditions—Annual review.

(1) If the court or jury determines that conditional release to a less restrictive alternative is in the best interest of the person and will adequately protect the community, and the court determines that the minimum conditions set forth in *section 9 of this act are met, the court shall enter judgment and direct a conditional release.

(2) The court shall impose any additional conditions necessary to ensure compliance with treatment and to protect the community. If the court finds that conditions do not exist that will both ensure the person's compliance with treatment and protect the community, then the person shall be remanded to the custody of the department of social and health services for control, care, and treatment in a secure facility as designated in RCW 71.09.060(1).

(3) If the service provider designated to provide inpatient or outpatient treatment or to monitor or supervise any other terms and conditions of a person's placement in a less restrictive alternative is other than the department of social and health services or the department of corrections, then the service provider so designated must agree in writing to provide such treatment.

(4) Prior to authorizing any release to a less restrictive alternative, the court shall impose such conditions upon the person as are necessary to ensure the safety of the community. The court shall order the department of corrections to investigate the less restrictive alternative and recommend any additional conditions to the court. These conditions shall include, but are not limited to the following: Specification of residence, prohibition of contact with potential or past victims, prohibition of alcohol and other drug use, participation in a specific course of inpatient or outpatient treatment that may include monitoring by the use of polygraph and plethysmograph, supervision by a department of corrections community corrections officer, a requirement that the person remain within the state unless the person receives prior authorization by the court, and any other conditions that the court determines are in the best interest of the person or others. A copy of the conditions of release shall be given to the person and to any designated service providers.

(5) Any service provider designated to provide inpatient or outpatient treatment shall monthly, or as otherwise directed by the court, submit to the court, to the department of social and health services facility from which the person was released, to the prosecutor of the county in which the person was found to be a sexually violent predator, and to the supervising community corrections officer, a report stating whether the person is complying with the terms and

conditions of the conditional release to a less restrictive alternative.

(6) Each person released to a less restrictive alternative shall have his or her case reviewed by the court that released him or her no later than one year after such release and annually thereafter until the person is unconditionally discharged. Review may occur in a shorter time or more frequently, if the court, in its discretion on its own motion, or on motion of the person, the secretary, or the prosecuting attorney so determines. The sole question to be determined by the court is whether the person shall continue to be conditionally released to a less restrictive alternative. The court in making its determination shall be aided by the periodic reports filed pursuant to subsection (5) of this section and the opinions of the secretary and other experts or professional persons. [1995 c 216 § 12.]

***Reviser's note:** The reference to "section 9 of this act" literally translates to the 1995 c 216 amendments to RCW 71.09.090, which appears to be an erroneous reference. Reference to RCW 71.09.092, "section 10 of this act," was apparently intended.

71.09.098 Conditional release to less restrictive alternative—Hearing on revocation or modification—Authority to apprehend conditionally released person.

(1) Any service provider submitting reports pursuant to RCW 71.09.096(5), the supervising community corrections officer, the prosecuting attorney, or the attorney general may petition the court, or the court on its own motion may schedule an immediate hearing, for the purpose of revoking or modifying the terms of the person's conditional release to a less restrictive alternative if the petitioner or the court believes the released person is not complying with the terms and conditions of his or her release or is in need of additional care and treatment.

(2) If the prosecuting attorney, the supervising community corrections officer, or the court, based upon information received by them, reasonably believes that a conditionally released person is not complying with the terms and conditions of his or her conditional release to a less restrictive alternative, the court or community corrections officer may order that the conditionally released person be apprehended and taken into custody until such time as a hearing can be scheduled to determine the facts and whether or not the person's conditional release should be revoked or modified. The court shall be notified before the close of the next judicial day of the person's apprehension. Both the prosecuting attorney and the conditionally released person shall have the right to request an immediate mental examination of the conditionally released person. If the conditionally released person is indigent, the court shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination.

(3) The court, upon receiving notification of the person's apprehension, shall promptly schedule a hearing. The issue to be determined is whether the state has proven by a preponderance of the evidence that the conditionally released person did not comply with the terms and conditions of his or her release. Hearsay evidence is admissible if the court finds it otherwise reliable. At the hearing, the court shall determine whether the person shall continue to be conditionally released on the same or modified conditions or whether his or her conditional release shall be revoked and

he or she shall be committed to total confinement, subject to release only in accordance with provisions of this chapter. [1995 c 216 § 13.]

71.09.100 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

71.09.110 Department of social and health services—Duties—Reimbursement. The department of social and health services shall be responsible for all costs relating to the evaluation and treatment of persons committed to their custody whether in a secure facility or under a less restrictive alternative under any provision of this chapter. Reimbursement may be obtained by the department for the cost of care and treatment of persons committed to its custody whether in a secure facility or under a less restrictive alternative pursuant to RCW 43.20B.330 through 43.20B.370. [1995 c 216 § 14; 1990 c 3 § 1011.]

71.09.130 Notice of escape or disappearance. In the event of an escape by a person committed under this chapter from a state institution or the disappearance of such a person while on conditional release, the superintendent or community corrections officer shall notify the following as appropriate: Local law enforcement officers, other governmental agencies, the person's relatives, and any other appropriate persons about information necessary for the public safety or to assist in the apprehension of the person. [1995 c 216 § 16.]

71.09.140 Notice of conditional release or unconditional discharge—Notice of escape and recapture. (1) At the earliest possible date, and in no event later than thirty days before conditional release or unconditional discharge, except in the event of escape, the department of social and health services shall send written notice of conditional release, unconditional discharge, or escape, to the following:

(a) The chief of police of the city, if any, in which the person will reside or in which placement will be made under a less restrictive alternative;

(b) The sheriff of the county in which the person will reside or in which placement will be made under a less restrictive alternative; and

(c) The sheriff of the county where the person was last convicted of a sexually violent offense, if the department does not know where the person will reside.

The department shall notify the state patrol of the release of all sexually violent predators and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific person found to be a sexually violent predator under this chapter:

(a) The victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. "Next of kin" as used in this section means a person's spouse, parents, siblings, and children;

(b) Any witnesses who testified against the person in his or her commitment trial under RCW 71.09.060; and

(c) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the committed person.

(3) If a person committed as a sexually violent predator under this chapter escapes from a department of social and health services facility, the department shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the committed person resided immediately before his or her commitment as a sexually violent predator, or immediately before his or her incarceration for his or her most recent offense. If previously requested, the department shall also notify the witnesses and the victims of the sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. If the person is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(4) If the victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(5) The department of social and health services shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(6) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section. [1995 c 216 § 17.]

71.09.200 Escorted leave—Definitions. For purposes of RCW 71.09.210 through 71.09.230:

(1) "Escorted leave" means a leave of absence from a facility housing persons detained or committed pursuant to this chapter under the continuous supervision of an escort.

(2) "Escort" means a correctional officer or other person approved by the superintendent or the superintendent's designee to accompany a resident on a leave of absence and be in visual or auditory contact with the resident at all times.

(3) "Resident" means a person detained or committed pursuant to this chapter. [1995 c 216 § 18.]

71.09.210 Escorted leave—Conditions. The superintendent of any facility housing persons detained or committed pursuant to this chapter may, subject to the approval of the secretary, grant escorted leaves of absence to residents confined in such institutions to:

(1) Go to the bedside of the resident's wife, husband, child, mother or father, or other member of the resident's immediate family who is seriously ill;

(2) Attend the funeral of a member of the resident's immediate family listed in subsection (1) of this section; and

(3) Receive necessary medical or dental care which is not available in the institution. [1995 c 216 § 19.]

71.09.220 Escorted leave—Notice. A resident shall not be allowed to start a leave of absence under RCW 71.09.210 until the secretary, or the secretary's designee, has notified any county and city law enforcement agency having jurisdiction in the area of the resident's destination. [1995 c 216 § 20.]

71.09.230 Escorted leave—Rules. (1) The secretary is authorized to adopt rules providing for the conditions under which residents will be granted leaves of absence and providing for safeguards to prevent escapes while on leaves of absence. Leaves of absence granted to residents under RCW 71.09.210, however, shall not allow or permit any resident to go beyond the boundaries of this state.

(2) The secretary shall adopt rules requiring reimbursement of the state from the resident granted leave of absence, or the resident's family, for the actual costs incurred arising from any leave of absence granted under the authority of RCW 71.09.210 (1) and (2). No state funds shall be expended in connection with leaves of absence granted under RCW 71.09.210 (1) and (2) unless the resident and the resident's immediate family are indigent and without resources sufficient to reimburse the state for the expenses of such leaves of absence. [1995 c 216 § 21.]

Chapter 71.12

PRIVATE ESTABLISHMENTS

Sections

71.12.485 Fire protection—Duties of chief of the Washington state patrol.

71.12.485 Fire protection—Duties of chief of the Washington state patrol. Standards for fire protection and the enforcement thereof, with respect to all establishments to be licensed hereunder, shall be the responsibility of the chief of the Washington state patrol, through the director of fire protection, who shall adopt such recognized standards as may be applicable to such establishments for the protection of life against the cause and spread of fire and fire hazards. The department of health, upon receipt of an application for a license, or renewal of a license, shall submit to the chief of the Washington state patrol, 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 chief of the Washington state patrol, through the director of fire protection, or his or her deputy shall make an inspection of the establishment 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 chief of the Washington state patrol, through the director of fire protection, he or she shall promptly make a written report to the establishment and the department of health 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 of health,

applicant or licensee shall notify the chief of the Washington state patrol, through the director of fire protection, upon completion of any requirements made by him or her, and the director of fire protection or his or her deputy shall make a reinspection of such premises. Whenever the establishment to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall submit to the department of health a written report approving same with respect to fire protection before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made inspections of such establishments at least annually. The department of health shall not license or continue the license of any establishment unless and until it shall be approved by the chief of the Washington state patrol, through the director of fire protection, as herein provided.

In cities which have in force a comprehensive building code, the provisions of which are determined by the chief of the Washington state patrol, through the director of fire protection, to be equal to the minimum standards of the chief of the Washington state patrol, through the director of fire protection, for such establishments, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the chief of the Washington state patrol, 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. [1995 c 369 § 61; 1989 1st ex.s. c 9 § 228; 1986 c 266 § 122; 1979 c 141 § 135; 1959 c 224 § 1.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1986 c 266: See note following RCW 38.52.005.

Chapter 71.24

COMMUNITY MENTAL HEALTH SERVICES ACT

Sections

71.24.025	Definitions.
71.24.400	Streamlining delivery system—Finding.
71.24.405	Streamlining delivery system—Project outcome.
71.24.415	Streamlining delivery system—Department duties to achieve outcomes.

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

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020(2) or, in the case of a child, as defined in RCW 71.34.020(12);

(b) Being gravely disabled as defined in RCW 71.05.020(1) or, in the case of a child, as defined in RCW 71.34.020(8); or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020(3) or, in the case of a child, as defined in RCW 71.34.020(11).

(2) "Available resources" means those funds which shall be appropriated under this chapter by the legislature during any biennium for the purpose of providing community mental health programs under RCW 71.24.045. When

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regional support networks are established or after July 1, 1995, "available resources" means federal funds, except those provided according to Title XIX of the Social Security Act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals, except as negotiated according to RCW 71.24.300(1)(d).

(3) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW that meets state minimum standards or individuals licensed under chapter 18.57, 18.71, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

(4) "Child" means a person under the age of eighteen years.

(5) "Chronically mentally ill adult" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(6) "Severely emotionally disturbed child" means an infant or child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a mentally ill or inadequate caretaker;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

(7) "Community mental health service delivery system" means public or private agencies that provide services specifically to persons with mental disorders as defined

under RCW 71.05.020 and receive funding from various public sources including: (a) Federal medicare, medicaid, or early periodic screening, diagnostic, and treatment programs; or (b) state funds from the division of mental health, division of children and family services, division of alcohol and substance abuse, or division of vocational rehabilitation of the department of social and health services.

(8) "Community mental health program" means all mental health services established by a county authority. After July 1, 1995, or when the regional support networks are established, "community mental health program" means all activities or programs using available resources.

(9) "Community support services" means services for acutely mentally ill persons, chronically mentally ill adults, and severely emotionally disturbed children and includes: (a) Discharge planning for clients leaving state mental hospitals, other acute care inpatient facilities, inpatient psychiatric facilities for persons under twenty-one years of age, and other children's mental health residential treatment facilities; (b) sufficient contacts with clients, families, schools, or significant others to provide for an effective program of community maintenance; and (c) medication monitoring. After July 1, 1995, or when regional support networks are established, for adults and children "community support services" means services authorized, planned, and coordinated through resource management services including, at least, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for mentally ill persons being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for acutely mentally ill and severely emotionally disturbed children discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, other services determined by regional support networks, and maintenance of a patient tracking system for chronically mentally ill adults and severely emotionally disturbed children.

(10) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

(11) "Department" means the department of social and health services.

(12) "Mental health services" means community services pursuant to RCW 71.24.035(5)(b) and other services provided by the state for the mentally ill. When regional support networks are established, or after July 1, 1995, "mental health services" shall include all services provided by regional support networks.

(13) "Mentally ill persons" and "the mentally ill" mean persons and conditions defined in subsections (1), (5), (6), and (17) of this section.

(14) "Regional support network" means a county authority or group of county authorities recognized by the secretary that enter into joint operating agreements to contract with the secretary pursuant to this chapter.

(15) "Residential services" means a facility or distinct part thereof which provides food and shelter, and may include treatment services.

When regional support networks are established, or after July 1, 1995, for adults and children "residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for acutely mentally ill persons, chronically mentally ill adults, severely emotionally disturbed children, or seriously disturbed adults determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service mentally ill persons in nursing homes. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

(16) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for acutely mentally ill adults and children, chronically mentally ill adults, severely emotionally disturbed children, or seriously disturbed adults determined by the regional support network at their sole discretion to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of information regarding mentally ill adults' and children's enrollment in services and their individual service plan to county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

(17) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to oneself or others as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in RCW 71.05.020, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

(18) "Secretary" means the secretary of social and health services.

(19) "State minimum standards" means: (a) Minimum requirements for delivery of mental health services as established by departmental rules and necessary to implement this chapter, including but not limited to licensing service providers and services; (b) minimum service requirements for licensed service providers for the provision of mental health services as established by departmental rules pursuant to chapter 34.05 RCW as necessary to implement this chapter, including, but not limited to: Qualifications for staff providing services directly to mentally ill persons; the intended result of each service; and the rights and responsibilities of persons receiving mental health services pursuant to this chapter; (c) minimum requirements for residential services as established by the department in rule based on clients' functional abilities and not solely on their diagnoses, limited to health and safety, staff qualifications, and program outcomes. Minimum requirements for residential services are those developed in collaboration with consumers, families, counties, regulators, and residential providers serving the mentally ill. Minimum requirements encourage the development of broad-range residential programs, including integrated housing and cross-systems programs where appropriate, and do not unnecessarily restrict programming flexibility; and (d) minimum standards for community support services and resource management services, including at least qualifications for resource management services, client tracking systems, and the transfer of patient information between service providers.

(20) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any regional support network that would present a conflict of interest. [1995 c 96 § 4. Prior: 1994 sp.s. c 9 § 748; 1994 c 204 § 1; 1991 c 306 § 2; 1989 c 205 § 2; 1986 c 274 § 2; 1982 c 204 § 3.]

Effective date—1995 c 96: See note following RCW 71.21.400.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Conflict with federal requirements—1991 c 306: See note following RCW 71.24.015.

Effective date—1986 c 274 §§ 1, 2, 3, 5, 9: See note following RCW 71.24.015.

71.24.400 Streamlining delivery system—Finding. The legislature finds that the current complex set of federal, state, and local rules and regulations, audited and administered at multiple levels, which affect the community mental health service delivery system, focus primarily on the process of providing mental health services and do not sufficiently address consumer and system outcomes. To this extent, the legislature finds that the intent of RCW 71.24.015 related to reduced administrative layering, duplication, and reduced administrative costs need much more aggressive action. [1995 c 96 § 1; 1994 c 259 § 1.]

Effective date—1995 c 96: "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 immediately [April 18, 1995]." [1995 c 96 § 5.]

71.24.405 Streamlining delivery system—Project outcome. The department of social and health services shall establish a single comprehensive and collaborative project within regional support networks and with local mental health service providers aimed at creating innovative and streamlined community mental health service delivery systems, in order to carry out the purposes set forth in RCW 71.24.400 and to capture the diversity of the community mental health service delivery system.

The project must accomplish the following:

(1) Identification, review, and cataloging of all rules, regulations, duplicative administrative and monitoring functions, and other requirements that currently lead to inefficiencies in the community mental health service delivery system and, if possible, eliminate the requirements;

(2) The systematic and incremental development of a single system of accountability for all federal, state, and local funds provided to the community mental health service delivery system. Systematic efforts should be made to include federal and local funds into the single system of accountability;

(3) The elimination of process regulations and related contract and reporting requirements. In place of the regulations and requirements, a set of outcomes for mental health adult and children clients according to chapter 71.24 RCW must be used to measure the performance of mental health service providers and regional support networks. Such outcomes shall focus on stabilizing out-of-home and hospital care, increasing stable community living, increasing age-appropriate activities, achieving family and consumer satisfaction with services, and system efficiencies;

(4) Evaluation of the feasibility of contractual agreements between the department of social and health services and regional support networks and mental health service providers that link financial incentives to the success or failure of mental health service providers and regional support networks to meet outcomes established for mental health service clients;

(5) The involvement of mental health consumers and their representatives in the pilot projects. Mental health consumers and their representatives will be involved in the development of outcome standards for mental health clients and other related aspects of the pilot projects; and

(6) An independent evaluation component to measure the success of the projects. [1995 c 96 § 2; 1994 c 259 § 2.]

Effective date—1995 c 96: See note following RCW 71.21.400.

71.24.415 Streamlining delivery system—Department duties to achieve outcomes. To carry out the purposes specified in RCW 71.24.400, the department of social and health services is encouraged to utilize its authority to immediately eliminate any unnecessary rules, regulations, standards, or contracts, to immediately eliminate duplication of audits or any other unnecessarily duplicated functions, and to seek any waivers of federal or state rules or regulations necessary to achieve the purpose of streamlining the community mental health service delivery system and infusing it with incentives that reward efficiency, positive outcomes for clients, and quality services. [1995 c 96 § 3; 1994 c 259 § 4.]

Effective date—1995 c 96: See note following RCW 71.21.400.

Chapter 71.34

MENTAL HEALTH SERVICES FOR MINORS

Sections

- 71.34.025 Review of admission and treatment of minors—Medical assistance eligibility.
- 71.34.030 Outpatient, inpatient treatment of minors—Involuntary, voluntary admission—Procedures—Release, exception—Renewal of consent—Review of need for treatment—Discharge, exception.
- 71.34.035 Evaluation of treatment of minors.
- 71.34.050 Minor thirteen or older who presents likelihood of serious harm or is gravely disabled—Transport to inpatient facility—Petition for initial detention—Notice of commitment hearing—Facility to evaluate and admit or release minor.
- 71.34.070 Petition for fourteen-day commitment—Requirements.

71.34.025 Review of admission and treatment of minors—Medical assistance eligibility. (1) The admission of any child under RCW 71.34.030 may be reviewed by the county-designated mental health professional between fifteen and thirty days following admission. The county-designated mental health professional may undertake the review on his or her own initiative and may seek reimbursement from the parents, their insurance, or medicaid for the expense of the review.

(2) The department shall ensure a review is conducted no later than sixty days following admission to determine whether it is medically appropriate to continue the child's treatment on an inpatient basis. The department may, subject to available funds, contract with a county for the conduct of the review conducted under this subsection and may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

If the county-designated mental health professional determines that continued inpatient treatment of the child is no longer medically appropriate, the professional shall notify the facility, the child, the child's parents, and the department of the finding within twenty-four hours of the determination.

(3) For purposes of eligibility for medical assistance under chapter 74.09 RCW, children in inpatient mental health or chemical dependency treatment shall be considered to be part of their parent's or legal guardian's household, unless the child has been assessed by the department of social and health services or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the child's parents are found to not be exercising responsibility for care and control of the child. Payment for such care by the department of social and health services shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department. [1995 c 312 § 56.]

Short title—1995 c 312: See note following RCW 13.32A.010.

71.34.030 Outpatient, inpatient treatment of minors—Involuntary, voluntary admission—Procedures—Release, exception—Renewal of consent—Review of need for treatment—Discharge, exception. (1) Any minor thirteen years or older may request and receive outpatient treatment without the consent of the minor's

parent. Parental authorization is required for outpatient treatment of a minor under the age of thirteen.

(2) When in the judgment of the professional person in charge of an evaluation and treatment facility there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to an evaluation and treatment facility in accordance with the following requirements:

(a) A minor may be voluntarily admitted by application of the parent. The consent of the minor is not required for the minor to be evaluated and admitted as appropriate.

(b) A minor thirteen years or older may, with the concurrence of the professional person in charge of an evaluation and treatment facility, admit himself or herself without parental consent to the evaluation and treatment facility, provided that notice is given by the facility to the minor's parent in accordance with the following requirements:

(i) Notice of the minor's admission shall be in the form most likely to reach the parent within twenty-four hours of the minor's voluntary admission and shall advise the parent that the minor has been admitted to inpatient treatment; the location and telephone number of the facility providing such treatment; and the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for inpatient treatment with the parent.

(ii) The minor shall be released to the parent at the parent's request for release unless the facility files a petition with the superior court of the county in which treatment is being provided setting forth the basis for the facility's belief that the minor is in need of inpatient treatment and that release would constitute a threat to the minor's health or safety.

(iii) The petition shall be signed by the professional person in charge of the facility or that person's designee.

(iv) The parent may apply to the court for separate counsel to represent the parent if the parent cannot afford counsel.

(v) There shall be a hearing on the petition, which shall be held within three judicial days from the filing of the petition.

(vi) The hearing shall be conducted by a judge, court commissioner, or licensed attorney designated by the superior court as a hearing officer for such hearing. The hearing may be held at the treatment facility.

(vii) At such hearing, the facility must demonstrate by a preponderance of the evidence presented at the hearing that the minor is in need of inpatient treatment and that release would constitute a threat to the minor's health or safety. The hearing shall not be conducted using the rules of evidence, and the admission or exclusion of evidence sought to be presented shall be within the exercise of sound discretion by the judicial officer conducting the hearing.

(c) Written renewal of voluntary consent must be obtained from the applicant no less than once every twelve months.

(d) The minor's need for continued inpatient treatments shall be reviewed and documented no less than every one hundred eighty days.

(3) A notice of intent to leave shall result in the following:

(a) Any minor under the age of thirteen must be discharged immediately upon written request of the parent.

(b) Any minor thirteen years or older voluntarily admitted may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the minor can be discerned.

(c) The staff member receiving the notice shall date it immediately, record its existence in the minor's clinical record, and send copies of it to the minor's attorney, if any, the county-designated mental health professional, and the parent.

(d) The professional person in charge of the evaluation and treatment facility shall discharge the minor, thirteen years or older, from the facility within twenty-four hours after receipt of the minor's notice of intent to leave, unless the county-designated mental health professional or a parent or legal guardian files a petition or an application for initial detention within the time prescribed by this chapter.

(4) The ability of a parent to apply to a certified evaluation and treatment program for the involuntary admission of his or her minor child does not create a right to obtain or benefit from any funds or resources of the state. However, the state may provide services for indigent minors to the extent that funds are available therefor. [1995 c 312 § 52; 1985 c 354 § 3.]

Short title—1995 c 312: See note following RCW 13.32A.010.

71.34.035 Evaluation of treatment of minors. The department shall randomly select and review the information on children who are admitted to in-patient treatment on application of the child's parent. The review shall determine whether the children reviewed were appropriately admitted into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment. [1995 c 312 § 58.]

Short title—1995 c 312: See note following RCW 13.32A.010.

71.34.050 Minor thirteen or older who presents likelihood of serious harm or is gravely disabled—Transport to inpatient facility—Petition for initial detention—Notice of commitment hearing—Facility to evaluate and admit or release minor. (1) When a county-designated mental health professional receives information that a minor, thirteen years or older, as a result of a mental disorder presents a likelihood of serious harm or is gravely disabled, has investigated the specific facts alleged and of the credibility of the person or persons providing the information, and has determined that voluntary admission for inpatient treatment is not possible, the county-designated mental health professional may take the minor, or cause the minor to be taken, into custody and transported to an evaluation and treatment facility providing inpatient treatment.

If the minor is not taken into custody for evaluation and treatment, the parent who has custody of the minor may seek review of that decision made by the county designated

mental health professional in court. The parent shall file notice with the court and provide a copy of the county designated mental health professional's report or notes.

(2) Within twelve hours of the minor's arrival at the evaluation and treatment facility, the county-designated mental health professional shall serve on the minor a copy of the petition for initial detention, notice of initial detention, and statement of rights. The county-designated mental health professional shall file with the court on the next judicial day following the initial detention the original petition for initial detention, notice of initial detention, and statement of rights along with an affidavit of service. The county-designated mental health professional shall commence service of the petition for initial detention and notice of the initial detention on the minor's parent and the minor's attorney as soon as possible following the initial detention.

(3) At the time of initial detention, the county-designated mental health professional shall advise the minor both orally and in writing that if admitted to the evaluation and treatment facility for inpatient treatment, a commitment hearing shall be held within seventy-two hours of the minor's provisional acceptance to determine whether probable cause exists to commit the minor for further mental health treatment.

The minor shall be advised that he or she has a right to communicate immediately with an attorney and that he or she has a right to have an attorney appointed to represent him or her before and at the hearing if the minor is indigent.

(4) Whenever the county designated mental health professional petitions for detention of a minor under this chapter, an evaluation and treatment facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. Within twenty-four hours of the minor's arrival, the facility must evaluate the minor's condition and either admit or release the minor in accordance with this chapter.

(5) If a minor is not approved for admission by the inpatient evaluation and treatment facility, the facility shall make such recommendations and referrals for further care and treatment of the minor as necessary. [1995 c 312 § 53; 1985 c 354 § 5.]

Short title—1995 c 312: See note following RCW 13.32A.010.

71.34.070 Petition for fourteen-day commitment—Requirements. (1) The professional person in charge of an evaluation and treatment facility where a minor has been admitted involuntarily for the initial seventy-two hour treatment period under this chapter may petition to have a minor committed to an evaluation and treatment facility for fourteen-day diagnosis, evaluation, and treatment.

If the professional person in charge of the treatment and evaluation facility does not petition to have the minor committed, the parent who has custody of the minor may seek review of that decision in court. The parent shall file notice with the court and provide a copy of the treatment and evaluation facility's report.

(2) A petition for commitment of a minor under this section shall be filed with the superior court in the county where the minor is residing or being detained.

(a) A petition for a fourteen-day commitment shall be signed either by two physicians or by one physician and a

mental health professional who have examined the minor and shall contain the following:

- (i) The name and address of the petitioner;
- (ii) The name of the minor alleged to meet the criteria for fourteen-day commitment;
- (iii) The name, telephone number, and address if known of every person believed by the petitioner to be legally responsible for the minor;
- (iv) A statement that the petitioner has examined the minor and finds that the minor's condition meets required criteria for fourteen-day commitment and the supporting facts therefor;

(v) A statement that the minor has been advised of the need for voluntary treatment but has been unwilling or unable to consent to necessary treatment;

(vi) A statement recommending the appropriate facility or facilities to provide the necessary treatment; and

(vii) A statement concerning whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(b) A copy of the petition shall be personally delivered to the minor by the petitioner or petitioner's designee. A copy of the petition shall be sent to the minor's attorney and the minor's parent. [1995 c 312 § 54; 1985 c 354 § 7.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Title 71A

DEVELOPMENTAL DISABILITIES

Chapters

71A.10 General provisions.

Chapter 71A.10

GENERAL PROVISIONS

Sections

71A.10.011 Intent—1995 c 383.

71A.10.011 Intent—1995 c 383. The legislature recognizes that the emphasis of state developmental disability services is shifting from institutional-based care to community services in an effort to increase the personal and social independence and fulfillment of persons with developmental disabilities, consistent with state policy as expressed in RCW 71A.10.015. It is the intent of the legislature that financial savings achieved from program reductions and efficiencies within the developmental disabilities program shall be redirected within the program to provide public or private community-based services for eligible persons who would otherwise be unidentified or unserved. [1995 c 383 § 1.]

Title 72

STATE INSTITUTIONS

Chapters

72.09 Department of corrections.

72.10 Health care services—Department of corrections.

72.65 Work release program.

Chapter 72.09

DEPARTMENT OF CORRECTIONS (CORRECTIONS REFORM ACT OF 1981)

Sections

- 72.09.010 Legislative intent.
- 72.09.015 Definitions.
- 72.09.020 Repealed.
- 72.09.050 Powers and duties of secretary.
- 72.09.055 Affordable housing—Inventory of suitable property.
- 72.09.057 Fees for reproduction, shipment, and certification of documents and records.
- 72.09.095 Transfer of funds to department of labor and industries for crime victims' compensation.
- 72.09.100 Inmate work program—Classes of work programs—Participation—Benefits.
- 72.09.130 Incentive system for participation in education and work programs—Rules—Dissemination.
- 72.09.450 Limitation on denial of access to services and supplies—Recoupment of assessments.
- 72.09.460 Inmate participation in education and work programs—Legislative intent—Priorities—Rules—Department coordination and plans.
- 72.09.470 Inmate contributions for cost of privileges—Standards.
- 72.09.480 Inmate funds subject to deductions.
- 72.09.490 Policy on extended family visitation.
- 72.09.500 Prohibition on weight-lifting.
- 72.09.510 Limitation on purchasing recreational equipment and dietary supplements that increase muscle mass.
- 72.09.520 Limitation on purchase of televisions.
- 72.09.530 Prohibition on receipt or possession of contraband—Rules.
- 72.09.540 Inmate name change—Limitations on use—Penalty.
- 72.09.560 Camp for alien offenders—Implementation plan.
- 72.09.570 Joint committee on corrections cost-efficiencies oversight—Expiration of section.

72.09.010 Legislative intent. It is the intent of the legislature to establish a comprehensive system of corrections for convicted law violators within the state of Washington to accomplish the following objectives.

(1) The system should ensure the public safety. The system should be designed and managed to provide the maximum feasible safety for the persons and property of the general public, the staff, and the inmates.

(2) The system should punish the offender for violating the laws of the state of Washington. This punishment should generally be limited to the denial of liberty of the offender.

(3) The system should positively impact offenders by stressing personal responsibility and accountability and by discouraging recidivism.

(4) The system should treat all offenders fairly and equitably without regard to race, religion, sex, national origin, residence, or social condition.

(5) The system, as much as possible, should reflect the values of the community including:

(a) Avoiding idleness. Idleness is not only wasteful but destructive to the individual and to the community.

(b) Adoption of the work ethic. It is the community expectation that all individuals should work and through their efforts benefit both themselves and the community.

(c) Providing opportunities for self improvement. All individuals should have opportunities to grow and expand their skills and abilities so as to fulfill their role in the community.

(d) Linking the receipt or denial of privileges to responsible behavior and accomplishments. The individual who works to improve himself or herself and the community should be rewarded for these efforts. As a corollary, there should be no rewards for no effort.

(e) Sharing in the obligations of the community. All citizens, the public and inmates alike, have a personal and fiscal obligation in the corrections system. All communities must share in the responsibility of the corrections system.

(6) The system should provide for prudent management of resources. The avoidance of unnecessary or inefficient public expenditures on the part of offenders and the department is essential. Offenders must be accountable to the department, and the department to the public and the legislature. The human and fiscal resources of the community are limited. The management and use of these resources can be enhanced by wise investment, productive programs, the reduction of duplication and waste, and the joining together of all involved parties in a common endeavor. Since most offenders return to the community, it is wise for the state and the communities to make an investment in effective rehabilitation programs for offenders and the wise use of resources.

(7) The system should provide for restitution. Those who have damaged others, persons or property, have a responsibility to make restitution for these damages.

(8) The system should be accountable to the citizens of the state. In return, the individual citizens and local units of government must meet their responsibilities to make the corrections system effective.

(9) The system should meet those national standards which the state determines to be appropriate. [1995 1st sp.s. c 19 § 2; 1981 c 136 § 2.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.015 Definitions. The definitions in this section apply throughout this chapter.

(1) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders.

(2) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

(3) "County" means a county or combination of counties.

(4) "Department" means the department of corrections.

(5) "Earned early release" means earned early release as authorized by RCW 9.94A.150.

(6) "Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined.

(7) "Good conduct" means compliance with department rules and policies.

(8) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

(9) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, and a person legally married to an inmate. "Immediate family" does not include an inmate adopted by another inmate or the immediate family of the adopted or adopting inmate.

(10) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.

(11) "Inmate" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

(12) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of which are directly linked to an inmate's (a) good conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

(13) "Secretary" means the secretary of corrections or his or her designee.

(14) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

(15) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100. [1995 1st sp.s. c 19 § 3; 1987 c 312 § 2.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.020 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

72.09.050 Powers and duties of secretary. The secretary shall manage the department of corrections and shall be responsible for the administration of adult correctional programs, including but not limited to the operation of all state correctional institutions or facilities used for the confinement of convicted felons. In addition, the secretary shall have broad powers to enter into agreements with any federal agency, or any other state, or any Washington state agency or local government providing for the operation of any correctional facility or program for persons convicted of felonies or misdemeanors or for juvenile offenders. Such agreements for counties with local law and justice councils shall be required in the local law and justice plan pursuant to RCW 72.09.300. The agreements may provide for joint operation or operation by the department of corrections, alone, or by any of the other governmental entities, alone. The secretary may employ persons to aid in performing the functions and duties of the department. The secretary may delegate any of his or her functions or duties to department employees, including the authority to certify and maintain custody of records and documents on file with the depart-

ment. The secretary is authorized to promulgate standards for the department of corrections within appropriation levels authorized by the legislature.

Pursuant to the authority granted in chapter 34.05 RCW, the secretary shall adopt rules providing for inmate restitution when restitution is determined appropriate as a result of a disciplinary action. [1995 c 189 § 1; 1991 c 363 § 149; 1987 c 312 § 4; 1986 c 19 § 1; 1981 c 136 § 5.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

72.09.055 Affordable housing—Inventory of suitable property. (1) The department shall identify and catalog real property that is no longer required for department purposes and is suitable for the development of affordable housing for very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510. The inventory shall include the location, approximate size, and current zoning classification of the property. The department shall provide a copy of the inventory to the department of community, trade, and economic development by November 1, 1993, and every November 1 thereafter.

(2) By November 1 of each year, beginning in 1994, the department shall purge the inventory of real property of sites that are no longer available for the development of affordable housing. The department shall include an updated listing of real property that has become available since the last update. As used in this section, "real property" means buildings, land, or buildings and land. [1995 c 399 § 202; 1993 c 461 § 12.]

Finding—1993 c 461: See note following RCW 43.63A.510.

72.09.057 Fees for reproduction, shipment, and certification of documents and records. The department may charge reasonable fees for the reproduction, shipment, and certification of documents, records, and other materials in the files of the department. [1995 c 189 § 2.]

72.09.095 Transfer of funds to department of labor and industries for crime victims' compensation. Each year the department shall transfer twenty-five percent of the total annual revenues and receipts received in each institutional betterment fund subaccount to the department of labor and industries for the purpose of providing direct benefits to crime victims through the crime victims' compensation program as outlined in chapter 7.68 RCW. This transfer takes priority over any expenditure of betterment funds and shall be reflected on the monthly financial statements of each institution's betterment fund subaccount.

Any funds so transferred to the department of labor and industries shall be in addition to the crime victims' compensation amount provided in an omnibus appropriation bill. It is the intent of the legislature that the funds forecasted or transferred pursuant to this section shall not reduce the funding levels provided by appropriation. [1995 c 234 § 2.]

Finding—1995 c 234: "The legislature finds that the responsibility for criminal activity should fall squarely on the criminal. To the greatest extent possible society should not be expected to have to pay the price for crimes twice, once for the criminal activity and again by feeding, clothing, and housing the criminal. The corrections system should be the first place criminals are given the opportunity to be responsible for paying for their criminal act, not just through the loss of their personal freedom, but by

making financial contributions to alleviate the pain and suffering of victims of crime." [1995 c 234 § 1.]

72.09.100 Inmate work program—Classes of work programs—Participation—Benefits. It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) **CLASS I: FREE VENTURE INDUSTRIES.** The employer model industries in this class shall be operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers. The correctional industries board of directors shall review these proposed industries before the department contracts to provide such products or services. The review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community and labor market.

The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) **CLASS II: TAX REDUCTION INDUSTRIES.** Industries in this class shall be state-owned and operated enterprises designed to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations. The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit. The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to public agencies, to nonprofit organizations, and to private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization. Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons. Correctional industries products and

services shall be reviewed by the correctional industries board of directors before offering such products and services for sale to private contractors. The board of directors shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, byproducts and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus byproducts and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

Security and custody services shall be provided without charge by the department of corrections.

Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located and which is approved by the director of correctional industries.

Subject to approval of the correctional industries board, provisions of RCW 41.06.380 prohibiting contracting out work performed by classified employees shall not apply to contracts with Washington state businesses entered into by the department of corrections through class II industries.

(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES. Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

(a) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(b) Whenever possible, to provide forty hours of work or work training per week.

(c) Whenever possible, to offset tax and other public support costs.

Supervising, management, and custody staff shall be employees of the department.

All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) CLASS IV: COMMUNITY WORK INDUSTRIES. Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of correc-

tions. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

(5) CLASS V: COMMUNITY SERVICE PROGRAMS. Programs in this class shall be subject to supervision by the department of corrections. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community service order as ordered by the sentencing court.

Employment shall be in a community service program operated by the state, local units of government, or a nonprofit agency.

To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs. [1995 1st sp.s. c 19 § 33; 1994 c 224 § 1; 1992 c 123 § 1; 1990 c 22 § 1; 1989 c 185 § 7; 1986 c 193 § 2; 1985 c 151 § 1; 1983 c 255 § 5; 1981 c 136 § 11.]

Findings—Purpose—Short title—Severability—Effective date— 1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Severability—1983 c 255: See RCW 72.74.900.

Fish and game projects in prison work programs subject to RCW 72.09.100: RCW 72.63.020.

72.09.130 Incentive system for participation in education and work programs—Rules—Dissemination.

(1) The department shall adopt, by rule, a system that clearly links an inmate's behavior and participation in available education and work programs with the receipt or denial of earned early release days and other privileges. The system shall include increases or decreases in the degree of liberty granted the inmate within the programs operated by the department, access to or withholding of privileges available within correctional institutions, and recommended increases or decreases in the number of earned early release days that an inmate can earn for good conduct and good performance.

(2) Earned early release days shall be recommended by the department as a reward for accomplishment. The system shall be fair, measurable, and understandable to offenders, staff, and the public. At least once in each twelve-month period, the department shall inform the offender in writing as to his or her conduct and performance. This written evaluation shall include reasons for awarding or not awarding recommended earned early release days for good conduct and good performance. An inmate is not eligible to receive earned early release days during any time in which he or she refuses to participate in an available education or work program into which he or she has been placed under RCW 72.09.460.

(3) The department shall provide each offender in its custody a written description of the system created under this section. [1995 1st sp.s. c 19 § 6; 1981 c 136 § 17.]

Findings—Purpose—Short title—Severability—Effective date— 1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.450 Limitation on denial of access to services and supplies—Recoupment of assessments. (1) An inmate shall not be denied access to services or supplies required by state or federal law solely on the basis of his or her inability to pay for them.

(2) The department shall record all lawfully authorized assessments for services or supplies as a debt to the department and shall recoup the assessments when the inmate's institutional account exceeds the indigency standard. [1995 1st sp.s. c 19 § 4.]

Findings—Purpose—1995 1st sp.s. c 19: "The legislature finds the increasing number of inmates incarcerated in state correctional institutions, and the expenses associated with their incarceration, require expanded efforts to contain corrections costs. Cost containment requires improved planning and oversight, and increased accountability and responsibility on the part of inmates and the department.

The legislature further finds motivating inmates to participate in meaningful education and work programs in order to learn transferable skills and earn basic privileges is an effective and efficient way to meet the penological objectives of the corrections system.

The purpose of this act is to assure that the department fulfills its mission to reduce offender recidivism, to mirror the values of the community by clearly linking inmate behavior to receipt of privileges, and to prudently manage the resources it receives through tax dollars. This purpose is accomplished through the implementation of specific cost-control measures and creation of a planning and oversight process that will improve the department's effectiveness and efficiencies." [1995 1st sp.s. c 19 § 1.]

Short title—1995 1st sp.s. c 19: "This act shall be known as the department of corrections cost-efficiency and inmate responsibility omnibus act." [1995 1st sp.s. c 19 § 37.]

Severability—1995 1st sp.s. c 19: "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." [1995 1st sp.s. c 19 § 38.]

Effective date—1995 1st sp.s. c 19: "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 immediately [June 15, 1995]." [1995 1st sp.s. c 19 § 40.]

72.09.460 Inmate participation in education and work programs—Legislative intent—Priorities—Rules—Department coordination and plans. (1) The legislature intends that all inmates be required to participate in department-approved education programs, work programs, or both, unless exempted under subsection (3) of this section. Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges. The legislature recognizes more inmates may agree to participate in education and work programs than are available. The department must make every effort to achieve maximum public benefit by placing inmates in available and appropriate education and work programs.

(2) The department shall, to the extent possible and considering all available funds, prioritize its resources to meet the following goals for inmates in the order listed:

(a) Achievement of basic academic skills through obtaining a high school diploma or its equivalent and achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release;

(b) Additional work and education programs based on assessments and placements under subsection (4) of this section; and

(c) Other work and education programs as appropriate.

(3) The department shall establish, by rule, objective medical standards to determine when an inmate is physically or mentally unable to participate in available education or work programs. When the department determines an inmate is permanently unable to participate in any available education or work program due to a medical condition, the inmate is exempt from the requirement under subsection (1) of this section. When the department determines an inmate is temporarily unable to participate in an education or work program due to a medical condition, the inmate is exempt from the requirement of subsection (1) of this section for the period of time he or she is temporarily disabled. The department shall periodically review the medical condition of all temporarily disabled inmates to ensure the earliest possible entry or reentry by inmates into available programming.

(4) The department shall establish, by rule, standards for participation in department-approved education and work programs. The standards shall address the following areas:

(a) **Assessment.** The department shall assess all inmates for their basic academic skill levels using a professionally accepted method of scoring reading, math, and language skills as grade level equivalents. The department shall determine an inmate's education history, work history, and vocational or work skills. The initial assessment shall be conducted, whenever possible, within the first thirty days of an inmate's entry into the correctional system, except that initial assessments are not required for inmates who are sentenced to life without the possibility of release, assigned to an intensive management unit within the first thirty days after entry into the correctional system, are returning to the correctional system within one year of a prior release, or whose physical or mental condition renders them unable to complete the assessment process. The department shall track and record changes in the basic academic skill levels of all inmates reflected in any testing or assessment performed as part of their education programming;

(b) **Placement.** The department shall follow the policies set forth in subsection (1) of this section in establishing criteria for placing inmates in education and work programs. The department shall, to the extent possible, place all inmates whose composite grade level score for basic academic skills is below the eighth grade level in a combined education and work program. The placement criteria shall include at least the following factors:

(i) An inmate's release date and custody level, except an inmate shall not be precluded from participating in an education or work program solely on the basis of his or her release date;

(ii) An inmate's education history and basic academic skills;

(iii) An inmate's work history and vocational or work skills;

(iv) An inmate's economic circumstances, including but not limited to an inmate's family support obligations; and

(v) Where applicable, an inmate's prior performance in department-approved education or work programs;

(c) Performance and goals. The department shall establish, and periodically review, inmate behavior standards and program goals for all education and work programs. Inmates shall be notified of applicable behavior standards and program goals prior to placement in an education or work program and shall be removed from the education or work program if they consistently fail to meet the standards or goals;

(d) Financial responsibility. (i) The department shall establish a formula by which inmates, based on their ability to pay, shall pay all or a portion of the costs or tuition of certain programs. Inmates shall, based on the formula, pay a portion of the costs or tuition of participation in:

(A) Second and subsequent vocational programs associated with an inmate's work programs; and

(B) An associate of arts or baccalaureate degree program when placement in a degree program is the result of a placement made under this subsection;

(ii) Inmates shall pay all costs and tuition for participation in:

(A) Any postsecondary academic degree program which is entered independently of a placement decision made under this subsection; and

(B) Second and subsequent vocational programs not associated with an inmate's work program.

Enrollment in any program specified in (d)(ii) of this subsection shall only be allowed by correspondence or if there is an opening in an education or work program at the institution where an inmate is incarcerated and no other inmate who is placed in a program under this subsection will be displaced; and

(e) Notwithstanding any other provision in this section, an inmate sentenced to life without the possibility of release:

(i) Shall not be required to participate in education programming; and

(ii) May receive not more than one postsecondary academic degree in a program offered by the department or its contracted providers.

If an inmate sentenced to life without the possibility of release requires prevocational or vocational training for a work program, he or she may participate in the training subject to this section.

(5) The department shall coordinate education and work programs among its institutions, to the greatest extent possible, to facilitate continuity of programming among inmates transferred between institutions. Before transferring an inmate enrolled in a program, the department shall consider the effect the transfer will have on the inmate's ability to continue or complete a program. This subsection shall not be used to delay or prohibit a transfer necessary for legitimate safety or security concerns.

(6) Before construction of a new correctional institution or expansion of an existing correctional institution, the department shall adopt a plan demonstrating how cable, closed-circuit, and satellite television will be used for education and training purposes in the institution. The plan shall specify how the use of television in the education and training programs will improve inmates' preparedness for available work programs and job opportunities for which inmates may qualify upon release.

(7) The department shall adopt a plan to reduce the per-pupil cost of instruction by, among other methods, increasing

the use of volunteer instructors and implementing technological efficiencies. The plan shall be adopted by December 1996 and shall be transmitted to the legislature upon adoption. The department shall, in adoption of the plan, consider distance learning, satellite instruction, video tape usage, computer-aided instruction, and flexible scheduling of offender instruction.

(8) Following completion of the review required by section 27(3), chapter 19, Laws of 1995 1st sp. sess. the department shall take all necessary steps to assure the vocation and education programs are relevant to work programs and skills necessary to enhance the employability of inmates upon release. [1995 1st sp.s. c 19 § 5.]

Findings—Purpose—Short title—Severability—Effective date— 1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.470 Inmate contributions for cost of privileges—Standards. To the greatest extent practical, all inmates shall contribute to the cost of privileges. The department shall establish standards by which inmates shall contribute a portion of the department's capital costs of providing privileges, including television cable access, extended family visitation, weight lifting, and other recreational sports equipment and supplies. The standards shall also require inmates to contribute a significant portion of the department's operating costs directly associated with providing privileges, including staff and supplies. Inmate contributions may be in the form of individual user fees assessed against an inmate's institution account, deductions from an inmate's gross wages or gratuities, or inmates' collective contributions to the institutional welfare/betterment fund. The department shall make every effort to maximize individual inmate contributions to payment for privileges. The department shall not limit inmates' financial support for privileges to contributions from the institutional welfare/betterment fund. The standards shall consider the assets available to the inmates, the cost of administering compliance with the contribution requirements, and shall promote a responsible work ethic. [1995 1st sp.s. c 19 § 7.]

Findings—Purpose—Short title—Severability—Effective date— 1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.480 Inmate funds subject to deductions. When an inmate receives any funds in addition to his or her wages or gratuities, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW. [1995 1st sp.s. c 19 § 8.]

Findings—Purpose—Short title—Severability—Effective date— 1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.490 Policy on extended family visitation. (1) The department shall establish a uniform policy on the privilege of extended family visitation. Not fewer than sixty days before making any changes in any policy on extended family visitation, the department shall: (a) Notify the appropriate legislative committees of the proposed change; and (b) notify the committee created under RCW 72.09.570 of the proposed change. The department shall seek the advice of the committee established under RCW 72.09.570 and other appropriate committees on all proposed changes and shall, before the effective date of any change, offer the

committees an opportunity to provide input on proposed changes.

(2) In addition to its duties under chapter 34.05 RCW, the department shall provide the committee established under RCW 72.09.570 and other appropriate committees of the legislature a written copy of any proposed adoption, revision, or repeal of any rule relating to extended family visitation. Except for adoption, revision, or repeal of a rule on an emergency basis, the copy shall be provided not fewer than thirty days before any public hearing scheduled on the rule. [1995 1st sp.s. c 19 § 9.]

Findings—Purpose—Short title—Severability—Effective date—
1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.500 Prohibition on weight-lifting. An inmate found by the superintendent in the institution in which the inmate is incarcerated to have committed an aggravated assault against another person, under rules adopted by the department, is prohibited from participating in weight lifting for a period of two years from the date the finding is made. At the conclusion of the two-year period the superintendent shall review the inmate's infraction record to determine if additional weight-lifting prohibitions are appropriate. If, based on the review, it is determined by the superintendent that the inmate poses a threat to the safety of others or the order of the facility, or otherwise does not meet requirements for the weight-lifting privilege, the superintendent may impose an additional reasonable restriction period. [1995 1st sp.s. c 19 § 10.]

Findings—Purpose—Short title—Severability—Effective date—
1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.510 Limitation on purchasing recreational equipment and dietary supplements that increase muscle mass. Purchases of recreational equipment following June 15, 1995, shall be cost-effective and, to the extent possible, minimize an inmate's ability to substantially increase muscle mass. Dietary supplements made for the sole purpose of increasing muscle mass shall not be available for purchase by inmates unless prescribed by a physician for medical purposes or for inmates officially competing in department-sanctioned competitive weight lifting. [1995 1st sp.s. c 19 § 11.]

Findings—Purpose—Short title—Severability—Effective date—
1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.520 Limitation on purchase of televisions. No inmate may acquire or possess a television for personal use for at least sixty days following completion of his or her intake and evaluation process at the Washington Corrections Center or the Washington Corrections Center for Women. [1995 1st sp.s. c 19 § 12.]

Findings—Purpose—Short title—Severability—Effective date—
1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.530 Prohibition on receipt or possession of contraband—Rules. The secretary shall, in consultation with the attorney general, adopt by rule a uniform policy that prohibits receipt or possession of anything that is determined to be contraband. The rule shall provide consistent maximum protection of legitimate penological interests, including

prison security and order and deterrence of criminal activity. The rule shall protect the legitimate interests of the public and inmates in the exchange of ideas. The secretary shall establish a method of reviewing all incoming and outgoing material, consistent with constitutional constraints, for the purpose of confiscating anything determined to be contraband. The secretary shall consult regularly with the committee created under RCW 72.09.570 on the development of the policy and implementation of the rule. [1995 1st sp.s. c 19 § 13.]

Findings—Purpose—Short title—Severability—Effective date—
1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.540 Inmate name change—Limitations on use—Penalty. The department may require an offender who obtains an order under RCW 4.24.130 to use the name under which he or she was committed to the department during all official communications with department personnel and in all matters relating to the offender's incarceration or community supervision. An offender officially communicating with the department may also use his or her new name in addition to the name under which he or she was committed. Violation of this section is a misdemeanor. [1995 1st sp.s. c 19 § 15.]

Findings—Purpose—Short title—Severability—Effective date—
1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.560 Camp for alien offenders—Implementation plan. (1) The department is authorized to establish a camp for alien offenders and shall be ready to assign offenders to the camp not later than January 1, 1997. The secretary shall locate the camp within the boundaries of an existing department facility.

(2) The secretary, in consultation with the committee established in RCW 72.09.570, shall prepare a report to the legislature by December 1, 1995, on an implementation plan for the camp. The plan shall include recommendations on meeting the following goals: (a) Expedited deportation of alien offenders; (b) reduced daily costs of incarceration; (c) enhanced public benefit through an emphasis on inmate work and exemption from education programs other than those programs necessary for offenders to understand and follow directions; (d) minimum access to privileges; and (e) maximized use of nonstate resources for the costs of incarceration.

(3) In preparing the plan, the secretary shall address at least the following: (a) Eligibility criteria for prompt admission to the camp; (b) whether to have a minimum and maximum length of stay in the camp; (c) operational elements including residential arrangements, inmate conduct and programming standards, and achieving maximum cooperation with the United States government to expedite deportation of alien offenders and reduce the likelihood that alien offenders who complete the camp will avoid deportation; (d) mitigating adverse impacts the camp may have on other offender programs; (e) meeting the goals set forth in this section; and (f) any state law and fiscal issues that are necessary for implementation of the camp.

(4) The department shall consult with all appropriate public safety organizations and the committee created under RCW 72.09.570 in developing the plan. [1995 1st sp.s. c 19 § 21.]

Findings—Purpose—Short title—Severability—Effective date—
1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.570 Joint committee on corrections cost-efficiencies oversight—Expiration of section. (1) There is created a joint committee on corrections cost-efficiencies oversight. The committee shall consist of: (a) Three members of the senate appointed by the president of the senate, two of whom shall be members of the majority party and one of whom shall be a member of the minority party; and (b) three members of the house of representatives, appointed by the speaker of the house of representatives, two of whom shall be members of the majority party and one of whom shall be a member of the minority party.

(2) The committee shall elect a chair and vice-chair. The chair shall be a member of the senate in even-numbered years and a member of the house of representatives in odd-numbered years.

(3) The committee shall:

(a) Review all reports required under sections 25 and *26, chapter 19, Laws of 1995 1st sp. sess.;

(b) Review all reports required and recommendations submitted by the teams under *section 22, chapter 19, Laws of 1995 1st sp. sess.;

(c) Initiate or review studies relevant to the issues of corrections cost-efficiencies and programmatic improvements;

(d) Review all rules proposed by the department to ensure consistency with the purpose of chapter 19, Laws of 1995 1st sp. sess.;

(e) Periodically make recommendations to the legislature regarding corrections cost-efficiencies and programmatic improvements; and

(f) By December 1, 1996, report to the legislature the amount of actual and projected cost savings within the department during the 1995-97 biennium and report its further recommendations to address expenditure growth in the department.

(4) This section expires July 1, 1997. [1995 1st sp.s. c 19 § 23.]

***Reviser's note:** Sections 22 and 26, chapter 19, Laws of 1995 1st sp. sess. were vetoed by the governor.

Findings—Purpose—Short title—Severability—Effective date—
1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Chapter 72.10

HEALTH CARE SERVICES—DEPARTMENT OF CORRECTIONS

Sections

72.10.010 Definitions.

72.10.020 Health services delivery plan—Reports to the legislature—
Policy for distribution of personal hygiene items.

72.10.050 Rules to implement RCW 72.10.020.

72.10.010 Definitions. As used in this chapter:

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

(2) "Health care practitioner" means an individual or firm licensed or certified to actively engage in a regulated health profession.

(3) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

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(4) "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, federally approved renal dialysis center or facility, or federally approved blood bank.

(5) "Health care services" means medical, dental, and mental health care services.

(6) "Secretary" means the secretary of the department.

(7) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the department, or his or her designee. [1995 1st sp.s. c 19 § 16; 1989 c 157 § 2.]

Findings—Purpose—Short title—Severability—Effective date—
1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.10.020 Health services delivery plan—Reports to the legislature—Policy for distribution of personal hygiene items.

(1) Upon entry into the correctional system, offenders shall receive an initial medical examination. The department shall prepare a health profile for each offender that includes at least the following information: (a) An identification of the offender's serious medical and dental needs; (b) an evaluation of the offender's capacity for work and recreation; and (c) a financial assessment of the offender's ability to pay for all or a portion of his or her health care services from personal resources or private insurance.

(2)(a) The department may develop and implement a plan for the delivery of health care services and personal hygiene items to offenders in the department's correctional facilities, at the discretion of the secretary, and in conformity with federal law.

(b) To discourage unwarranted use of health care services caused by unnecessary visits to health care providers, offenders shall participate in the costs of their health care services by paying a nominal amount of no less than three dollars per visit, as determined by the secretary. Under the authority granted in RCW 72.01.050(2), the secretary may authorize the superintendent to collect this amount directly from an offender's institution account. All copayments collected from offenders' institution accounts shall be deposited into the general fund.

(c) Offenders are required to make copayments for initial health care visits that are offender initiated and, by rule adopted by the department, may be charged a copayment for subsequent visits related to the medical condition which caused the initial visit. Offenders are not required to pay for emergency treatment or for visits initiated by health care staff or treatment of those conditions that constitute a serious health care need.

(d) No offender may be refused any health care service because of indigency.

(e) At no time shall the withdrawal of funds for the payment of a medical service copayment result in reducing an offender's institution account to an amount less than the level of indigency as defined in chapter 72.09 RCW.

(3)(a) The department shall report annually to the legislature the following information for the fiscal year preceding the report: (i) The total number of health care visits made by offenders; (ii) the total number of copayments assessed; (iii) the total dollar amount of copayments collect-

ed; (iv) the total number of copayments not collected due to an offender's indigency; and (v) the total number of copayments not assessed due to the serious or emergent nature of the health care treatment or because the health care visit was not offender initiated.

(b) The first report required under this section shall be submitted not later than October 1, 1996, and shall include, at a minimum, all available information collected through the second half of fiscal year 1996. This subsection (3)(b) shall expire December 1, 1996.

(4)(a) The secretary shall adopt, by rule, a uniform policy relating to the distribution and replenishment of personal hygiene items for inmates incarcerated in all department institutions. The policy shall provide for the initial distribution of adequate personal hygiene items to inmates upon their arrival at an institution.

(b) The acquisition of replenishment personal hygiene items is the responsibility of inmates, except that indigent inmates shall not be denied adequate personal hygiene items based on their inability to pay for them.

(c) The policy shall provide that the replenishment personal hygiene items be distributed to inmates only in authorized quantities and at intervals that reflect prudent use and customary wear and consumption of the items.

(5) The following become a debt and are subject to RCW 72.09.450:

(a) All copayments under subsection (2) of this section that are not collected when the visit occurs; and

(b) All charges for replenishment personal hygiene items that are not collected when the item is distributed. [1995 1st sp.s. c 19 § 17; 1989 c 157 § 3.]

Findings—Purpose—Short title—Severability—Effective date— 1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.10.050 Rules to implement RCW 72.10.020. The department shall adopt rules to implement RCW 72.10.020. [1995 1st sp.s. c 19 § 18.]

Findings—Purpose—Short title—Severability—Effective date— 1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Chapter 72.65

WORK RELEASE PROGRAM

Sections

72.65.210 Inmate participation eligibility standards—Department to conduct overall review of work release program.

72.65.210 Inmate participation eligibility standards—Department to conduct overall review of work release program. (1) The department shall establish, by rule, inmate eligibility standards for participation in the work release program.

(2) The department shall:

(a) Conduct an annual examination of each work release facility and its security procedures;

(b) Investigate and set standards for the inmate supervision policies of each work release facility;

(c) Establish physical standards for future work release structures to ensure the safety of inmates, employees, and the surrounding communities;

(d) Evaluate its recordkeeping of serious infractions to determine if infractions are properly and consistently assessed against inmates eligible for work release;

(e) Report to the legislature on a case management procedure to evaluate and determine those inmates on work release who are in need of treatment. The department shall establish in the report a written treatment plan best suited to the inmate's needs, cost, and the relationship of community placement and community corrections officers to a system of case management;

(f) Adopt a policy to encourage businesses employing work release inmates to contact the appropriate work release facility whenever an inmate is absent from his or her work schedule. The department of corrections shall provide each employer with written information and instructions on who should be called if a work release employee is absent from work or leaves the job site without authorization; and

(g) Develop a siting policy, in conjunction with cities, counties, community groups, and the department of community, trade, and economic development for the establishment of additional work release facilities. Such policy shall include at least the following elements: (i) Guidelines for appropriate site selection of work-release facilities; (ii) notification requirements to local government and community groups of intent to site a work release facility; and (iii) guidelines for effective community relations by the work release program operator.

The department shall comply with the requirements of this section by July 1, 1990. [1995 c 399 § 203; 1989 c 89 § 1.]

Title 74

PUBLIC ASSISTANCE

Chapters

- 74.08 Eligibility generally—Standards of assistance—Old age assistance.
- 74.09 Medical care.
- 74.12 Aid to families with dependent children.
- 74.13 Child welfare services.
- 74.14C Family preservation services.
- 74.15 Agencies for care of children, expectant mothers, developmentally disabled.
- 74.34 Abuse of vulnerable adults.
- 74.39 Long-term care service options.
- 74.39A Long-term care services options—Expansion.
- 74.42 Nursing homes—Resident care, operating standards.
- 74.46 Nursing home auditing and cost reimbursement act of 1980.

Chapter 74.08

ELIGIBILITY GENERALLY—STANDARDS OF ASSISTANCE—OLD AGE ASSISTANCE

Sections

- 74.08.290 Suspension of payments—Need lapse—Imprisonment—Conviction under RCW 74.08.331.
- 74.08.530 Recodified as RCW 74.39A.100.

74.08.541 Repealed.
 74.08.545 Recodified as RCW 74.39A.110.
 74.08.550 Recodified as RCW 74.39A.130.
 74.08.560 Recodified as RCW 74.39A.140.
 74.08.570 Recodified as RCW 74.39A.150.

74.08.290 Suspension of payments—Need lapse—Imprisonment—Conviction under RCW 74.08.331. The department is hereby authorized to suspend temporarily the public assistance granted to any person for any period during which such person is not in need thereof.

If a recipient is convicted of any crime or offense, and punished by imprisonment, no payment shall be made during the period of imprisonment.

If a recipient is convicted of unlawful practices under RCW 74.08.331, no payment shall be made for a period to be determined by the court, but in no event less than six months upon the first conviction and no less than twelve months for a second or subsequent violation. This suspension of public assistance shall apply regardless of whether the recipient is subject to complete or partial confinement upon conviction, or incurs some lesser penalty. [1995 c 379 § 2; 1959 c 26 § 74.08.290. Prior: 1953 c 174 § 38; 1935 c 182 § 12; RRS § 9998-12.]

Finding—1995 c 379: "The legislature finds that welfare fraud damages the state's ability to use its limited resources to help those in need who legitimately qualify for assistance. In addition, it affects the credibility and integrity of the system, promoting disdain for the law.

Persons convicted of committing such fraud should be barred, for a period of time, from receiving additional public assistance." [1995 c 379 § 1.]

74.08.530 Recodified as RCW 74.39A.100. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.08.541 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.08.545 Recodified as RCW 74.39A.110. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.08.550 Recodified as RCW 74.39A.130. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.08.560 Recodified as RCW 74.39A.140. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.08.570 Recodified as RCW 74.39A.150. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 74.09 MEDICAL CARE

Sections

74.09.185 Third party has legal liability to make payments—State acquires rights—Lien—Equitable subrogation does not apply.

74.09.240 Bribes, kickbacks, rebates—Self-referrals—Penalties.
 74.09.520 Medical assistance—Care and services included—Funding limitations.
 74.09.585 Medical assistance for institutionalized persons—Period of ineligibility for transfer of resources.

74.09.185 Third party has legal liability to make payments—State acquires rights—Lien—Equitable subrogation does not apply. To the extent that payment for covered expenses has been made under medical assistance for health care items or services furnished to an individual, in any case where a third party has a legal liability to make payments, the state is considered to have acquired the rights of the individual to payment by any other party for those health care items or services. Recovery pursuant to the subrogation rights, assignment, or enforcement of the lien granted to the department by this section shall not be reduced, prorated, or applied to only a portion of a judgment, award, or settlement, except as provided in RCW 43.20B.050 and 43.20B.060. The doctrine of equitable subrogation shall not apply to defeat, reduce, or prorate recovery by the department as to its assignment, lien, or subrogation rights. [1995 c 34 § 6.]

74.09.240 Bribes, kickbacks, rebates—Self-referrals—Penalties. (1) Any person, including any corporation, that solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind

(a) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter, or

(b) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter, shall be guilty of a class C felony; however, the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(2) Any person, including any corporation, that offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person

(a) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter, or

(b) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter, shall be guilty of a class C felony; however, the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(3)(a) Except as provided in 42 U.S.C. 1395 nn, physicians are prohibited from self-referring any client eligible under this chapter for the following designated health services to a facility in which the physician or an immediate family member has a financial relationship:

- (i) Clinical laboratory services;
- (ii) Physical therapy services;

- (iii) Occupational therapy services;
- (iv) Radiology including magnetic resonance imaging, computerized axial tomography, and ultrasound services;
- (v) Durable medical equipment and supplies;
- (vi) Parenteral and enteral nutrients equipment and supplies;
- (vii) Prosthetics, orthotics, and prosthetic devices;
- (viii) Home health services;
- (ix) Outpatient prescription drugs;
- (x) Inpatient and outpatient hospital services;
- (xi) Radiation therapy services and supplies.

(b) For purposes of this subsection, "financial relationship" means the relationship between a physician and an entity that includes either:

- (i) An ownership or investment interest; or
- (ii) A compensation arrangement.

For purposes of this subsection, "compensation arrangement" means an arrangement involving remuneration between a physician, or an immediate family member of a physician, and an entity.

(c) The department is authorized to adopt by rule amendments to 42 U.S.C. 1395 nn enacted after July 23, 1995.

(d) This section shall not apply in any case covered by a general exception specified in 42 U.S.C. Sec. 1395 nn.

(4) Subsections (1) and (2) of this section shall not apply to

(a) a discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter, and

(b) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(5) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW, but shall not preclude administrative proceedings authorized by chapter 19.68 RCW. [1995 c 319 § 1; 1979 ex.s. c 152 § 5.]

74.09.520 Medical assistance—Care and services included—Funding limitations. (1) The term "medical assistance" may include the following care and services: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and x-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a child by a school district in a manner consistent with the requirements of this chapter. For the

purposes of this section, the department may not cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services.

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care must be reviewed by a nurse.

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(5) The department shall report to the appropriate fiscal committees of the legislature on the utilization and associated costs of the personal care option under Title XIX of the federal social security act, as defined in 42 C.F.R. 440.170(f), in the categorically needy program. This report shall be submitted by January 1, 1990, and submitted on a yearly basis thereafter.

(6) Effective July 1, 1989, the department shall offer hospice services in accordance with available funds.

(7) For Title XIX personal care services administered by aging and adult services administration of the department, the department shall contract with area agencies on aging:

(a) To provide case management services to individuals receiving Title XIX personal care services in their own home; and

(b) To reassess and reauthorize Title XIX personal care services or other home and community services as defined in RCW 74.39A.008 in home or in other settings for individuals consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive Title XIX personal care services or other home and community services as defined in RCW 74.39A.008; and

(ii) Who, at the time of reassessment and reauthorization, are receiving such services in their own home.

(8) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract to provide these services, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found. [1995 1st sp.s. c 18 § 39; 1994 c 21 § 4. Prior: 1993 c 149 § 10; 1993 c 57 § 1; 1991 sp.s. c 8 § 9; prior: 1991 c 233 § 1; 1991 c 119 § 1; prior: 1990 c 33 § 594; 1990 c 25 § 1; prior: 1989 c 427 § 10; 1989 c 400 § 3; 1985 c 5 § 3; 1982 1st ex.s. c 19 § 4; 1981 1st ex.s. c 6 § 21; 1981 c 8 § 20; 1979 c 141 § 344; 1969 ex.s. c 173 § 11; 1967 ex.s. c 30 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Conflict with federal requirements—Effective date—1994 c 21: See notes following RCW 43.20B.080.

Conflict with federal requirements—Severability—Effective dates—1993 c 149: See notes following RCW 74.09.5241.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—1989 c 427: See RCW 74.39.900.

Intent—1989 c 400: See note following RCW 28A.150.390.

Effective date—1982 1st ex.s. c 19: See note following RCW 74.09.035.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.09.585 Medical assistance for institutionalized persons—Period of ineligibility for transfer of resources.

(1) The department shall establish standards consistent with section 1917 of the social security act in determining the period of ineligibility for medical assistance due to the transfer of resources.

(2) There shall be no penalty imposed for the transfer of assets that are excluded in a determination of the individual's eligibility for medicaid to the extent such assets are protected by the long-term care insurance policy or contract pursuant to chapter 48.85 RCW.

(3) The department may waive a period of ineligibility if the department determines that denial of eligibility would work an undue hardship. [1995 1st sp.s. c 18 § 81; 1989 c 87 § 7.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective dates—1989 c 87: See note following RCW 11.94.050.

Captions not law—1989 c 87: See note following RCW 74.09.565.

Chapter 74.12

AID TO FAMILIES WITH DEPENDENT CHILDREN

Sections

- 74.12.450 Application for assistance—Report on suspected child abuse or neglect—Notice to parent about application, location of child, and family reconciliation act.
- 74.12.460 Notice to parent—Required within seven days of approval of application.

74.12.450 Application for assistance—Report on suspected child abuse or neglect—Notice to parent about application, location of child, and family reconciliation act. (1) Whenever the department receives an application for assistance on behalf of a child under this chapter and an employee of the department has reason to believe that the child has suffered abuse or neglect, the employee shall cause a report to be made as provided under chapter 26.44 RCW.

[1995 RCW Supp—page 886]

(2) Whenever the department approves an application for assistance on behalf of a child under this chapter, the department shall make a reasonable effort to determine whether the child is living with a parent of the child. Whenever the child is living in the home of a relative other than a parent of the child, the department shall make reasonable efforts to notify the parent with whom the child has most recently resided that an application for assistance on behalf of the child has been approved by the department and shall advise the parent of his or her rights under this section, RCW 74.12.460, and *sections 4 and 5 of this act, unless good cause exists not to do so based on a substantiated claim that the parent has abused or neglected the child.

(3) Upon written request of the parent, the department shall notify the parent of the address and location of the child, unless there is a current investigation or pending case involving abuse or neglect by the parent under chapter 13.34 RCW.

(4) The department shall notify and advise the parent of the provisions of the family reconciliation act under chapter 13.32A RCW. [1995 c 401 § 2.]

***Reviser's note:** Sections 4 and 5 of this act were vetoed by the governor.

Severability—1995 c 401: "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." [1995 c 401 § 7.]

74.12.460 Notice to parent—Required within seven days of approval of application. The department shall make reasonable efforts to notify the parent under RCW 74.12.450(2) as soon as reasonably possible, but no later than seven days after approval of the application by the department. [1995 c 401 § 3.]

Severability—1995 c 401: See note following RCW 74.12.450.

Chapter 74.13

CHILD WELFARE SERVICES

Sections

- 74.13.031 Duties of department—Child welfare services—Children's services advisory committee.
- 74.13.032 Crisis residential centers—Establishment—Staff—Duties—Semi-secure facilities—Secure facilities.
- 74.13.0321 Crisis residential centers—Limit on reimbursement or compensation.
- 74.13.033 Crisis residential centers—Removal from—Services available—Unauthorized leave.
- 74.13.034 Crisis residential centers—Removal to another center or secure facility—Placement in secure juvenile detention facility.
- 74.13.036 Implementation of chapters 13.32A and 13.34 RCW—Report to local governments.
- 74.13.042 Petition by the department for order compelling disclosure of record or information.
- 74.13.065 Out-of-home care—Social study required.
- 74.13.090 Child care coordinating committee.
- 74.13.118 Review of support payments.
- 74.13.121 Adoptive parent's financial information.
- 74.13.280 Client information.

74.13.031 Duties of department—Child welfare services—Children's services advisory committee. The department shall have the duty to provide child welfare services as defined in RCW 74.13.020, and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of homeless, runaway, dependent, or neglected children.

(2) Develop a recruiting plan for recruiting an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, and annually submit the plan for review to the house and senate committees on social and health services. The plan shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of neglect, abuse, or abandonment of children, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency: PROVIDED, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report delineating the results to the house and senate committees on social and health services.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and

services related thereto. At least one member shall represent the adoption community.

(10) Have authority to provide continued foster care or group care for individuals from eighteen through twenty years of age to enable them to complete their high school or vocational school program.

(11) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974. [1995 c 191 § 1; 1990 c 146 § 9. Prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Effective date—1987 c 170 §§ 10 and 11: "Sections 10 and 11 of this act shall take effect July 1, 1988." [1987 c 170 § 16.]

Severability—1987 c 170: See note following RCW 13.04.030.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Severability—1967 c 172: See note following RCW 74.15.010.

Abuse of child or adult dependent person: Chapter 26.44 RCW.

Licensing of agencies caring for or placing children, expectant mothers, and developmentally disabled persons: Chapter 74.15 RCW.

74.13.032 Crisis residential centers—Establishment—Staff—Duties—Semi-secure facilities—Secure facilities.

(1) The department shall establish, by contracts with private vendors, regional crisis residential centers with semi-secure facilities. These facilities shall be structured group care facilities licensed under rules adopted by the department and shall have an average of at least four adult staff members and in no event less than three adult staff members to every eight children.

(2) Within available funds appropriated for this purpose, the department shall establish, by contracts with private vendors, regional crisis residential centers with secure facilities. These facilities shall be facilities licensed under rules adopted by the department. These centers may also include semi-secure facilities and to such extent shall be subject to subsection (1) of this section.

(3) The department shall, in addition to the facilities established under subsections (1) and (2) of this section, establish additional crisis residential centers pursuant to contract with licensed private group care facilities.

(4) The staff at the facilities established under this section shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervi-

sion, and structure to the juveniles that recognize the need for support and the varying circumstances that cause children to leave their families, and carry out the responsibilities stated in RCW 13.32A.090. The responsibilities stated in RCW 13.32A.090 may, in any of the centers, be carried out by the department.

(5) The secure facilities located within crisis residential centers shall be operated to conform with the definition in RCW 13.32A.030. The facilities shall have an average of no more than three adult staff members to every eight children. The staffing ratio shall continue to ensure the safety of the children.

(6) A center with secure facilities created under this section may not be located within, or on the same grounds as, other secure structures including jails, juvenile detention facilities operated by the state, or units of local government. However, the secretary may, following consultation with the appropriate county legislative authority, make a written finding that location of a center with secure facilities on the same grounds as another secure structure is the only practical location for a secure facility. Upon the written finding a secure facility may be located on the same grounds as the secure structure. Where a center is located in or adjacent to a secure juvenile detention facility, the center shall be operated in a manner that prevents in-person contact between the residents of the center and the persons held in such facility. [1995 c 312 § 60; 1979 c 155 § 78.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.13.0321 Crisis residential centers—Limit on reimbursement or compensation. No contract may provide reimbursement or compensation to a crisis residential center's secure facility for any service delivered or provided to a resident child after five consecutive days of residence. [1995 c 312 § 61.]

Short title—1995 c 312: See note following RCW 13.32A.010.

74.13.033 Crisis residential centers—Removal from—Services available—Unauthorized leave. (1) If a resident of a center becomes by his or her behavior disruptive to the facility's program, such resident may be immediately removed to a separate area within the facility and counseled on an individual basis until such time as the child regains his or her composure. The department may set rules and regulations establishing additional procedures for dealing with severely disruptive children on the premises.

(2) When the juvenile resides in this facility, all services deemed necessary to the juvenile's reentry to normal family life shall be made available to the juvenile as required by chapter 13.32A RCW. In assessing the child and providing these services, the facility staff shall:

(a) Interview the juvenile as soon as possible;

(b) Contact the juvenile's parents and arrange for a counseling interview with the juvenile and his or her parents as soon as possible;

(c) Conduct counseling interviews with the juvenile and his or her parents, to the end that resolution of the child/parent conflict is attained and the child is returned home as soon as possible;

(d) Provide additional crisis counseling as needed, to the end that placement of the child in the crisis residential center will be required for the shortest time possible, but not to exceed five consecutive days; and

(e) Convene, when appropriate, a multidisciplinary team.

(3) Based on the assessments done under subsection (2) of this section the facility staff may refer any child who, as the result of a mental or emotional disorder, or intoxication by alcohol or other drugs, is suicidal, seriously assaultive, or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency medical evaluation and possible care, for evaluation pursuant to chapter 71.34 RCW, to a mental health professional pursuant to chapter 71.05 RCW, or to a chemical dependency specialist pursuant to chapter 70.96A RCW whenever such action is deemed appropriate and consistent with law.

(4) A juvenile taking unauthorized leave from a facility shall be apprehended and returned to it by law enforcement officers or other persons designated as having this authority as provided in RCW 13.32A.050. If returned to the facility after having taken unauthorized leave for a period of more than twenty-four hours a juvenile shall be supervised by such a facility for a period, pursuant to this chapter, which, unless where otherwise provided, may not exceed five consecutive days on the premises. Costs of housing juveniles admitted to crisis residential centers shall be assumed by the department for a period not to exceed five consecutive days. [1995 c 312 § 62; 1992 c 205 § 213; 1979 c 155 § 79.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.13.034 Crisis residential centers—Removal to another center or secure facility—Placement in secure juvenile detention facility. (1) A child taken into custody and taken to a crisis residential center established pursuant to RCW 74.13.032 may, if the center is unable to provide appropriate treatment, supervision, and structure to the child, be taken at department expense to another crisis residential center, the nearest regional secure crisis residential center, or a secure facility with which it is collocated under RCW 74.13.032. Placement in both locations shall not exceed five consecutive days from the point of intake as provided in RCW 13.32A.130.

(2) A child taken into custody and taken to a crisis residential center established by this chapter may be placed physically by the department or the department's designee and, at departmental expense and approval, in a secure juvenile detention facility operated by the county in which the center is located for a maximum of forty-eight hours, including Saturdays, Sundays, and holidays, if the child has taken unauthorized leave from the center and the person in charge of the center determines that the center cannot provide supervision and structure adequate to ensure that the child will not again take unauthorized leave. Juveniles placed in such a facility pursuant to this section may not, to the extent possible, come in contact with alleged or convicted juvenile or adult offenders.

(3) Any child placed in secure detention pursuant to this section shall, during the period of confinement, be provided

with appropriate treatment by the department or the department's designee, which shall include the services defined in RCW 74.13.033(2). If the child placed in secure detention is not returned home or if an alternative living arrangement agreeable to the parent and the child is not made within twenty-four hours after the child's admission, the child shall be taken at the department's expense to a crisis residential center. Placement in the crisis residential center or centers plus placement in juvenile detention shall not exceed five consecutive days from the point of intake as provided in RCW 13.32A.130.

(4) Juvenile detention facilities used pursuant to this section shall first be certified by the department to ensure that juveniles placed in the facility pursuant to this section are provided with living conditions suitable to the well-being of the child. Where space is available, juvenile courts, when certified by the department to do so, shall provide secure placement for juveniles pursuant to this section, at department expense. [1995 c 312 § 63; 1992 c 205 § 214; 1991 c 364 § 5; 1981 c 298 § 17; 1979 ex.s. c 165 § 21; 1979 c 155 § 80.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Conflict with federal requirements—1991 c 364: See note following RCW 70.96A.020.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Child admitted to crisis residential center—Maximum hours of detention—Reconciliation effort—Information to parents upon retaining custody—Written statement of services and rights: RCW 13.32A.130.

74.13.036 Implementation of chapters 13.32A and 13.34 RCW—Report to local governments. (1) The department of social and health services shall oversee implementation of chapter 13.34 RCW and chapter 13.32A RCW. The oversight shall be comprised of working with affected parts of the criminal justice and child care systems as well as with local government, legislative, and executive authorities to effectively carry out these chapters. The department shall work with all such entities to ensure that chapters 13.32A and 13.34 RCW are implemented in a uniform manner throughout the state.

(2) The department shall develop a plan and procedures, in cooperation with the state-wide advisory committee, to insure the full implementation of the provisions of chapter 13.32A RCW. Such plan and procedures shall include but are not limited to:

(a) Procedures defining and delineating the role of the department and juvenile court with regard to the execution of the child in need of services placement process;

(b) Procedures for designating department staff responsible for family reconciliation services;

(c) Procedures assuring enforcement of contempt proceedings in accordance with RCW 13.32A.170 and 13.32A.250; and

(d) Procedures for the continued education of all individuals in the criminal juvenile justice and child care systems who are affected by chapter 13.32A RCW, as well as members of the legislative and executive branches of government.

There shall be uniform application of the procedures developed by the department and juvenile court personnel, to the extent practicable. Local and regional differences shall be taken into consideration in the development of procedures required under this subsection.

(3) In addition to its other oversight duties, the department shall:

(a) Identify and evaluate resource needs in each region of the state;

(b) Disseminate information collected as part of the oversight process to affected groups and the general public;

(c) Educate affected entities within the juvenile justice and child care systems, local government, and the legislative branch regarding the implementation of chapters 13.32A and 13.34 RCW;

(d) Review complaints concerning the services, policies, and procedures of those entities charged with implementing chapters 13.32A and 13.34 RCW; and

(e) Report any violations and misunderstandings regarding the implementation of chapters 13.32A and 13.34 RCW.

(4) The secretary shall submit a quarterly report to the appropriate local government entities. [1995 c 312 § 65; 1989 c 175 § 147; 1987 c 505 § 70; 1985 c 257 § 11; 1981 c 298 § 18; 1979 c 155 § 82.]

Short title—1995 c 312: See note following RCW 13.32A.010.

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

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.13.042 Petition by the department for order compelling disclosure of record or information. If the department is denied lawful access to records or information, or requested records or information is not provided in a timely manner, the department may petition the court for an order compelling disclosure.

(1) The petition shall be filed in the juvenile court for the county in which the record or information is located or the county in which the person who is the subject of the record or information resides. If the person who is the subject of the record or information is a party to or the subject of a pending proceeding under chapter 13.32A or 13.34 RCW, the petition shall be filed in such proceeding.

(2) Except as otherwise provided in this section, the persons from whom and about whom the record or information is sought shall be served with a summons and a petition at least seven calendar days prior to a hearing on the petition. The court may order disclosure upon ex parte application of the department, without prior notice to any person, if the court finds there is reason to believe access to the record or information is necessary to determine whether the child is in imminent danger and in need of immediate protection.

(3) The court shall grant the petition upon a showing that there is reason to believe that the record or information sought is necessary for the health, safety, or welfare of the child who is currently receiving child welfare services. [1995 c 311 § 14.]

74.13.065 Out-of-home care—Social study required.

(1) The department, or agency responsible for supervising a child in out-of-home care, shall conduct a social study whenever a child is placed in out-of-home care under the supervision of the department or other agency. The study shall be conducted prior to placement, or, if it is not feasible to conduct the study prior to placement due to the circumstances of the case, the study shall be conducted as soon as possible following placement.

(2) The social study shall include, but not be limited to, an assessment of the following factors:

(a) The physical and emotional strengths and needs of the child;

(b) The proximity of the child's placement to the child's family to aid reunification;

(c) The possibility of placement with the child's relatives or extended family;

(d) The racial, ethnic, cultural, and religious background of the child;

(e) The least-restrictive, most family-like placement reasonably available and capable of meeting the child's needs; and

(f) Compliance with RCW 13.34.260 regarding parental preferences for placement of their children. [1995 c 311 § 26.]

74.13.090 Child care coordinating committee. (1)

There is established a child care coordinating committee to provide coordination and communication between state agencies responsible for child care and early childhood education services. The child care coordinating committee shall be composed of not less than seventeen nor more than thirty-three members who shall include:

(a) One representative each from the department of social and health services, the department of community, trade, and economic development, the office of the superintendent of public instruction, and any other agency having responsibility for regulation, provision, or funding of child care services in the state;

(b) One representative from the department of labor and industries;

(c) One representative from the department of revenue;

(d) One representative from the employment security department;

(e) One representative from the department of personnel;

(f) One representative from the department of health;

(g) At least one representative of family home child care providers and one representative of center care providers;

(h) At least one representative of early childhood development experts;

(i) At least one representative of school districts and teachers involved in the provision of child care and pre-school programs;

(j) At least one parent education specialist;

(k) At least one representative of resource and referral programs;

(l) One pediatric or other health professional;

(m) At least one representative of college or university child care providers;

(n) At least one representative of a citizen group concerned with child care;

(o) At least one representative of a labor organization;

(p) At least one representative of a head start - early childhood education assistance program agency;

(q) At least one employer who provides child care assistance to employees;

(r) Parents of children receiving, or in need of, child care, half of whom shall be parents needing or receiving subsidized child care and half of whom shall be parents who are able to pay for child care.

The named state agencies shall select their representative to the child care coordinating committee. The department of social and health services shall select the remaining members, considering recommendations from lists submitted by professional associations and other interest groups until such time as the committee adopts a member selection process. The department shall use any federal funds which may become available to accomplish the purposes of RCW 74.13.085 through 74.13.095.

The committee shall elect officers from among its membership and shall adopt policies and procedures specifying the lengths of terms, methods for filling vacancies, and other matters necessary to the ongoing functioning of the committee. The secretary of social and health services shall appoint a temporary chair until the committee has adopted policies and elected a chair accordingly. Child care coordinating committee members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) To the extent possible within available funds, the child care coordinating committee shall:

(a) Serve as an advisory coordinator for all state agencies responsible for early childhood or child care programs for the purpose of improving communication and interagency coordination;

(b) Annually review state programs and make recommendations to the agencies and the legislature which will maximize funding and promote furtherance of the policies set forth in RCW 74.13.085. Reports shall be provided to all appropriate committees of the legislature by December 1 of each year. At a minimum the committee shall:

(i) Review and propose changes to the child care subsidy system in its December 1989 report;

(ii) Review alternative models for child care service systems, in the context of the policies set forth in RCW 74.13.085, and recommend to the legislature a new child care service structure; and

(iii) Review options and make recommendations on the feasibility of establishing an allocation for day care facilities when constructing state buildings;

(c) Review department of social and health services administration of the child care expansion grant program described in RCW 74.13.095;

(d) Review rules regarding child care facilities and services for the purpose of identifying those which unnecessarily obstruct the availability and affordability of child care in the state;

(e) Advise and assist the office of child care policy in implementing his or her duties under RCW 74.13.0903;

(f) Perform other functions to improve the quantity and quality of child care in the state, including compliance with existing and future prerequisites for federal funding; and

(g) Advise and assist the department of personnel in its responsibility for establishing policies and procedures that

provide for the development of quality child care programs for state employees. [1995 c 399 § 204; 1993 c 194 § 7; 1989 c 381 § 3; 1988 c 213 § 2.]

Findings—Severability—1989 c 381: See notes following RCW 74.13.085.

Severability—1988 c 213: See note following RCW 74.13.085.

74.13.118 Review of support payments. At least once every five years, the secretary shall review the need of any adoptive parent or parents receiving continuing support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145, or the need of any parent who is to receive more than one lump sum payment where such payments are to be spaced more than one year apart.

At the time of such review and at other times when changed conditions, including variations in medical opinions, prognosis and costs, are deemed by the secretary to warrant such action, appropriate adjustments in payments shall be made based upon changes in the needs of the child, in the adoptive parents' income, resources, and expenses for the care of such child or other members of the family, including medical and/or hospitalization expense not otherwise covered by or subject to reimbursement from insurance or other sources of financial assistance.

Any parent who is a party to such an agreement may at any time in writing request, for reasons set forth in such request, a review of the amount of any payment or the level of continuing payments. Such review shall be begun not later than thirty days from the receipt of such request. Any adjustment may be made retroactive to the date such request was received by the secretary. If such request is not acted on within thirty days after it has been received by the secretary, such parent may invoke his rights under the hearing provisions set forth in RCW 74.13.127. [1995 c 270 § 2; 1985 c 7 § 138; 1971 ex.s. c 63 § 7.]

Finding—1995 c 270: "The legislature finds that it is in the best interest of the people of the state of Washington to support the adoption process in a variety of ways, including easing administrative burdens on adoptive parents receiving financial support, providing finality for adoptive placements and stable homes for children, and not delaying adoptions." [1995 c 270 § 1.]

74.13.121 Adoptive parent's financial information. So long as any adoptive parent is receiving support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 he or she shall, upon request, file with the secretary a copy of his or her federal income tax return. Such return and any information thereon shall be marked by the secretary "confidential", shall be used by the secretary solely for the purposes of RCW 26.33.320 and 74.13.100 through 74.13.145, and shall not be revealed to any other person, institution or agency, public or private, including agencies of the United States government, other than a superior court, judge or commissioner before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 is then pending.

In carrying on the review process authorized by RCW 26.33.320 and 74.13.100 through 74.13.145 the secretary may require the adoptive parent or parents to disclose such additional financial information, not privileged, as may enable him or her to make determinations and adjustments

in support to the end that the purposes and policies of this state expressed in RCW 74.13.100 may be carried out, provided that no adoptive parent or parents shall be obliged, by virtue of this section, to sign any agreement or other writing waiving any constitutional right or privilege nor to admit to his or her home any agent, employee, or official of any department of this state, or of the United States government.

Such information shall be marked "confidential" by the secretary, shall be used by him or her solely for the purposes of RCW 26.33.320 and 74.13.100 through 74.13.145, and shall not be revealed to any other person, institution, or agency, public or private, including agencies of the United States government other than a superior court judge or commissioner before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 is then pending. [1995 c 270 § 3; 1985 c 7 § 139; 1971 ex.s. c 63 § 8.]

Finding—1995 c 270: See note following RCW 74.13.118.

74.13.280 Client information. (1) Except as provided in RCW 70.24.105, whenever a child is placed in out-of-home care by the department or a child-placing agency, the department or agency may share information about the child and the child's family with the care provider and may consult with the care provider regarding the child's case plan. If the child is dependent pursuant to a proceeding under chapter 13.34 RCW, the department or agency shall keep the care provider informed regarding the dates and location of dependency review and permanency planning hearings pertaining to the child.

(2) Any person who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information except as authorized by law.

(3) Nothing in this section shall be construed to limit the authority of the department or child-placing agencies to disclose client information or to maintain client confidentiality as provided by law. [1995 c 311 § 21; 1991 c 340 § 4; 1990 c 284 § 10.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Chapter 74.14C

FAMILY PRESERVATION SERVICES

Sections

74.14C.005	Findings and intent.
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74.14C.020	Preservation services.
74.14C.030	Department duties.
74.14C.032	Preservation services contracts.
74.14C.035	Repealed.
74.14C.040	Intensive family preservation services—Eligibility criteria.
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74.14C.065	Federal funds.
74.14C.070	Appropriations—Transfer of funds from foster care services to family preservation services—Annual report.
74.14C.080	Data collection—Reports to the legislature.
74.14C.090	Reports on referrals and services.

74.14C.100 Training and consultation for department personnel—
Training for judges and service providers.

74.14C.005 Findings and intent. (1) The legislature believes that protecting the health and safety of children is paramount. The legislature recognizes that the number of children entering out-of-home care is increasing and that a number of children receive long-term foster care protection. Reasonable efforts by the department to shorten out-of-home placement or avoid it altogether should be a major focus of the child welfare system. It is intended that providing up-front services decrease the number of children entering out-of-home care and have the effect of eventually lowering foster care expenditures and strengthening the family unit.

Within available funds, the legislature directs the department to focus child welfare services on protecting the child, strengthening families and, to the extent possible, providing necessary services in the family setting, while drawing upon the strengths of the family. The legislature intends services be locally based and offered as early as possible to avoid disruption to the family, out-of-home placement of the child, and entry into the dependency system. The legislature also intends that these services be used for those families whose children are returning to the home from out-of-home care. These services are known as family preservation services and intensive family preservation services and are characterized by the following values, beliefs, and goals:

- (a) Safety of the child is always the first concern;
- (b) Children need their families and should be raised by their own families whenever possible;
- (c) Interventions should focus on family strengths and be responsive to the individual family's cultural values and needs;
- (d) Participation should be voluntary; and
- (e) Improvement of family functioning is essential in order to promote the child's health, safety, and welfare and thereby allow the family to remain intact and allow children to remain at home.

(2) Subject to the availability of funds for such purposes, the legislature intends for these services to be made available to all eligible families on a state-wide basis through a phased-in process. Except as otherwise specified by statute, the department of social and health services shall have the authority and discretion to implement and expand these services as provided in this chapter. The department shall consult with the community public health and safety networks when assessing a community's resources and need for services.

(3) It is the legislature's intent that, within available funds, the department develop services in accordance with this chapter.

(4) Nothing in this chapter shall be construed to create an entitlement to services nor to create judicial authority to order the provision of preservation services to any person or family if the services are unavailable or unsuitable or that the child or family are not eligible for such services. [1995 c 311 § 1; 1992 c 214 § 1.]

74.14C.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

[1995 RCW Supp—page 892]

(1) "Department" means the department of social and health services.

(2) "Family preservation services" means in-home or community-based services drawing on the strengths of the family and its individual members while addressing family needs to strengthen and keep the family together where possible and may include:

(a) Respite care of children to provide temporary relief for parents and other caregivers;

(b) Services designed to improve parenting skills with respect to such matters as child development, family budgeting, coping with stress, health, safety, and nutrition; and

(c) Services designed to promote the well-being of children and families, increase the strength and stability of families, increase parents' confidence and competence in their parenting abilities, promote a safe, stable, and supportive family environment for children, and otherwise enhance children's development.

Family preservation services shall have the characteristics delineated in RCW 74.14C.020 (2) and (3).

(3) "Imminent" means a decision has been made by the department that, without intensive family preservation services, a petition requesting the removal of a child from the family home will be immediately filed under chapter 13.32A or 13.34 RCW, or that a voluntary placement agreement will be immediately initiated.

(4) "Intensive family preservation services" means community-based services that are delivered primarily in the home, that follow intensive service models with demonstrated effectiveness in reducing or avoiding the need for unnecessary imminent out-of-home placement, and that have all of the characteristics delineated in RCW 74.14C.020 (1) and (3).

(5) "Out-of-home placement" means a placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(6) "Preservation services" means family preservation services and intensive family preservation services that consider the individual family's cultural values and needs. [1995 c 311 § 2; 1992 c 214 § 2.]

74.14C.020 Preservation services. (1) Intensive family preservation services shall have all of the following characteristics:

(a) Services are provided by specially trained service providers who have received at least forty hours of training from recognized intensive in-home services experts. Service providers deliver the services in the family's home, and other environments of the family, such as their neighborhood or schools;

(b) Caseload size averages two families per service provider;

(c) The services to the family are provided by a single service provider, with backup providers identified to provide assistance as necessary;

(d) Services are available to the family within twenty-four hours following receipt of a referral to the program;

(e) Duration of service is limited to a maximum of forty days, unless the department authorizes an additional provision of service through an exception to policy.

(2) Family preservation services shall have all of the following characteristics:

(a) Services are delivered primarily in the family home or community;

(b) Services are committed to reinforcing the strengths of the family and its members and empowering the family to solve problems and become self-sufficient;

(c) Services are committed to providing support to families through community organizations including but not limited to school, church, cultural, ethnic, neighborhood, and business;

(d) Services are available to the family within forty-eight hours of referral unless an exception is noted in the file;

(e) Duration of service is limited to a maximum of ninety days, unless the department authorizes an additional provision of service through an exception to policy; and

(f) Caseload size no more than ten families per service provider, which can be adjusted according to exceptions defined by the department.

(3) Preservation services shall include the following characteristics:

(a) Services protect the child and strengthen the family;

(b) Service providers have the authority and discretion to spend funds, up to a maximum amount specified by the department, to help families obtain necessary food, shelter, or clothing, or to purchase other goods or services that will enhance the effectiveness of intervention;

(c) Services are available to the family twenty-four hours a day and seven days a week;

(d) Services enhance parenting skills, family and personal self-sufficiency, functioning of the family, and reduce stress on families; and

(e) Services help families locate and use additional assistance including, but not limited to, counseling and treatment services, housing, child care, education, job training, emergency cash grants, state and federally funded public assistance, and other basic support services. [1995 c 311 § 3; 1992 c 214 § 3.]

74.14C.030 Department duties. (1) The department shall be the lead administrative agency for preservation services and may receive funding from any source for the implementation or expansion of such services. The department shall:

(a) Provide coordination and planning with the advice of the community networks for the implementation and expansion of preservation services; and

(b) Monitor and evaluate such services to determine whether the programs meet measurable standards specified by this chapter and the department.

(2) In carrying out the requirements of this section, the department shall consult with qualified agencies that have demonstrated expertise and experience in preservation services.

(3) The department may provide preservation services directly and shall, within available funds, enter into outcome-based, competitive contracts with social service agencies to

provide preservation services, provided that such agencies meet measurable standards specified by this chapter and by the department. The standards shall include, but not be limited to, satisfactory performance in the following areas:

(a) The number of families appropriately connected to community resources;

(b) Avoidance of new referrals accepted by the department for child protective services or family reconciliation services within one year of the most recent case closure by the department;

(c) Consumer satisfaction;

(d) For reunification cases, reduction in the length of stay in out-of-home placement; and

(e) Reduction in the level of risk factors specified by the department.

(4)(a) The department shall not provide intensive family preservation services unless it is demonstrated that provision of such services prevent out-of-home placement in at least seventy percent of the cases served for a period of at least six months following termination of services. The department's caseworkers may only provide preservation services if there is no other qualified entity willing or able to do so.

(b) Contractors shall demonstrate that provision of intensive family preservation services prevent out-of-home placement in at least seventy percent of the cases served for a period of no less than six months following termination of services. The department may increase the period of time based on additional research and data. If the contractor fails to meet the seventy percent requirement the department may: (i) Review the conditions that may have contributed to the failure to meet the standard and renew the contract if the department determines: (A) The contractor is making progress to meet the standard; or (B) conditions unrelated to the provision of services, including case mix and severity of cases, contributed to the failure; or (ii) reopen the contract for other bids.

(c) The department shall cooperate with any person who has a contract under this section in providing data necessary to determine the amount of reduction in foster care. For the purposes of this subsection "prevent out-of-home placement" means that a child who has been a recipient of intensive family preservation services has not been placed outside of the home, other than for a single, temporary period of time not exceeding fourteen days. [1995 c 311 § 4; 1992 c 214 § 4.]

74.14C.032 Preservation services contracts. The initial contracts under RCW 74.14C.030(3) shall be executed not later than July 1996 and shall expire June 30, 1997. Subsequent contracts shall be for periods not to exceed twenty-four months. [1995 c 311 § 13.]

74.14C.035 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.14C.040 Intensive family preservation services—Eligibility criteria. (1) Intensive family preservation services may be provided to children and their families only when the department has determined that:

(a) The child has been placed out-of-home or is at imminent risk of an out-of-home placement due to:

- (i) Child abuse or neglect;
- (ii) A serious threat of substantial harm to the child's health, safety, or welfare; or
- (iii) Family conflict; and

(b) There are no other reasonably available services including family preservation services that will prevent out-of-home placement of the child or make it possible to immediately return the child home.

(2) The department shall refer eligible families to intensive family preservation services on a twenty-four hour intake basis. The department need not refer otherwise eligible families, and intensive family preservation services need not be provided, if:

(a) The services are not available in the community in which the family resides;

(b) The services cannot be provided because the program is filled to capacity and there are no current service openings;

(c) The family refuses the services;

(d) The department, or the agency that is supervising the foster care placement, has developed a case plan that does not include reunification of the child and family; or

(e) The department or the service provider determines that the safety of a child, a family member, or persons providing the service would be unduly threatened.

(3) Nothing in this chapter shall prevent provision of intensive family preservation services to nonfamily members when the department or the service provider deems it necessary or appropriate to do so in order to assist the family or child. [1995 c 311 § 6; 1992 c 214 § 5.]

74.14C.042 Family preservation services—Eligibility criteria. (1) Family preservation services may be provided to children and their families only when the department has determined that without intervention, the child faces a substantial likelihood of out-of-home placement due to:

- (a) Child abuse or neglect;
- (b) A serious threat of substantial harm to the child's health, safety, or welfare; or
- (c) Family conflict.

(2) The department need not refer otherwise eligible families and family preservation services need not be provided, if:

(a) The services are not available in the community in which the family resides;

(b) The services cannot be provided because the program is filled to capacity;

(c) The family refuses the services; or

(d) The department or the service provider determines that the safety of a child, a family member, or persons providing the services would be unduly threatened.

(3) Nothing in this chapter shall prevent provision of family preservation services to nonfamily members when the department or the service provider deems it necessary or appropriate to do so in order to assist the family or the child. [1995 c 311 § 7.]

74.14C.050 Implementation and evaluation plan. By December 1, 1995, the department, with the assistance of

the family policy council, two urban and two rural public health and safety networks to be chosen by the family policy council, and two private, nonprofit agencies with expertise and experience in preservation services shall submit to the legislature an implementation and evaluation plan that identifies:

(1) A valid and reliable process that can be used by caseworkers for accurately identifying clients who are eligible for intensive family preservation services and family preservation services. The plan shall recognize the due process rights of families that receive preservation services and recognize that family preservation services are not intended to be investigative for purposes of chapter 13.34 RCW;

(2) Necessary data by which program success will be measured, projections of service needs, budget requests, and long-range planning;

(3) Regional and state-wide projections of service needs;

(4) A cost estimate for state-wide implementation and expansion of preservation services on a phased-in basis beginning no later than July 1, 1996;

(5) A plan and time frame for phased-in implementation of preservation services on a state-wide basis to be accomplished as soon as possible but no later than July 1, 1997;

(6) Data regarding the number of children in foster care, group care, institutional placements, and other out-of-home placements due to medical needs, mental health needs, developmental disabilities, and juvenile offenses, and an assessment of the feasibility of providing preservation services to include all of these children;

(7) Standards and outcome measures for the department when the department provides preservation services directly; and

(8) A process to assess outcome measures identified in RCW 74.14C.030 for contractors providing preservation services. [1995 c 311 § 9; 1992 c 214 § 6.]

74.14C.060 Funds, volunteer services. For the purpose of providing preservation services the department may:

(1) Solicit and use any available federal or private resources, which may include funds, in-kind resources, or volunteer services; and

(2) Use any available state resources, which may include in-kind resources or volunteer services. [1995 c 311 § 10; 1992 c 214 § 7.]

74.14C.065 Federal funds. Any federal funds made available under RCW 74.14C.060 shall be used to supplement and shall not supplant state funds to carry out the purposes of this chapter. However, during the 1995-97 fiscal biennium, federal funds made available under RCW 74.14C.060 may be used to supplant state funds to carry out the purposes of this chapter. [1995 2nd sp.s. c 18 § 922; 1992 c 214 § 11.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

74.14C.070 Appropriations—Transfer of funds from foster care services to family preservation services—Annual report. The secretary of social and health

services, or the secretary's regional designee, may transfer funds appropriated for foster care services to purchase preservation services and other preventive services for children at imminent risk of out-of-home placement or who face a substantial likelihood of out-of-home placement. This transfer may be made in those regions that lower foster care expenditures through efficient use of preservation services and permanency planning efforts. The transfer shall be equivalent to the amount of reduced foster care expenditures and shall be made in accordance with the provisions of this chapter and with the approval of the office of financial management. The secretary shall present an annual report to the legislature regarding any transfers under this section. The secretary shall include caseload, expenditure, cost avoidance, identified improvements to the out-of-home care system, and outcome data related to the transfer in the report. The secretary shall also include in the report information regarding: (1) The percent of cases where a child is placed in out-of-home care after the provision of intensive family preservation services or family preservation services; (2) the average length of time before such child is placed out-of-home; (3) the average length of time such child is placed out-of-home; and (4) the number of families that refused the offer of either family preservation services or intensive family preservation services. [1995 c 311 § 11; 1994 c 288 § 3; 1992 c 214 § 9.]

Funds transfer review: "The juvenile issues task force established under chapter 234, Laws of 1991, shall review the advisability of transferring appropriated funds from foster care to purchase family preservation services for children at imminent risk of foster care placement and include findings and recommendations on the transfer of funds to the appropriate committees of the senate and house of representatives by December 15, 1992. The task force shall identify ways to improve the foster care system and expand family preservation services with the savings generated by avoiding the placement of children at imminent risk of foster care placement through the provision of family preservation services." [1992 c 214 § 10.]

74.14C.080 Data collection—Reports to the legislature. The department shall collect data regarding the rates at which intensive family preservation services prevent out-of-home placements over varying periods of time. The department shall make an initial report to the appropriate committees of the legislature of the data, and the proposed rules to implement this section, by December 1, 1995. The department shall present a report to the appropriate committees of the legislature on September 1st of each odd-numbered year, commencing on September 1, 1997. [1995 c 311 § 5.]

74.14C.090 Reports on referrals and services. Each department caseworker who refers a client for preservation services shall file a report with his or her direct supervisor stating the reasons for which the client was referred. The caseworker's supervisor shall verify in writing his or her belief that the family who is the subject of a referral for preservation services meets the eligibility criteria for services as provided in this chapter. The direct supervisor shall report monthly to the regional administrator on the provision of these services. The regional administrator shall report to the assistant secretary quarterly on the provision of these services for the entire region. The assistant secretary shall make a semiannual report to the secretary on the provision of these services on a state-wide basis. [1995 c 311 § 8.]

74.14C.100 Training and consultation for department personnel—Training for judges and service providers. (1) The department shall, within available funds, provide for ongoing training and consultation to department personnel to carry out their responsibilities effectively. Such training may:

(a) Include the family unit as the primary focus of service; identifying family member strengths; empowering families; child, adult, and family development; stress management; and may include parent training and family therapy techniques;

(b) Address intake and referral, assessment of risk, case assessment, matching clients to services, and service planning issues in the context of the home-delivered service model, including strategies for engaging family members, defusing violent situations, and communication and conflict resolution skills;

(c) Cover methods of helping families acquire the skills they need, including home management skills, life skills, parenting, child development, and the use of community resources;

(d) Address crisis intervention and other strategies for the management of depression, and suicidal, assaultive, and other high-risk behavior; and

(e) Address skills in collaborating with other disciplines and services in promoting the safety of children and other family members and promoting the preservation of the family.

(2) The department and the office of the administrator for the courts shall, within available funds, collaborate in providing training to judges, and others involved in the provision of services pursuant to this title, including service providers, on the function and use of preservation services. [1995 c 311 § 12.]

Chapter 74.15

CARE OF CHILDREN, EXPECTANT MOTHERS, DEVELOPMENTALLY DISABLED

Sections

74.15.010	Declaration of purpose.
74.15.020	Definitions (<i>as amended by 1995 c 302</i>).
74.15.020	Definitions (<i>as amended by 1995 c 311</i>).
74.15.030	Powers and duties of secretary.
74.15.050	Fire protection—Powers and duties of chief of the Washington state patrol.
74.15.080	Access to agencies, records.
74.15.100	License application, issuance, duration—Reclassification.
74.15.120	Initial licenses.
74.15.125	Probationary licenses.
74.15.130	Licenses—Denial, suspension, revocation, modification—Procedures—Adjudicative proceedings—Penalties.
74.15.132	Adjudicative proceedings—Training for administrative law judges.

74.15.010 Declaration of purpose. The purpose of chapter 74.15 RCW and RCW 74.13.031 is:

(1) To safeguard the health, safety, and well-being of children, expectant mothers and developmentally disabled persons receiving care away from their own homes, which is paramount over the right of any person to provide care;

(2) To strengthen and encourage family unity and to sustain parental rights and responsibilities to the end that

foster care is provided only when a child's family, through the use of all available resources, is unable to provide necessary care;

(3) To promote the development of a sufficient number and variety of adequate child-care and maternity-care facilities, both public and private, through the cooperative efforts of public and voluntary agencies and related groups;

(4) To provide consultation to agencies caring for children, expectant mothers or developmentally disabled persons in order to help them to improve their methods of and facilities for care;

(5) To license agencies as defined in RCW 74.15.020 and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all agencies caring for children, expectant mothers and developmentally disabled persons. [1995 c 302 § 2; 1983 c 3 § 192; 1977 ex.s. c 80 § 70; 1967 c 172 § 1.]

Intent—1995 c 302: "The legislature declares that the state of Washington has a compelling interest in protecting and promoting the health, welfare, and safety of children, including those who receive care away from their own homes. The legislature further declares that no person or agency has a right to be licensed under this chapter to provide care for children. The health, safety, and well-being of children must be the paramount concern in determining whether to issue a license to an applicant, whether to suspend or revoke a license, and whether to take other licensing action. The legislature intends, through the provisions of this act, to provide the department of social and health services with additional enforcement authority to carry out the purpose and provisions of this act. Furthermore, administrative law judges should receive specialized training so that they have the specialized expertise required to appropriately review licensing decisions of the department.

Children placed in foster care are particularly vulnerable and have a special need for placement in an environment that is stable, safe, and nurturing. For this reason, foster homes should be held to a high standard of care, and department decisions regarding denial, suspension, or revocation of foster care licenses should be upheld on review if there are reasonable grounds for such action." [1995 c 302 § 1.]

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

Severability—1967 c 172: "If any provision of this 1967 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." [1967 c 172 § 24.] For codification of 1967 c 172, see Codification Tables, Volume 0.

74.15.020 Definitions (as amended by 1995 c 302). For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Department" means the state department of social and health services;

(2) "Secretary" means the secretary of social and health services;

(3) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(d) "Child day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(e) "Family day-care provider" means a ~~((licensed))~~ child day-care provider who regularly provides child day care for not more than twelve children in the provider's home in the family living quarters;

(f) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(g) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036.

(4) "Agency" shall not include the following:

(a) Persons related ~~((by blood or marriage to the child, expectant mother, or persons with developmental disabilities in the following degrees: parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, and/or first cousin))~~ to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (4)(a), even after the marriage is terminated; or

(v) "Extended family members," as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where: (i) The person providing care for periods of less than twenty-four hours does not ~~((engage in))~~ conduct such activity on ~~((a regular basis, or where))~~ an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care; or (ii) the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) Parents on a mutually cooperative basis exchange care of one another's children ~~((, or persons who have the care of an exchange student in their own home));~~

~~((d))~~ (e) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

~~((e))~~ (f) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

~~((f))~~ (g) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

~~((g))~~ (h) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

~~((h))~~ (i) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

~~((i))~~ (j) Licensed physicians or lawyers;

~~((j))~~ (k) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

~~((k))~~ (l) Facilities approved and certified under chapter 71A.22 RCW;

~~((l))~~ (m) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

~~((m))~~ (n) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

~~((n))~~ (o) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

~~((o))~~ (p) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

(5) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards. [1995 c 302 § 3; 1994 c 273 § 21; 1991 c 128 § 14; 1988 c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

Intent—1995 c 302: See note following RCW 74.15.010.

74.15.020 Definitions (as amended by 1995 c 311). For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Department" means the state department of social and health services;

(2) "Secretary" means the secretary of social and health services;

(3) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(d) "Day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(e) "Family day-care provider" means a licensed day-care provider who regularly provides day care for not more than twelve children in the provider's home in the family living quarters;

(f) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(g) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036.

(4) "Agency" shall not include the following:

(a) ~~((Persons related by blood or marriage to the child, expectant mother, or persons with developmental disabilities in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, and/or first cousin))~~ Persons related to the child, expectant mother, or person with developmental disabilities in the following ways:

(i) Any blood relative, including those of half blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection, even if a marriage is terminated; or

(v) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who

has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person does not engage in such activity on a regular basis, or where parents on a mutually cooperative basis exchange care of one another's children, or persons who have the care of an exchange student in their own home;

(d) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors;

(e) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(i) Licensed physicians or lawyers;

(j) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(k) Facilities approved and certified under chapter 71A.22 RCW;

(l) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(m) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(n) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(o) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

(5) "Requirement" means any rule, regulation or standard of care to be maintained by an agency. [1995 c 311 § 18; 1994 c 273 § 21; 1991 c 128 § 14; 1988 c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

Reviser's note: RCW 74.15.020 was amended twice during the 1995 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 date—1991 c 128: See RCW 19.166.900 and 19.166.901.

Severability—1988 c 176: See RCW 71A.10.900.

Severability—1987 c 170: See note following RCW 13.04.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

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

74.15.030 Powers and duties of secretary. The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or

different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) The character, suitability and competence of an agency and other persons associated with an agency directly responsible for the care and treatment of children, expectant mothers or developmentally disabled persons. In consultation with law enforcement personnel, the secretary shall investigate the conviction record or pending charges and dependency record information under chapter 43.43 RCW of each agency and its staff seeking licensure or relicensure. In order to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care, and who have not resided in the state of Washington during the three-year period before being authorized to care for children shall be fingerprinted. The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history records check. The fingerprint criminal history records checks will be at the expense of the licensee except that in the case of a foster family home, if this expense would work a hardship on the licensee, the department shall pay the expense. The licensee may not pass this cost on to the employee or prospective employee, unless the employee is determined to be unsuitable due to his or her criminal history record. The secretary shall use the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children, expectant mothers, and developmentally disabled persons. Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose;

(c) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(d) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;

(e) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(f) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and

(g) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.060 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care centers and family day-care homes, to determine whether the abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(6) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;

(7) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted hereunder;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with the child care coordinating committee and other affected groups for child day-care requirements and with the children's services advisory committee for requirements for other agencies; and

(9) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and developmentally disabled persons. [1995 c 302 § 4; 1988 c 189 § 3. Prior: 1987 c 524 § 13; 1987 c 486 § 14; 1984 c 188 § 5; 1982 c 118 § 6; 1980 c 125 § 1; 1979 c 141 § 355; 1977 ex.s. c 80 § 72; 1967 c 172 § 3.]

Intent—1995 c 302: See note following RCW 74.15.010.

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

74.15.050 Fire protection—Powers and duties of chief of the Washington state patrol. The chief of the Washington state patrol, through the director of fire protection, shall have the power and it shall be his or her duty:

(1) In consultation with the children's services advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt recognized minimum standard requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and RCW 74.13.031, except foster-family homes

and child-placing agencies, necessary to protect all persons residing therein from fire hazards;

(2) To make or cause to be made such inspections and investigations of agencies, other than foster-family homes or child-placing agencies, as he or she deems necessary;

(3) To make a periodic review of requirements under RCW 74.15.030(7) and to adopt necessary changes after consultation as required in subsection (1) of this section;

(4) To issue to applicants for licenses hereunder, other than foster-family homes or child-placing agencies, who comply with the requirements, a certificate of compliance, a copy of which shall be presented to the department of social and health services before a license shall be issued, except that a provisional license may be issued as provided in RCW 74.15.120. [1995 c 369 § 62; 1986 c 266 § 123; 1982 c 118 § 8; 1979 c 141 § 357; 1967 c 172 § 5.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

74.15.080 Access to agencies, records. All agencies subject to chapter 74.15 RCW and RCW 74.13.031 shall accord the department of social and health services, the secretary of health, the chief of the Washington state patrol, and the director of fire protection, or their designees, the right of entrance and the privilege of access to and inspection of records for the purpose of determining whether or not there is compliance with the provisions of chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted thereunder. [1995 c 369 § 63; 1989 1st ex.s. c 9 § 266; 1986 c 266 § 124; 1979 c 141 § 359; 1967 c 172 § 8.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1986 c 266: See note following RCW 38.52.005.

74.15.100 License application, issuance, duration—Reclassification. Each agency shall make application for a license or renewal of license to the department of social and health services on forms prescribed by the department. A licensed agency having foster-family homes under its supervision may make application for a license on behalf of any such foster-family home. Such a foster home license shall cease to be valid when the home is no longer under the supervision of that agency. Upon receipt of such application, the department shall either grant or deny a license within ninety days unless the application is for licensure as a foster-family home, in which case RCW 74.15.040 shall govern. A license shall be granted if the agency meets the minimum requirements set forth in chapter 74.15 RCW and RCW 74.13.031 and the departmental requirements consistent herewith, except that an initial license may be issued as provided in RCW 74.15.120. Licenses provided for in chapter 74.15 RCW and RCW 74.13.031 shall be issued for a period of three years. The licensee, however, shall advise the secretary of any material change in circumstances which might constitute grounds for reclassification of license as to category. The license issued under this chapter is not transferable and applies only to the licensee and the location stated in the application. For licensed foster-family and family day-care homes having an acceptable history of child care, the license may remain in effect for two weeks after a

move, except that for the foster-family home this will apply only if the family remains intact. [1995 c 302 § 8; 1982 c 118 § 11; 1979 c 141 § 360; 1967 c 172 § 10.]

Intent—1995 c 302: See note following RCW 74.15.010.

74.15.120 Initial licenses. The secretary of social and health services may, at his or her discretion, issue an initial license instead of a full license, to an agency or facility for a period not to exceed six months, renewable for a period not to exceed two years, to allow such agency or facility reasonable time to become eligible for full license. An initial license shall not be granted to any foster-family home except as specified in this section. An initial license may be granted to a foster-family home only if the following three conditions are met: (1) The license is limited so that the licensee is authorized to provide care only to a specific child or specific children; (2) the department has determined that the licensee has a relationship with the child, and the child is comfortable with the licensee, or that it would otherwise be in the child's best interest to remain or be placed in the licensee's home; and (3) the initial license is issued for a period not to exceed ninety days. [1995 c 311 § 22; 1979 c 141 § 361; 1967 c 172 § 12.]

74.15.125 Probationary licenses. (1) The department may issue a probationary license to a licensee who has had a license but is temporarily unable to comply with a rule or has been the subject of multiple complaints or concerns about noncompliance if:

(a) The noncompliance does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue; and

(b) The licensee has a plan approved by the department to correct the area of noncompliance within the probationary period.

(2) A probationary license may be issued for up to six months, and at the discretion of the department it may be extended for an additional six months. The department shall immediately terminate the probationary license, if at any time the noncompliance for which the probationary license was issued presents an immediate threat to the health or well-being of the children.

(3) The department may, at any time, issue a probationary license for due cause that states the conditions of probation.

(4) An existing license is invalidated when a probationary license is issued.

(5) At the expiration of the probationary license, the department shall reinstate the original license for the remainder of its term, issue a new license, or revoke the original license.

(6) A right to an adjudicative proceeding shall not accrue to the licensee whose license has been placed on probationary status unless the licensee does not agree with the placement on probationary status and the department then suspends, revokes, or modifies the license. [1995 c 302 § 7.]

Intent—1995 c 302: See note following RCW 74.15.010.

74.15.130 Licenses—Denial, suspension, revocation, modification—Procedures—Adjudicative proceedings—

Penalties. (1) An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended, revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of a foster family home license, the department's decision shall be upheld if there is reasonable cause to believe that:

(a) The applicant or licensee lacks the character, suitability, or competence to care for children placed in out-of-home care;

(b) The applicant or licensee has failed or refused to comply with any provision of chapter 74.15 RCW, RCW 74.13.031, or the requirements adopted pursuant to such provisions; or

(c) The conditions required for issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses.

(3) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, other than a foster family home license, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(4) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under the provisions of this chapter and RCW 74.13.031 or that an agency subject to licensing under this chapter and RCW 74.13.031 is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home. Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance. Civil monetary penalties shall not exceed seventy-five dollars per violation for a family day-care home and two hundred fifty dollars per violation for group homes, child day-care centers, and child-placing agencies. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty. The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period. The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. Chapter 43.20A RCW governs notice of a civil monetary penalty and provides the right of an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil

monetary penalties. [1995 c 302 § 5; 1989 c 175 § 149; 1982 c 118 § 12; 1979 c 141 § 362; 1967 c 172 § 13.]

Intent—1995 c 302: See note following RCW 74.15.010.

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

74.15.132 Adjudicative proceedings—Training for administrative law judges. (1) The office of administrative hearings shall not assign nor allow an administrative law judge to preside over an adjudicative hearing regarding denial, modification, suspension, or revocation of any license to provide child care, including foster care, under this chapter, unless such judge has received training related to state and federal laws and department policies and procedures regarding:

(a) Child abuse, neglect, and maltreatment;

(b) Child protective services investigations and standards;

(c) Licensing activities and standards;

(d) Child development; and

(e) Parenting skills.

(2) The office of administrative hearings shall develop and implement a training program that carries out the requirements of this section. The office of administrative hearings shall consult and coordinate with the department in developing the training program. The department may assist the office of administrative hearings in developing and providing training to administrative law judges. [1995 c 302 § 6.]

Intent—1995 c 302: See note following RCW 74.15.010.

Chapter 74.34

ABUSE OF VULNERABLE ADULTS

Sections

74.34.010	Legislative findings—Intent.
74.34.015	Protection of frail elders and vulnerable adults—Legislative findings and intent.
74.34.020	Definitions.
74.34.030	Reports—Duty to make.
74.34.070	Response to reports—Information required—Cooperative agreements for services.
74.34.100	Recodified as RCW 74.34.015.
74.34.200	Abuse, neglect, exploitation, or abandonment of frail elder or vulnerable adult—Cause of action for damages—Legislative intent.
74.34.210	Order for protection or action for damages—Standing—Jurisdiction.

74.34.010 Legislative findings—Intent. The legislature finds that frail elders and vulnerable adults may be subjected to abuse, neglect, exploitation, or abandonment. The legislature finds that there are a number of adults sixty years of age or older who lack the ability to perform or obtain those services necessary to maintain or establish their well-being. The legislature finds that many frail elders and vulnerable adults have health problems that place them in a dependent position. The legislature further finds that a significant number of frail elders and vulnerable adults have mental and verbal limitations that leave them vulnerable and incapable of asking for help and protection.

It is the intent of the legislature to prevent or remedy the abuse, neglect, exploitation, or abandonment of persons

sixty years of age or older who have a functional, mental, or physical inability to care for or protect themselves.

It is the intent of the legislature to assist frail elders and vulnerable adults by providing these persons with the protection of the courts and with the least-restrictive services, such as home care, and by preventing or reducing inappropriate institutional care. The legislature finds that it is in the interests of the public health, safety, and welfare of the people of the state to provide a procedure for identifying these vulnerable persons and providing the services and remedies necessary for their well-being. [1995 1st sp.s. c 18 § 82; 1984 c 97 § 7.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.34.015 Protection of frail elders and vulnerable adults—Legislative findings and intent. The legislature finds that frail elders and vulnerable adults who are abused, neglected, abandoned, or exploited may need the protection of the courts. The legislature further finds that many of these elderly or vulnerable persons may be homebound or otherwise may be unable to represent themselves in court or to retain legal counsel in order to obtain the relief available to them under this chapter.

It is the intent of the legislature to improve access to the courts for victims of abuse, neglect, exploitation, and abandonment in order to better protect the state's frail elderly and vulnerable adults. [1995 1st sp.s. c 18 § 83; 1986 c 187 § 4. Formerly RCW 74.34.100.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

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

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means a nonaccidental act of physical or mental mistreatment or injury, or sexual mistreatment, which harms a person through action or inaction by another individual.

(3) "Consent" means express written consent granted after the person has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(4) "Department" means the department of social and health services.

(5) "Exploitation" means the illegal or improper use of a frail elder or vulnerable adult or that person's income or resources, including trust funds, for another person's profit or advantage.

(6) "Neglect" means a pattern of conduct or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that results in the deprivation of care necessary to maintain the vulnerable person's physical or mental health.

(7) "Secretary" means the secretary of social and health services.

(8) "Frail elder or vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. "Frail elder or vulnerable adult" shall include persons found incapacitated under chapter 11.88 RCW, or a person who has a developmental disability under chapter 71A.10 RCW, and persons admitted to any long-term care facility that is licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, or persons receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW. [1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.34.030 Reports—Duty to make. Any person, including but not limited to, financial institutions or attorneys, having reasonable cause to believe that a vulnerable adult has suffered abuse, exploitation, neglect, or abandonment, or is otherwise in need of protective services may report such information to the department. Any police officer, social worker, employee of the department, a social service, welfare, mental health, or health agency, including but not limited to home health, hospice, and home care agencies licensed under chapter 70.127 RCW, congregate long-term care facility, including but not limited to adult family homes licensed under chapter 70.128 RCW, boarding homes licensed under chapter 18.20 RCW, and nursing homes licensed under chapter 18.51 RCW, or assisted living services pursuant to RCW 74.39A.010, or health care provider licensed under Title 18 RCW, including but not limited to doctors, nurses, psychologists, and pharmacists, having reasonable cause to believe that a vulnerable adult has suffered abuse, exploitation, neglect, or abandonment, shall make an immediate oral report of such information to the department and shall report such information in writing to the department within ten calendar days of receiving the information. [1995 1st sp.s. c 18 § 88; 1986 c 187 § 1; 1984 c 97 § 9.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1984 c 97 § 9: "Section 9 of this act shall take effect on July 1, 1985." [1984 c 97 § 16.] Section 9 is codified as RCW 74.34.030.

74.34.070 Response to reports—Information required—Cooperative agreements for services. In responding to reports of abuse, exploitation, neglect, or abandonment under this chapter, the department shall provide information to the frail elder or vulnerable adult on protective services available to the person and inform the person of the right to refuse such services. The department shall develop cooperative agreements with community-based agencies servicing the abused elderly and vulnerable adults. The agreements shall cover such subjects as the appropriate roles and responsibilities of the department and community-based agencies in identifying and responding to reports of abuse, the provision of case-management services, standardized data collection procedures, and related coordination activities. [1995 1st sp.s. c 18 § 87; 1984 c 97 § 13.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.34.100 Recodified as RCW 74.34.015. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.34.200 Abuse, neglect, exploitation, or abandonment of frail elder or vulnerable adult—Cause of action for damages—Legislative intent. (1) In addition to other remedies available under the law, a frail elder or vulnerable adult or a person age eighteen or older who has been subjected to abuse, neglect, exploitation, or abandonment either while residing in a long-term care facility or in the case of a person in the care of a home health, hospice, or home care agency, residing at home, shall have a cause of action for damages on account of his or her injuries, pain and suffering, and loss of property sustained thereby. This action shall be available where the defendant is or was a corporation, trust, unincorporated association, partnership, administrator, employee, agent, officer, partner, or director of a long-term care facility, such as a nursing home or boarding home, that is licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, or of a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW, as now or subsequently designated.

(2) It is the intent of the legislature, however, that where there is a dispute about the care or treatment of a frail elder or vulnerable adult, the parties should use the least formal means available to try to resolve the dispute. Where feasible, parties are encouraged but not mandated to employ direct discussion with the health care provider, use of the long-term care ombudsman or other intermediaries, and, when necessary, recourse through licensing or other regulatory authorities.

(3) In an action brought under this section, a prevailing plaintiff shall be awarded his or her actual damages, together with the costs of the suit, including a reasonable attorney's fee. The term "costs" includes, but is not limited to, the reasonable fees for a guardian, guardian ad litem, and experts, if any, that may be necessary to the litigation of a claim brought under this section. [1995 1st sp.s. c 18 § 85.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.34.210 Order for protection or action for damages—Standing—Jurisdiction. A petition for an order for protection or an action for damages under this chapter may be brought by the plaintiff, or where necessary, by his or her family members and/or guardian or legal fiduciary, or as otherwise provided under this chapter. The death of the plaintiff shall not deprive the court of jurisdiction over a petition or claim brought under this chapter. Upon petition, after the death of the vulnerable person, the right to initiate or maintain the action shall be transferred to the executor or administrator of the deceased, for the benefit of the surviving spouse, child or children, or other heirs set forth in chapter 4.20 RCW. [1995 1st sp.s. c 18 § 86.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Chapter 74.39

LONG-TERM CARE SERVICE OPTIONS

Sections

74.39.005 Purpose.

74.39.005 Purpose. The purpose of this chapter is to:

(1) Establish a balanced range of health, social, and supportive services that deliver long-term care services to chronically, functionally disabled persons of all ages;

(2) Ensure that functional ability shall be the determining factor in defining long-term care service needs and that these needs will be determined by a uniform system for comprehensively assessing functional disability;

(3) Ensure that services are provided in the most independent living situation consistent with individual needs;

(4) Ensure that long-term care service options shall be developed and made available that enable functionally disabled persons to continue to live in their homes or other community residential facilities while in the care of their families or other volunteer support persons;

(5) Ensure that long-term care services are coordinated in a way that minimizes administrative cost, eliminates unnecessarily complex organization, minimizes program and service duplication, and maximizes the use of financial resources in directly meeting the needs of persons with functional limitations;

(6) Develop a systematic plan for the coordination, planning, budgeting, and administration of long-term care services now fragmented between the division of developmental disabilities, division of mental health, aging and adult services administration, division of children and family services, division of vocational rehabilitation, office on AIDS, division of health, and bureau of alcohol and substance abuse;

(7) Encourage the development of a state-wide long-term care case management system that effectively coordinates the plan of care and services provided to eligible clients;

(8) Ensure that individuals and organizations affected by or interested in long-term care programs have an opportunity to participate in identification of needs and priorities, policy development, planning, and development, implementation, and monitoring of state supported long-term care programs;

(9) Support educational institutions in Washington state to assist in the procurement of federal support for expanded research and training in long-term care; and

(10) Facilitate the development of a coordinated system of long-term care education that is clearly articulated between all levels of higher education and reflective of both in-home care needs and institutional care needs of functionally disabled persons. [1995 1st sp.s. c 18 § 10; 1989 c 427 § 2.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Chapter 74.39A

LONG-TERM CARE SERVICES OPTIONS— EXPANSION

Sections

74.39A.008 Definitions.

74.39A.010 Assisted living services and enhanced adult residential care—Contracts—Rules.

74.39A.020 Adult residential care and enhanced adult residential care—Contracts—Rules.

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74.39A.040 Department assessment of and assistance to hospital patients in need of long-term care.

74.39A.050 Quality improvement principles.

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74.39A.070 Rules for qualifications and training requirements— Requirement that contractors comply with federal and state regulations.

74.39A.080 Department authority to take actions in response to noncompliance or violations.

74.39A.090 Discharge planning—Contracts for case management services and reassessment and reauthorization.

74.39A.100 Chore services—Legislative finding, intent.

74.39A.110 Chore services—Legislative policy and intent regarding available funds—Levels of service.

74.39A.120 Chore services—Expenditure limitation—Priorities— Rule on patient resource limit.

74.39A.130 Chore services—Department to develop program.

74.39A.140 Chore services—Employment of public assistance recipients.

74.39A.150 Chore services for disabled persons—Eligibility.

74.39A.160 Transfer of assets—Penalties.

74.39A.170 Recovery of payments—Transfer of assets rules for eligibility.

74.39A.180 Authority to pay for probate actions and collection of bad debts.

74.39A.008 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult family home" means a facility licensed under chapter 70.128 RCW.

(2) "Adult residential care" means personal care services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020.

(3) "Aging and adult services administration" means the aging and adult services administration of the department.

(4) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 and the resident is housed in a private apartment-like unit.

(5) "Boarding home" means a facility licensed under chapter 18.20 RCW.

(6) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

(7) "Department" means the department of social and health services.

(8) "Home and community services" means assisted living services, enhanced adult residential care, adult residential care, adult family homes, in-home services, and other services administered by the aging and adult services

administration of the department directly or through contract with area agencies on aging.

(9) "Long-term care services" means the services administered directly or through contract by the aging and adult services administration of the department, including but not limited to nursing facility care and home and community services.

(10) "Enhanced adult residential care" means personal care services and limited nursing services, as defined by the department of health in rule, which services are provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020.

(11) "Nursing facility" means a nursing facility as defined in section 1919(a) of the federal social security act and regulations adopted thereunder.

(12) "Nursing home" means a facility licensed under chapter 18.51 RCW.

(13) "Tribally licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW. [1995 1st sp.s. c 18 § 1.]

Conflict with federal requirements—1995 1st sp.s. c 18: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1995 1st sp.s. c 18 § 74.]

Severability—1995 1st sp.s. c 18: "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." [1995 1st sp.s. c 18 § 119.]

Effective date—1995 1st sp.s. c 18: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 18 § 120.]

74.39A.010 Assisted living services and enhanced adult residential care—Contracts—Rules. (1) To the extent of available funding, the department of social and health services may contract with licensed boarding homes under chapter 18.20 RCW and tribally licensed boarding homes for assisted living services and enhanced adult residential care. The department shall develop rules for facilities that contract with the department for assisted living services or enhanced adult residential care to establish:

(a) Facility service standards consistent with the principles in RCW 74.39A.050 and consistent with chapter 70.129 RCW;

(b) Standards for resident living areas consistent with RCW 74.39A.030;

(c) Training requirements for providers and their staff.

(2) The department's rules shall provide that services in assisted living and enhanced adult residential care:

(a) Recognize individual needs, privacy, and autonomy;

(b) Include, but not be limited to, personal care, nursing services, medication administration, and supportive services that promote independence and self-sufficiency;

(c) Are of sufficient scope to assure that each resident who chooses to remain in the assisted living or enhanced

adult residential care may do so, to the extent that the care provided continues to be cost-effective and safe and promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice;

(d) Are directed first to those persons most likely, in the absence of enhanced adult residential care or assisted living services, to need hospital, nursing facility, or other out-of-home placement; and

(e) Are provided in compliance with applicable facility and professional licensing laws and rules.

(3) When a facility contracts with the department for assisted living services or enhanced adult residential care, only services and facility standards that are provided to or in behalf of the assisted living services or enhanced adult residential care client shall be subject to the department's rules. [1995 1st sp.s. c 18 § 14; 1993 c 508 § 3.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.39A.020 Adult residential care and enhanced adult residential care—Contracts—Rules. (1) To the extent of available funding, the department of social and health services may contract for adult residential care and enhanced adult residential care.

(2) The department shall, by rule, develop terms and conditions for facilities that contract with the department for adult residential care and enhanced adult residential care to establish:

(a) Facility service standards consistent with the principles in RCW 74.39A.050 and consistent with chapter 70.129 RCW; and

(b) Training requirements for providers and their staff.

(3) The department shall, by rule, provide that services in adult residential care and enhanced adult residential care facilities:

(a) Recognize individual needs, privacy, and autonomy;

(b) Include personal care and limited nursing services and other services that promote independence and self-sufficiency and aging in place;

(c) Are directed first to those persons most likely, in the absence of adult residential care and enhanced adult residential care services, to need hospital, nursing facility, or other out-of-home placement; and

(d) Are provided in compliance with applicable facility and professional licensing laws and rules.

(4) When a facility contracts with the department for adult residential care and enhanced adult residential care, only services and facility standards that are provided to or in behalf of the adult residential care or the enhanced adult residential care client shall be subject to the adult residential care or enhanced adult residential care rules.

(5) To the extent of available funding, the department may also contract under this section with a tribally licensed boarding home for the provision of services of the same nature as the services provided by adult residential care facilities. The provisions of subsections (2) (a) and (b) and (3) (a) through (d) of this section apply to such a contract. [1995 1st sp.s. c 18 § 15.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.39A.030 Expansion of home and community services—Payment rates. (1) To the extent of available funding, the department shall expand cost-effective options for home and community services for consumers for whom the state participates in the cost of their care.

(2) In expanding home and community services, the department shall: (a) Take full advantage of federal funding available under Title XVIII and Title XIX of the federal social security act, including home health, adult day care, waiver options, and state plan services; and (b) be authorized to use funds available under its community options program entry system waiver granted under section 1915(c) of the federal social security act to expand the availability of in-home, adult residential care, adult family homes, enhanced adult residential care, and assisted living services. By June 30, 1997, the department shall undertake to reduce the nursing home medicaid census by at least one thousand six hundred by assisting individuals who would otherwise require nursing facility services to obtain services of their choice, including assisted living services, enhanced adult residential care, and other home and community services. If a resident, or his or her legal representative, objects to a discharge decision initiated by the department, the resident shall not be discharged if the resident has been assessed and determined to require nursing facility services. In contracting with nursing homes and boarding homes for enhanced adult residential care placements, the department shall not require, by contract or through other means, structural modifications to existing building construction.

(3)(a) The department shall by rule establish payment rates for home and community services that support the provision of cost-effective care.

(b) The department may authorize an enhanced adult residential care rate for nursing homes that temporarily or permanently convert their bed use for the purpose of providing enhanced adult residential care under chapter 70.38 RCW, when the department determines that payment of an enhanced rate is cost-effective and necessary to foster expansion of contracted enhanced adult residential care services. As an incentive for nursing homes to permanently convert a portion of its nursing home bed capacity for the purpose of providing enhanced adult residential care, the department may authorize a supplemental add-on to the enhanced adult residential care rate.

(c) The department may authorize a supplemental assisted living services rate for up to four years for facilities that convert from nursing home use and do not retain rights to the converted nursing home beds under chapter 70.38 RCW, if the department determines that payment of a supplemental rate is cost-effective and necessary to foster expansion of contracted assisted living services. [1995 1st sp.s. c 18 § 2.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.39A.040 Department assessment of and assistance to hospital patients in need of long-term care. The department shall work in partnership with hospitals in assisting patients and their families to find long-term care services of their choice. The department shall not delay hospital discharges but shall assist and support the activities of hospital discharge planners. The department also shall

coordinate with home health and hospice agencies whenever appropriate. The role of the department is to assist the hospital and to assist patients and their families in making informed choices by providing information regarding home and community options to individuals who are hospitalized and likely to need long-term care.

(1) To the extent of available funds, the department shall assess individuals who:

(a) Are medicaid clients, medicaid applicants, or eligible for both medicare and medicaid; and

(b) Apply or are likely to apply for admission to a nursing facility.

(2) For individuals who are reasonably expected to become medicaid recipients within one hundred eighty days of admission to a nursing facility, the department shall, to the extent of available funds, offer an assessment and information regarding appropriate in-home and community services.

(3) When the department finds, based on assessment, that the individual prefers and could live appropriately and cost-effectively at home or in some other community-based setting, the department shall:

(a) Advise the individual that an in-home or other community service is appropriate;

(b) Develop, with the individual or the individual's representative, a comprehensive community service plan;

(c) Inform the individual regarding the availability of services that could meet the applicant's needs as set forth in the community service plan and explain the cost to the applicant of the available in-home and community services relative to nursing facility care; and

(d) Discuss and evaluate the need for on-going involvement with the individual or the individual's representative.

(4) When the department finds, based on assessment, that the individual prefers and needs nursing facility care, the department shall:

(a) Advise the individual that nursing facility care is appropriate and inform the individual of the available nursing facility vacancies;

(b) If appropriate, advise the individual that the stay in the nursing facility may be short term; and

(c) Describe the role of the department in providing nursing facility case management. [1995 1st sp.s. c 18 § 6.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.39A.050 Quality improvement principles. The department's system of quality improvement for long-term care services shall be guided by the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be consumer centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers.

(3) Providers should be supported in their efforts to improve quality through training, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints.

(6) Providers generally should be assisted in addressing identified problems initially through consultation and technical assistance. Enforcement remedies shall be available for problems that are serious, recurring, or that have been uncorrected. [1995 1st sp.s. c 18 § 12.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.39A.060 Toll-free telephone number for complaints—Investigation and referral—Discrimination or retaliation prohibited. (1) The aging and adult services administration of the department shall establish and maintain a toll-free telephone number for receiving complaints regarding a facility that the administration licenses or with which it contracts for long-term care services.

(2) All facilities that are licensed by, or that contract with the aging and adult services administration to provide long-term care services shall post in a place and manner clearly visible to residents and visitors the department's toll-free complaint telephone number.

(3) The aging and adult services administration shall investigate complaints if the subject of the complaint is within its authority unless the department determines that: (a) The complaint is intended to willfully harass a licensee or employee of the licensee; (b) there is no reasonable basis for investigation; or (c) corrective action has been taken.

(4) The aging and adult services administration shall refer complaints to appropriate state agencies, law enforcement agencies, the attorney general, the long-term care ombudsman, or other entities if the department lacks authority to investigate.

(5) The department may not provide the substance of the complaint to the licensee or contractor before the completion of the investigation by the department. Neither the substance of the complaint provided to the licensee or contractor nor any copy of the complaint or related report published, released, or made otherwise available shall disclose the name, title, or identity of any complainant, or other person mentioned in the complaint, except that the department may disclose the identity of the complainant if such disclosure is requested in writing by the complainant.

(6) A facility that provides long-term care services shall not discriminate or retaliate in any manner against a resident on the basis or for the reason that such resident or any other person made a complaint to the department or the long-term care ombudsman or cooperated with the investigation of such a complaint. The department may impose a civil penalty of not more than three thousand dollars for a violation of this subsection and require the facility to mitigate any damages incurred by the resident. [1995 1st sp.s. c 18 § 13.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.39A.070 Rules for qualifications and training requirements—Requirement that contractors comply with federal and state regulations. (1) The department shall, by rule, establish reasonable minimum qualifications and training requirements to assure that assisted living service, enhanced adult residential care service, and adult

residential care providers with whom the department contracts are capable of providing services consistent with this chapter. The rules shall apply only to residential capacity for which the state contracts.

(2) The department shall not contract for assisted living, enhanced adult residential care, or adult residential care services with a provider if the department finds that the provider or any partner, officer, director, managerial employee, or owner of five percent or more of the provider has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children. [1995 1st sp.s. c 18 § 16.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.39A.080 Department authority to take actions in response to noncompliance or violations. (1) The department is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that a provider of assisted living services or enhanced adult residential care services has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated without a license or under a revoked license;

(c) Knowingly, or with reason to know, made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a contract;

(b) Impose reasonable conditions on a contract, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a contract; or

(e) Suspend admissions to the facility by imposing stop placement on contracted services.

(3) When the department orders stop placement, the facility shall not admit any person admitted by contract until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain adequate care and service.

(4) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing contracts suspension, stop placement, or conditions for continuation of a contract are effective immediately upon notice and shall continue pending any hearing. [1995 1st sp.s. c 18 § 17.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.39A.090 Discharge planning—Contracts for case management services and reassessment and reauthorization. (1) The legislature intends that any staff reassigned by the department as a result of shifting of the reauthorization responsibilities by contract outlined in this section shall be dedicated for discharge planning and assisting with discharge planning and information on existing discharge planning cases. Discharge planning, as directed in this section, is intended for residents and patients identified for discharge to long-term care pursuant to RCW 70.41.320, 74.39A.040, and 74.42.058. The purpose of discharge planning is to protect residents and patients from the financial incentives inherent in keeping residents or patients in a more expensive higher level of care and shall focus on care options that are in the best interest of the patient or resident.

(2) The department shall contract with area agencies on aging:

(a) To provide case management services to individuals receiving home and community services in their own home; and

(b) To reassess and reauthorize home and community services in home or in other settings for individuals consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive home and community services; and

(ii) Who, at the time of reassessment and reauthorization, are receiving home and community services in their own home.

(3) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract to provide these services, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found. [1995 1st sp.s. c 18 § 38.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.39A.100 Chore services—Legislative finding, intent. The legislature finds that it is desirable to provide a coordinated and comprehensive program of in-home services for certain citizens in order that such persons may remain in their own homes, obtain employment if possible, and maintain a closer contact with the community. Such a program will seek to prevent mental and psychological deterioration which our citizens might otherwise experience. The legislature intends that the services will be provided in a fashion which promotes independent living. [1980 c 137 § 1; 1973 1st ex.s. c 51 § 1. Formerly RCW 74.08.530.]

74.39A.110 Chore services—Legislative policy and intent regarding available funds—Levels of service. It is the intent of the legislature that chore services be provided to eligible persons within the limits of funds appropriated for that purpose. Therefore, the department shall provide services only to those persons identified as at risk of being placed in a long-term care facility in the absence of such services. The department shall not provide chore services to any individual who is eligible for, and whose needs can be met by another community service administered by the department. Chore services shall be provided to the extent

necessary to maintain a safe and healthful living environment. It is the policy of the state to encourage the development of volunteer chore services in local communities as a means of meeting chore care service needs and directing financial resources. In determining eligibility for chore services, the department shall consider the following:

- (1) The kind of services needed;
- (2) The degree of service need, and the extent to which an individual is dependent upon such services to remain in his or her home or return to his or her home;
- (3) The availability of personal or community resources which may be utilized to meet the individual's need; and
- (4) Such other factors as the department considers necessary to insure service is provided only to those persons whose chore service needs cannot be met by relatives, friends, nonprofit organizations, other persons, or by other programs or resources.

In determining the level of services to be provided under this chapter, the client shall be assessed using an instrument designed by the department to determine the level of functional disability, the need for service and the person's risk of long-term care facility placement. [1995 1st sp.s. c 18 § 36; 1989 c 427 § 5; 1981 1st ex.s. c 6 § 16. Formerly RCW 74.08.545.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Severability—1989 c 427: See RCW 74.39.900.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.39A.120 Chore services—Expenditure limitation—Priorities—Rule on patient resource limit. (1) The department shall establish a monthly dollar lid for each region on chore services expenditures within the legislative appropriation. Priority for services shall be given to the following situations:

- (a) People who were receiving chore personal care services as of June 30, 1995;
- (b) People for whom chore personal care services are necessary to return to the community from a nursing home;
- (c) People for whom chore personal care services are necessary to prevent unnecessary nursing home placement; and
- (d) People for whom chore personal care services are necessary as a protective measure based on referrals resulting from an adult protective services investigation.

(2) The department shall require a client to participate in the cost of chore services as a necessary precondition to receiving chore services paid for by the state. The client shall retain an amount equal to one hundred percent of the federal poverty level, adjusted for household size, for maintenance needs. The department shall consider the remaining income as the client participation amount for chore services except for those persons whose participation is established under *RCW 74.08.570.

(3) The department shall establish, by rule, the maximum amount of resources a person may retain and be eligible for chore services. [1995 1st sp.s. c 18 § 37.]

***Reviser's note:** RCW 74.08.570 was recodified as RCW 74.39A.150 pursuant to 1995 1st sp.s. c 18 § 34.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.39A.130 Chore services—Department to develop program. (1) The department is authorized to develop a program to provide for chore services under this chapter.

(2) The department may provide assistance in the recruiting of providers of the services enumerated in RCW 74.39A.120 and seek to assure the timely provision of services in emergency situations.

(3) The department shall assure that all providers of the chore services under this chapter are compensated for the delivery of the services on a prompt and regular basis. [1995 1st sp.s. c 18 § 40; 1989 c 427 § 6; 1983 c 3 § 189; 1980 c 137 § 2; 1973 1st ex.s. c 51 § 3. Formerly RCW 74.08.550.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Severability—1989 c 427: See RCW 74.39.900.

74.39A.140 Chore services—Employment of public assistance recipients. In developing the program set forth in RCW 74.08.550, the department shall, to the extent possible, and consistent with federal law, enlist the services of persons receiving grants under the provisions of chapter 74.08 RCW and chapter 74.12 RCW to carry out the services enumerated under RCW 74.08.541. To this end, the department shall establish appropriate rules and regulations designed to determine eligibility for employment under this section, as well as regulations designed to notify persons receiving such grants of eligibility for such employment. The department shall further establish a system of compensation to persons employed under the provisions of this section which provides that any grants they receive under chapter 74.08 RCW or chapter 74.12 RCW shall be diminished by such percentage of the compensation received under this section as the department shall establish by rules and regulations. [1983 c 3 § 190; 1973 1st ex.s. c 51 § 4. Formerly RCW 74.08.560.]

74.39A.150 Chore services for disabled persons—Eligibility. (1) An otherwise eligible disabled person shall not be deemed ineligible for chore services under this chapter if the person's gross income from employment, adjusted downward by the cost of the chore services to be provided and the disabled person's work expenses, does not exceed the maximum eligibility standard established by the department for such chore services. The department shall establish a methodology for client participation that allows such disabled persons to be employed.

(2) If a disabled person arranges for chore services through an individual provider arrangement, the client's contribution shall be counted as first dollar toward the total amount owed to the provider for chore services rendered.

(3) As used in this section:

- (a) "Gross income" means total earned wages, commissions, salary, and any bonus;
- (b) "Work expenses" includes:
 - (i) Payroll deductions required by law or as a condition of employment, in amounts actually withheld;
 - (ii) The necessary cost of transportation to and from the place of employment by the most economical means, except rental cars; and

(iii) Expenses of employment necessary for continued employment, such as tools, materials, union dues, transportation to service customers if not furnished by the employer, and uniforms and clothing needed on the job and not suitable for wear away from the job;

(c) "Employment" means any work activity for which a recipient receives monetary compensation;

(d) "Disabled" means:

(i) Permanently and totally disabled as defined by the department and as such definition is approved by the federal social security administration for federal matching funds;

(ii) Eighteen years of age or older;

(iii) A resident of the state of Washington; and

(iv) Willing to submit to such examinations as are deemed necessary by the department to establish the extent and nature of the disability. [1995 1st sp.s. c 18 § 41; 1989 c 427 § 7; 1980 c 137 § 3. Formerly RCW 74.08.570.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Severability—1989 c 427: See RCW 74.39.900.

74.39A.160 Transfer of assets—Penalties. (1) A person who receives an asset from an applicant for or recipient of long-term care services for less than fair market value shall be subject to a civil fine payable to the department if:

(a) The applicant for or recipient of long-term care services transferred the asset for the purpose of qualifying for state or federal coverage for long-term care services and the person who received the asset was aware, or should have been aware, of this purpose;

(b) Such transfer establishes a period of ineligibility for such service under state or federal laws or regulations; and

(c) The department provides coverage for such services during the period of ineligibility because the failure to provide such coverage would result in an undue hardship for the applicant or recipient.

(2) The civil fine imposed under this section shall be imposed in a judicial proceeding initiated by the department and shall equal (a) up to one hundred fifty percent of the amount the department expends for the care of the applicant or recipient during the period of ineligibility attributable to the amount transferred to the person subject to the civil fine plus (b) the department's court costs and legal fees.

(3) Transfers subject to a civil fine under this section shall be considered null and void and a fraudulent conveyance as to the department. The department shall have the right to petition a court to set aside such transfers and require all assets transferred returned to the applicant or recipient. [1995 1st sp.s. c 18 § 55.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.39A.170 Recovery of payments—Transfer of assets rules for eligibility. (1) All payments made in state-funded long-term care shall be recoverable as if they were medical assistance payments subject to recovery under 42 U.S.C. Sec. 1396p and chapter 43.20B RCW, but without regard to the recipient's age.

(2) In determining eligibility for state-funded long-term care services programs, the department shall impose the

same rules with respect to the transfer of assets for less than fair market value as are imposed under 42 U.S.C. 1396p with respect to nursing home and home and community services. [1995 1st sp.s. c 18 § 56.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.39A.180 Authority to pay for probate actions and collection of bad debts. Notwithstanding any other provision of law:

(1) In order to facilitate and ensure compliance with the federal social security act, Title XIX, as now existing or hereafter amended, later enactment to be adopted by reference by the director by rule, and other state laws mandating recovery of assets from estates of persons receiving long-term care services, the secretary of the department, with the approval of the office of the attorney general, may pay the reasonable and proper fees of attorneys admitted to practice before courts of this state, and associated professionals such as guardians, who are engaged in probate practice for the purpose of maintaining actions under Title 11 RCW, to the end that assets are not wasted, but are rather collected and preserved, and used for the care of the client or the reimbursement of the department pursuant to this chapter or chapter 43.20B RCW.

(2) The department may hire such other agencies and professionals on a contingency basis or otherwise as are necessary and cost-effective to collect bad debts owed to the department for long-term care services. [1995 1st sp.s. c 18 § 57.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Chapter 74.42

NURSING HOMES—RESIDENT CARE, OPERATING STANDARDS

Sections

74.42.020	Minimum standards.
74.42.056	Department assessment of medicaid eligible individuals—Requirements.
74.42.057	Notification regarding resident likely to become medicaid eligible.
74.42.058	Department case management services.
74.42.450	Residents limited to those the facility qualified to care for—Transfer or discharge of residents—Appeal of department discharge decision.
74.42.600	Department inspections—Notice of noncompliance—Penalties—Coordination with department of health.

74.42.020 Minimum standards. The standards in RCW 74.42.030 through 74.42.570 are the minimum standards for facilities licensed under chapter 18.51 RCW: PROVIDED, HOWEVER, That RCW 74.42.040, 74.42.140 through 74.42.280, 74.42.300, 74.42.360, 74.42.370, 74.42.380, 74.42.420 (2), (4), (5), (6) and (7), 74.42.430(3), 74.42.450 (2) and (3), 74.42.520, 74.42.530, 74.42.540, 74.42.570, and 74.42.580 shall not apply to 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. [1995 1st sp.s. c 18 § 68; 1982 c 120 § 1; 1980 c 184 § 6; 1979 ex.s. c 211 § 2.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.42.056 Department assessment of medicaid eligible individuals—Requirements. A nursing facility shall not admit any individual who is medicaid eligible unless that individual has been assessed by the department. Appropriate hospital discharge shall not be delayed pending the assessment.

To ensure timely hospital discharge of medicaid eligible persons, the date of the request for a department long-term care assessment, or the date that nursing home care actually begins, whichever is later, shall be deemed the effective date of the initial service and payment authorization. The department shall respond promptly to such requests.

A nursing facility admitting an individual without a request for a department assessment shall not be reimbursed by the department and shall not be allowed to collect payment from a medicaid eligible individual for any care rendered before the date the facility makes a request to the department for an assessment. The date on which a nursing facility makes a request for a department long-term care assessment, or the date that nursing home care actually begins, whichever is later, shall be deemed the effective date of initial service and payment authorization for admissions regardless of the source of referral.

A medicaid eligible individual residing in a nursing facility who is transferred to an acute care hospital shall not be required to have a department assessment under this section prior to returning to the same or another nursing facility. [1995 1st sp.s. c 18 § 7.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.42.057 Notification regarding resident likely to become medicaid eligible. If a nursing facility has reason to know that a resident is likely to become financially eligible for medicaid benefits within one hundred eighty days, the nursing facility shall notify the patient or his or her representative and the department. The department may:

(1) Assess any such resident to determine if the resident prefers and could live appropriately at home or in some other community-based setting; and

(2) Provide case management services to the resident. [1995 1st sp.s. c 18 § 8.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.42.058 Department case management services.

(1) To the extent of available funding, the department shall provide case management services to assist nursing facility residents, in conjunction and partnership with nursing facility staff. The purpose of the case management services is to assist residents and their families to assess the appropriateness and availability of home and community services that could meet the resident's needs so that the resident and family can make informed choices.

(2) To the extent of available funding, the department shall provide case management services to nursing facility residents who are:

(a) Medicaid funded;

(b) Dually medicaid and medicare eligible;

(c) Medicaid applicants; and

(d) Likely to become financially eligible for medicaid within one hundred eighty days, pursuant to RCW 74.42.057. [1995 1st sp.s. c 18 § 9.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.42.450 Residents limited to those the facility qualified to care for—Transfer or discharge of residents—Appeal of department discharge decision. (1) The facility shall admit as residents only those individuals whose needs can be met by:

(a) The facility;

(b) The facility cooperating with community resources; or

(c) The facility cooperating with other providers of care affiliated or under contract with the facility.

(2) The facility shall transfer a resident to a hospital or other appropriate facility when a change occurs in the resident's physical or mental condition that requires care or service that the facility cannot provide. The resident, the resident's guardian, if any, the resident's next of kin, the attending physician, and the department shall be consulted at least fifteen days before a transfer or discharge unless the resident is transferred under emergency circumstances. The department shall use casework services or other means to insure that adequate arrangements are made to meet the resident's needs.

(3) A resident shall be transferred or discharged only for medical reasons, the resident's welfare or request, the welfare of other residents, or nonpayment. A resident may not be discharged for nonpayment if the discharge would be prohibited by the medicaid program.

(4) If a resident chooses to remain in the nursing facility, the department shall respect that choice, provided that if the resident is a medicaid recipient, the resident continues to require a nursing facility level of care.

(5) If the department determines that a resident no longer requires a nursing facility level of care, the resident shall not be discharged from the nursing facility until at least thirty days after written notice is given to the resident, the resident's surrogate decision maker and, if appropriate, a family member or the resident's representative. A form for requesting a hearing to appeal the discharge decision shall be attached to the written notice. The written notice shall include at least the following:

(a) The reason for the discharge;

(b) A statement that the resident has the right to appeal the discharge; and

(c) The name, address, and telephone number of the state long-term care ombudsman.

(6) If the resident appeals a department discharge decision, the resident shall not be discharged without the resident's consent until at least thirty days after a final order is entered upholding the decision to discharge the resident. [1995 1st sp.s. c 18 § 64; 1979 ex.s. c 211 § 45.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.42.600 Department inspections—Notice of noncompliance—Penalties—Coordination with department of health. (1) In addition to the inspection required by chapter 18.51 RCW, the department shall inspect the facility for compliance with resident rights and direct care standards of this chapter. The department may inspect any and all other provisions randomly, by exception profiles, or during complaint investigations.

(2) If the facility has not complied with all the requirements of this chapter, the department shall notify the facility in writing that the facility is in noncompliance and describe the reasons for the facility's noncompliance and the department may impose penalties in accordance with RCW 18.51.060.

(3) To avoid unnecessary duplication in inspections, the department shall coordinate with the department of health when inspecting medicaid-certified or medicare-certified, or both, long-term care beds in hospitals for compliance with Title XVIII or XIX of the social security act. [1995 c 282 § 5; 1987 c 476 § 28; 1982 c 120 § 3; 1980 c 184 § 17; 1979 ex.s. c 211 § 60.]

Chapter 74.46

NURSING HOME AUDITING AND COST REIMBURSEMENT ACT OF 1980

Sections

74.46.020	Definitions.
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74.46.450	Reimbursement rate for new contractor. <i>(Effective until June 30, 1998.)</i>
74.46.450	Repealed. <i>(Effective June 30, 1998.)</i>
74.46.460	Rate adjustments. <i>(Effective until June 30, 1998.)</i>
74.46.460	Repealed. <i>(Effective June 30, 1998.)</i>
74.46.465	Repealed. <i>(Effective June 30, 1998.)</i>
74.46.470	Cost centers. <i>(Effective until June 30, 1998.)</i>
74.46.470	Repealed. <i>(Effective June 30, 1998.)</i>
74.46.481	Nursing services cost center reimbursement rate. <i>(Effective until June 30, 1998.)</i>
74.46.481	Repealed. <i>(Effective June 30, 1998.)</i>
74.46.490	Food cost center reimbursement rate. <i>(Effective until June 30, 1998.)</i>
74.46.490	Repealed. <i>(Effective June 30, 1998.)</i>
74.46.500	Administrative cost center reimbursement rate. <i>(Effective until June 30, 1998.)</i>
74.46.500	Repealed. <i>(Effective June 30, 1998.)</i>
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74.46.505	Repealed. <i>(Effective June 30, 1998.)</i>
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74.46.510	Repealed. <i>(Effective June 30, 1998.)</i>

74.46.530	Return on investment rate—Review. <i>(Effective until June 30, 1998.)</i>
74.46.530	Repealed. <i>(Effective June 30, 1998.)</i>
74.46.540	Repealed. <i>(Effective June 30, 1998.)</i>
74.46.550	Repealed. <i>(Effective June 30, 1998.)</i>
74.46.560	Notification of rates. <i>(Effective until June 30, 1998.)</i>
74.46.560	Repealed. <i>(Effective June 30, 1998.)</i>
74.46.570	Adjustments required due to errors or omissions. <i>(Effective until June 30, 1998.)</i>
74.46.570	Repealed. <i>(Effective June 30, 1998.)</i>
74.46.580	Repealed. <i>(Effective June 30, 1998.)</i>
74.46.590	Repealed. <i>(Effective June 30, 1998.)</i>
74.46.595	Development of new system for establishing nursing home payment rates—Repeal of RCW 74.46.420 through 74.46.590, effective June 30, 1998.
74.46.640	Suspension of payments.
74.46.690	Termination of contract—Settlement.
74.46.711	Resident personal funds—Conveyance upon death of resident.
74.46.770	Contractor appeals—Challenges of laws, rules, or contract provisions.
74.46.780	Appeals or exception procedure.

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

(1) "Accrual method of accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) "Ancillary care" means those services required by the individual, comprehensive plan of care provided by qualified therapists.

(3) "Appraisal" means the process of estimating the fair market value or reconstructing the historical cost of an asset acquired in a past period as performed by a professionally designated real estate appraiser with no pecuniary interest in the property to be appraised. It includes a systematic, analytic determination and the recording and analyzing of property facts, rights, investments, and values based on a personal inspection and inventory of the property.

(4) "Arm's-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who are not related organizations and have adverse positions in the market place. Sales or exchanges of nursing home facilities among two or more parties in which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm's-length transactions for purposes of this chapter. Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm's-length transaction for purposes of this chapter.

(5) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles.

(6) "Bad debts" means amounts considered to be uncollectable from accounts and notes receivable.

(7) "Beds" means the number of set-up beds in the facility, not to exceed the number of licensed beds.

(8) "Beneficial owner" means:

(a) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(i) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(ii) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest;

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting himself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;

(c) Any person who, subject to subparagraph (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(i) Through the exercise of any option, warrant, or right;

(ii) Through the conversion of an ownership interest;

(iii) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(iv) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement;

except that, any person who acquires an ownership interest or power specified in subparagraphs (i), (ii), or (iii) of this subparagraph (c) with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(d) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(i) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in subparagraph (b) of this subsection; and

(ii) The pledgee agreement, prior to default, does not grant to the pledgee:

(A) The power to vote or to direct the vote of the pledged ownership interest; or

(B) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

(9) "Capitalization" means the recording of an expenditure as an asset.

(10) "Contractor" means an entity which contracts with the department to provide services to medical care recipients in a facility and which entity is responsible for operational decisions.

(11) "Department" means the department of social and health services (DSHS) and its employees.

(12) "Depreciation" means the systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated useful life of the assets.

(13) "Direct care supplies" means medical, pharmaceutical, and other supplies required for the direct nursing and ancillary care of medical care recipients.

(14) "Entity" means an individual, partnership, corporation, or any other association of individuals capable of entering enforceable contracts.

(15) "Equity" means the net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles.

(16) "Facility" means a nursing home licensed in accordance with chapter 18.51 RCW, excepting nursing homes certified as institutions for mental diseases, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

(17) "Fair market value" means the replacement cost of an asset less observed physical depreciation on the date for which the market value is being determined.

(18) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles including, but not limited to, balance sheet, statement of operations, statement of changes in financial position, and related notes.

(19) "Generally accepted accounting principles" means accounting principles approved by the financial accounting standards board (FASB).

(20) "Generally accepted auditing standards" means auditing standards approved by the American institute of certified public accountants (AICPA).

(21) "Goodwill" means the excess of the price paid for a business over the fair market value of all other identifiable, tangible, and intangible assets acquired.

(22) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architect's fees, and engineering studies.

(23) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

(24) "Joint facility costs" means any costs which represent resources which benefit more than one facility, or one facility and any other entity.

(25) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination (due to any cause other than death or divorce) or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee, shall not be considered modification of a lease term.

(26) "Medical care program" means medical assistance provided under RCW 74.09.500 or authorized state medical care services.

(27) "Medical care recipient" or "recipient" means an individual determined eligible by the department for the services provided in chapter 74.09 RCW.

(28) "Net book value" means the historical cost of an asset less accumulated depreciation.

(29) "Net invested funds" means the net book value of tangible fixed assets employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles, plus an allowance for working capital which shall be five percent of the product of the per patient day rate multiplied by the prior calendar year reported total patient days of each contractor.

(30) "Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

(31) "Owner" means a sole proprietor, general or limited partners, and beneficial interest holders of five percent or more of a corporation's outstanding stock.

(32) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

(33) "Patient day" or "resident day" means a calendar day of care provided to a nursing facility resident, which will include the day of admission and exclude the day of discharge; except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist. A "client day" or "recipient day" means a calendar day of care provided to a medical care recipient determined eligible by the department for services provided under chapter 74.09 RCW, subject to the same conditions regarding admission and discharge applicable to a patient day or resident day of care.

(34) "Professionally designated real estate appraiser" means an individual who is regularly engaged in the business of providing real estate valuation services for a fee, and who is deemed qualified by a nationally recognized real estate appraisal educational organization on the basis of extensive practical appraisal experience, including the writing of real estate valuation reports as well as the passing of written examinations on valuation practice and theory, and who by virtue of membership in such organization is required to subscribe and adhere to certain standards of professional practice as such organization prescribes.

(35) "Qualified therapist" means:

(a) An activities specialist who has specialized education, training, or experience as specified by the department;

(b) An audiologist who is eligible for a certificate of clinical competence in audiology or who has the equivalent education and clinical experience;

(c) A mental health professional as defined by chapter 71.05 RCW;

(d) A mental retardation professional who is either a qualified therapist or a therapist approved by the department who has had specialized training or one year's experience in treating or working with the mentally retarded or developmentally disabled;

(e) A social worker who is a graduate of a school of social work;

(f) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has the equivalent education and clinical experience;

(g) A physical therapist as defined by chapter 18.74 RCW;

(h) An occupational therapist who is a graduate of a program in occupational therapy, or who has the equivalent of such education or training; and

(i) A respiratory care practitioner certified under chapter 18.89 RCW.

(36) "Questioned costs" means those costs which have been determined in accordance with generally accepted accounting principles but which may constitute disallowed costs or departures from the provisions of this chapter or rules and regulations adopted by the department.

(37) "Rebased rate" or "cost-rebased rate" means a facility-specific rate assigned to a nursing facility for a particular rate period established on desk-reviewed, adjusted costs reported for that facility covering at least six months of a prior calendar year.

(38) "Records" means those data supporting all financial statements and cost reports including, but not limited to, all general and subsidiary ledgers, books of original entry, and transaction documentation, however such data are maintained.

(39) "Related organization" means an entity which is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable or exercised.

(40) "Restricted fund" means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

(41) "Secretary" means the secretary of the department of social and health services.

(42) "Title XIX" or "Medicaid" means the 1965 amendments to the social security act, P.L. 89-07, as amended.

(43) "Physical plant capital improvement" means a capitalized improvement that is limited to an improvement to the building or the related physical plant. [1995 1st sp.s. c 18 § 90; 1993 sp.s. c 13 § 1; 1991 sp.s. c 8 § 11; 1989 c 372 § 17; 1987 c 476 § 6; 1985 c 361 § 16; 1982 c 117 § 1; 1980 c 177 § 2.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1993 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, and shall take effect July 1, 1993." [1993 sp.s. c 13 § 21.]

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Savings—1985 c 361: "This act shall not be construed as affecting any existing right acquired or any obligation or liability incurred under the statutes amended or repealed by this act or any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1985 c 361 § 20.]

74.46.105 Departmental audits—Procedure. Cost reports and patient trust accounts of contractors shall be field audited by the department, either by department staff or by auditors under contract to the department, in accordance with the provisions of this chapter. The department when it deems necessary to assure the accuracy of cost reports may review any underlying financial statements or other records upon which the cost reports are based. The department shall have the authority to accept or reject audits which fail to satisfy the requirements of this section or which are performed by auditors who violate any of the rules of this section. Department audits of the cost reports and patient trust accounts shall be conducted as follows:

(1) Each year the department will provide for field audit of the cost report, statistical reports, and patient trust funds, as established by RCW 74.46.700, of all or a sample of reporting facilities selected by profiles of costs, exceptions, contract terminations, upon special requests or other factors determined by the department.

(2) Beginning with audits for calendar year 1993, contractors' cost reports and resident care trust fund accounts shall be audited periodically as determined necessary by the department.

(3) Facilities shall be informed of the department's intent to audit at least ten working days before the commencement of an audit of a facility's cost report or resident trust fund accounts.

(4) Where an audit for a recent reporting or trust fund period discloses material discrepancies, undocumented costs or mishandling of patient trust funds, auditors may examine prior unaudited periods, for indication of similar material discrepancies, undocumented costs or mishandling of patient trust funds for not more than two reporting periods preceding the facility reporting period selected in the sample.

(5) The audit will result in a schedule summarizing appropriate adjustments to the contractor's cost report. These adjustments will include an explanation for the adjustment, the general ledger account or account group, and the dollar amount. Patient trust fund audits shall be reported separately and in accordance with RCW 74.46.700.

(6) Audits shall meet generally accepted auditing standards as promulgated by the American institute of certified public accountants and the standards for audit of governmental organizations, programs, activities and functions as published by the comptroller general of the United States. Audits shall be supervised or reviewed by a certified public accountant.

(7) No auditor under contract with or employed by the department to perform audits in accordance with the provisions of this chapter shall:

(a) Have had direct or indirect financial interest in the ownership, financing or operation of a nursing home in this state during the period covered by the audits;

(b) Acquire or commit to acquire any direct or indirect financial interest in the ownership, financing or operation of a nursing home in this state during said auditor's employment or contract with the department;

(c) Accept as a client any nursing home in this state during or within two years of termination of said auditor's contract or employment with the department.

(8) Audits shall be conducted by auditors who are otherwise independent as determined by the standards of independence established by the American institute of certified public accountants.

(9) All audit rules adopted after March 31, 1984, shall be published before the beginning of the cost report year to which they apply. [1995 1st sp.s. c 18 § 91; 1985 c 361 § 10; 1983 1st ex.s. c 67 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.115 Departmental audits—Review by state auditor. The office of the state auditor shall at least once in every three state fiscal years commencing July 1, 1995, review the performance of the department to ensure that departmental audits are conducted in accordance with generally accepted auditing standards. [1995 1st sp.s. c 18 § 92; 1983 1st ex.s. c 67 § 6.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.46.160 Preliminary and final settlement reports. (1) Within one hundred twenty days after receipt of the proposed preliminary settlement, the department shall verify the accuracy of the proposal and shall issue a preliminary settlement report by cost center to the contractor which fully substantiates disallowed costs, refunds, underpayments, or adjustments to the proposed preliminary settlement.

(2) After completion of the audit process, including exhaustion or mutual termination of any administrative appeals or exception procedure used by the contractor to contest audit findings or determinations, but not including any judicial review available to and commenced by the contractor, the department will submit a final settlement report by cost center to the contractor which fully substantiates disallowed costs, refunds, underpayments, or adjustments to the contractor's cost report. [1995 1st sp.s. c 18 § 93; 1985 c 361 § 12; 1983 1st ex.s. c 67 § 9; 1980 c 177 § 16.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.170 Settlement—Contractor may contest—Date settlement becomes final. (1) A contractor shall have a period of days, to be established by the department in rule, after the date the preliminary or final settlement report is submitted to the contractor to contest a settlement determination under the administrative appeals or exception procedure established by the department pursuant to RCW 74.46.780. Any such administrative review of a settlement shall be limited to calculation of the settlement or the application of settlement principles and rules, or both, and shall not examine or reexamine payment rate or audit issues. After the period established by the department in rule has expired, a preliminary or final settlement will not be subject to review.

(2) A preliminary settlement report as issued by the department will become the final settlement report if no audit has been scheduled within twelve calendar months

following the department's issuance of a preliminary settlement report to the contractor.

(3) A settlement will be reopened if necessary to make adjustments for findings resulting from an audit performed pursuant to RCW 74.46.105(4). [1995 1st sp.s. c 18 § 94; 1983 1st ex.s. c 67 § 10; 1980 c 177 § 17.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.46.180 Payment of underpayments—Refund of overpayments, erroneous payments—Allocation of savings. (1) The department shall make payment of any underpayments to which a contractor is entitled as determined by the department under the provisions of this chapter within sixty days after the date the preliminary or final settlement report is submitted to the contractor and the department shall pay interest at the rate of one percent per month on any unpaid preliminary or final settlement balance still due the contractor after such time, accruing from sixty days after the preliminary or final settlement report is submitted to the contractor, and no interest shall accrue or be paid for any period prior to this date: **PROVIDED,** That any increase in a preliminary or final settlement amount due the contractor resulting from a final administrative or judicial decision shall also bear interest until paid at the rate of one percent per month, accruing from sixty days after the preliminary or final settlement was submitted to the contractor. The department shall pay no interest on amounts due a contractor other than amounts determined by preliminary or final settlement as provided in this subsection.

(2) A contractor found, under a preliminary or final settlement issued by the department, to have received either overpayments or erroneous payments, to which the contractor is not entitled as determined by the department under the provisions of this chapter, shall refund such erroneous payments or overpayments to the department within sixty days after the date the preliminary or final settlement report is submitted to the contractor, subject to the provisions of subsections (3), (4), and (6) of this section: **PROVIDED,** That for all preliminary or final settlements issued on and after July 1, 1995, regardless of what period a settlement covers, neither a timely filed request to pursue the department's administrative appeals or exception procedure nor commencement of judicial review, as may be available to the contractor in law, contesting the settlement, erroneous payments or overpayments shall delay recovery. A contractor shall pay interest at the rate of one percent per month on any unpaid preliminary or final settlement balance still due the department sixty days after the preliminary or final settlement report is submitted to the contractor, accruing from this date: **PROVIDED FURTHER,** That the department shall refund interest collected for preliminary and settlement amounts the contractor was entitled to retain as subsequently determined by final administrative or judicial decision.

(3) Within the cost centers of nursing services and food, all savings resulting from the respective allowable costs being lower than the respective reimbursement rate paid to the contractor during the report period shall be refunded to the department. However, in computing a preliminary or final settlement, savings in a cost center may be shifted to cover a deficit in another cost center up to the amount of

any savings. Not more than twenty percent of the rate in a cost center may be shifted into that cost center and no shifting may be made into the property cost center. There shall be no shifting out of nursing services, and savings in food shall be shifted only to cover deficits in the nursing services cost center. There shall be no shifting from the operational to the administrative cost center.

(4) Within the administrative and property cost centers, the contractor shall retain at least fifty percent, but not more than seventy-five percent, of any savings resulting from the respective audited allowable costs being lower than the respective reimbursement rates paid to the contractor during the report period multiplied by the number of authorized medical care client days in which said rates were in effect, except that no savings may be retained if reported costs in the administrative and property cost centers exceed audited allowable costs in these cost areas by a total of ten cents or more per patient day. The secretary, by rule, shall establish the basis for the specific percentages of savings to the contractors. Such rules may provide for differences in the percentages allowed for each cost center to individual facilities based on performance measures related to administrative efficiency.

(5) All return on investment rate payments provided by *RCW 74.46.530 shall be retained by the contractor to the extent net invested funds are substantiated by department field audit. Any industrial insurance dividend or premium discount under RCW 51.16.035 shall be retained by the contractor to the extent that such dividend or premium discount is attributable to the contractor's private patients.

(6) In the event the contractor fails to make repayment in the time provided in subsection (2) of this section, the department shall either:

(a) Deduct the amount of refund due the department, plus any interest accrued under subsection (2) of this section, from payment amounts due the contractor; or

(b) In the instance the contract has been terminated, (i) deduct the amount of refund due the department, plus interest assessed at the rate and in the manner provided in subsection (2) of this section, from any payments due; or (ii) recover the amount due, plus any interest assessed under subsection (2) of this section from security posted with or otherwise obtained by the department or by any other lawful means.

(7) For all erroneous payments and overpayments determined by preliminary or final settlements issued before July 1, 1995, and not yet recovered by the department because they are specifically disputed by the contractor in a timely filed administrative or judicial review, if the judicial or administrative remedy sought by the facility is not granted after all appeals are exhausted or mutually terminated, the facility shall make payment of such amounts due plus interest accrued from the date of filing of the appeal, as payable on judgments, within sixty days of the date such decision is made. [1995 1st sp.s. c 18 § 95; 1993 sp.s. c 13 § 2. Prior: 1987 c 476 § 1; 1987 c 283 § 9; 1985 c 361 § 1; 1985 c 7 § 147; 1983 1st ex.s. c 67 § 11; 1980 c 177 § 18.]

*Reviser's note: RCW 74.46.530 was repealed by RCW 74.46.595, effective June 30, 1998.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.190 Principles of allowable costs. (1) The substance of a transaction will prevail over its form.

(2) All documented costs which are ordinary, necessary, related to care of medical care recipients, and not expressly unallowable, are to be allowable. Costs of providing ancillary care are allowable, subject to any applicable cost center limit contained in this chapter, provided documentation establishes the costs were incurred for medical care recipients and other sources of payment to which recipients may be legally entitled, such as private insurance or medicare, were first fully utilized.

(3) Costs applicable to services, facilities, and supplies furnished to the provider by related organizations are allowable but at the cost to the related organization, provided they do not exceed the price of comparable services, facilities, or supplies that could be purchased elsewhere.

(4) Beginning January 1, 1985, the payment for property usage is to be independent of ownership structure and financing arrangements.

(5) Beginning July 1, 1995, allowable costs shall not include costs reported by a nursing care provider for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the nursing facility in the period to be covered by the rate. [1995 1st sp.s. c 18 § 96; 1983 1st ex.s. c 67 § 12; 1980 c 177 § 19.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.46.410 Unallowable costs. (1) Costs will be unallowable if they are not documented, necessary, ordinary, and related to the provision of care services to authorized patients.

(2) Unallowable costs include, but are not limited to, the following:

(a) Costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items provided to recipients which are covered by the department's medical care program but not included in care services established by the department under this chapter;

(c) Costs associated with a capital expenditure subject to section 1122 approval (part 100, Title 42 C.F.R.) if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval pursuant to chapter 70.38 RCW if such approval was not obtained;

(e) Interest costs other than those provided by RCW 74.46.290 on and after January 1, 1985;

(f) Salaries or other compensation of owners, officers, directors, stockholders, and others associated with the contractor or home office, except compensation paid for service related to patient care;

(g) Costs in excess of limits or in violation of principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the cost-related reimbursement system set forth in this chapter;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts of non-Title XIX recipients. Bad debts of Title XIX recipients are allowable if the debt is related to covered services, it arises from the recipient's required contribution toward the cost of care, the provider can establish that reasonable collection efforts were made, the debt was actually uncollectible when claimed as worthless, and sound business judgment established that there was no likelihood of recovery at any time in the future;

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;

(r) Fund-raising expenses, except those directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, televisions, radios, and similar appliances in patients' private accommodations;

(u) Federal, state, and other income taxes;

(v) Costs of special care services except where authorized by the department;

(w) Expenses of key-man insurance and other insurance or retirement plans not made available to all employees;

(x) Expenses of profit-sharing plans;

(y) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(z) Personal expenses and allowances of owners or relatives;

(aa) All expenses of maintaining professional licenses or membership in professional organizations;

(bb) Costs related to agreements not to compete;

(cc) Amortization of goodwill;

(dd) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(ee) Legal and consultant fees in connection with a fair hearing against the department where a decision is rendered in favor of the department or where otherwise the determination of the department stands;

(ff) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department;

(gg) Lease acquisition costs and other intangibles not related to patient care;

(hh) All rental or lease costs other than those provided in RCW 74.46.300 on and after January 1, 1985;

(ii) Postsurvey charges incurred by the facility as a result of subsequent inspections under RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year;

(jj) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period;

(kk) For all partial or whole rate periods after July 17, 1984, costs of land and depreciable assets that cannot be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions;

(ll) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate. [1995 1st sp.s. c 18 § 97; 1993 sp.s. c 13 § 6; 1991 sp.s. c 8 § 15; 1989 c 372 § 2; 1986 c 175 § 3; 1983 1st ex.s. c 67 § 17; 1980 c 177 § 41.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Effective date—1989 c 372 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 372 § 19.] This note refers to the 1989 c 372 amendment to RCW 74.46.410.

74.46.420 Principles of rate setting. (Effective until June 30, 1998.) The following principles are inherent in *RCW 74.46.430 through 74.46.590:

(1) Effective July 1, 1995, through June 30, 1998, nursing facility payment rates will be set or adjusted for economic trends and conditions annually and prospectively on a per resident day basis, in accordance with the principles and methods set forth in this chapter, to take effect July 1st of each year.

(2) July 1, 1995, component rates in the nursing services, food, administrative, and operational cost centers shall be cost-rebased utilizing desk-reviewed and adjusted costs reported for calendar year 1994, for all nursing facilities submitting at least six months of cost data. Such component rates for July 1, 1995, shall also be adjusted downward or upward for economic trends and conditions as provided in this section. Component rates in property and return on investment (ROI) shall be reset annually as provided in this chapter.

(3) The July 1, 1995, component rates in the nursing services, food, administrative, and operational cost centers shall be adjusted for economic trends and conditions by the change in the implicit price deflator for personal consumption expenditures index published by the bureau of labor statistics of the United States department of labor (IPD index). The period used to measure the IPD increase or decrease to be applied to these July 1, 1995, rate components shall be calendar year 1994.

(4) July 1, 1996, component rates in the nursing services, food, administrative, and operational cost centers shall not be cost-rebased, but shall be the component rates assigned to each nursing facility in effect on June 30, 1996, adjusted downward or upward for economic trends and conditions by the change in the nursing home input price index without capital costs published by the health care financing administration of the department of health and human services (HCFA index). The period to be used to measure the HCFA index increase or decrease to be applied to these June 30, 1996, component rates shall be calendar year 1994.

(5) July 1, 1997, component rates in the nursing services, food, administrative, and operational cost centers shall not be cost-rebased, but shall be the component rates assigned to each nursing facility in effect on June 30, 1997, adjusted downward or upward for economic trends and conditions by the change in the nursing home input price index without capital costs published by the health care financing administration of the department of health and human services (HCFA index), multiplied by a factor of 1.25. The period to be used to measure the HCFA increase or decrease to be applied to these rate components for July 1, 1997, rate setting shall be calendar year 1996.

(6) If either the implicit price deflator (IPD) index or the health care financing administration (HCFA) index specified in this section ceases to be published in the future, the department shall select and use in its place or their place one or more measures of change from the same or an alternate source or sources utilizing the same or comparable time periods specified in this section. [1995 1st sp.s. c 18 § 99; 1993 sp.s. c 13 § 7; 1985 c 361 § 18; 1983 1st ex.s. c 67 § 18; 1980 c 177 § 42.]

***Reviser's note:** RCW 74.46.430 through 74.46.590 were repealed by RCW 74.46.595, effective June 30, 1998.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.420 Repealed. (Effective June 30, 1998.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.430 Prospective payment rates—Minimum hourly wages. (Effective until June 30, 1998.) (1) The department, as provided by this chapter, will determine prospective payment rates for services provided to medical care recipients. Each rate so determined shall represent the contractor's maximum compensation within each cost center and for return on investment for each resident day for such medical care recipient.

(2) The department may modify such maximum per resident day rates, consistent with this chapter, pursuant to the administrative appeals or exception procedure authorized by RCW 74.46.780.

(3) For July 1, 1995, and all following rates, the maximum prospective component payment rates for the nursing services, food, administrative, operational, and property cost centers, and the return on investment (ROI) component rate for each nursing facility shall be established based upon a minimum licensed bed facility occupancy level of ninety percent, except for rate adjustments as provided for in *RCW 74.46.460(6).

(4) The minimum ninety percent facility occupancy shall be used to calculate individual rates, to calculate the median cost limits (MCLs) for the metropolitan statistical area (MSA) and nonmetropolitan statistical area (non-MSA) peer groups, and to array facilities by costs in calculating the variable return portion of the return on investment rate component (ROI).

(5) All contractors shall be required to adjust and maintain wages for all employees to a minimum hourly wage of four dollars and seventy-six cents per hour beginning January 1, 1988, and five dollars and fifteen cents per hour beginning January 1, 1989. [1995 1st sp.s. c 18 § 100; 1993 sp.s. c 13 § 8; 1987 2nd ex.s. c 1 § 2; 1987 c 476 § 2; 1983 1st ex.s. c 67 § 19; 1980 c 177 § 43.]

*Reviser's note: RCW 74.46.460 was repealed by RCW 74.46.595, effective June 30, 1998.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

74.46.430 Repealed. (Effective June 30, 1998.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.440 Repealed. (Effective June 30, 1998.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.450 Reimbursement rate for new contractor. (Effective until June 30, 1998.) (1) Prospective reimbursement rates for a new contractor, as defined by the department in rule, will be established within sixty days following receipt by the department of the properly completed projected budget required by RCW 74.46.670. Such reimbursement rates will become effective as of the effective date of the contract and shall remain in effect until the new contractor's rate in all cost areas can be reset effective July 1st using a cost report of that contractor containing at least six months' data from the prior calendar year, regardless of whether reported costs for other contractors for the prior calendar year in question will be used to rebase their July 1st rates.

(2) Such reimbursement rates will be based on payment rates of the prior contractor, if any, or of other contractors in comparable circumstances.

(3) For nursing facilities receiving original certificate of need approval prior to June 30, 1988, and commencing operations on or after January 1, 1995, the department shall base initial nursing services, food, administrative, and operational rate components on such component rates

immediately above the median for facilities in the same county. Property and return on investment rate components shall be established as provided in this chapter.

(4) The department will establish a new contractor's initial component rates based on the factors specified in subsections (2) and (5) of this section. These initial rates will remain in effect until adjusted or reset as provided in this chapter.

(5) The department is authorized to develop policies and procedures in rule that comply with the policies and purposes of this chapter to establish factors by which a new contractor's rate will be set, for example, occupancy level or proration of rate adjustments for economic trends and conditions as authorized in *RCW 74.46.420. However, a new contractor, whose medicaid contract was effective in calendar year 1994; and whose nursing facility occupancy during calendar year 1994 increased by at least five percent over that of the prior owner, shall have its July 1995 rate for nursing services, food, administrative, operational, and property cost centers, and the return on investment (ROI) based upon a minimum facility occupancy of eighty-five percent. [1995 1st sp.s. c 18 § 101; 1995 1st sp.s. c 18 § 70; 1993 sp.s. c 13 § 9; 1983 1st ex.s. c 67 § 20; 1980 c 177 § 45.]

Reviser's note: *(1) RCW 74.46.420 was repealed by RCW 74.46.595, effective June 30, 1998.

(2) This section was amended by 1995 1st sp.s. c 18 § 70 and by 1995 1st sp.s. c 18 § 101, 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).

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

74.46.450 Repealed. (Effective June 30, 1998.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.460 Rate adjustments. (Effective until June 30, 1998.) (1) Each contractor's nursing services, food, administrative, and operational component payment rates will be adjusted for economic trends and conditions prospectively at least once during each calendar year, as provided in this chapter, to be effective July 1st: PROVIDED, That except for the rates of new contractors as defined by the department, a nursing facility's cost-rebased rate for July 1, 1995, must be established upon the facility's own cost report of at least six months of adjusted and/or audited cost data from the calendar year 1994.

(2) Subject to the provisions of subsections (3) through (6) of this section, rates may be adjusted by the department at the request of the nursing facility to cover the medicaid share of incremental costs necessary to address and take into account variations in the distribution of all medicaid and nonmedicaid patient classifications or changes in all medicaid or nonmedicaid patient characteristics from the prior reporting year, program changes required by the department, or changes in staffing levels at a facility required by the department. Rates may also be adjusted to cover costs associated with placing a nursing home in receivership which costs are not covered by the rate of the former contractor, including: Compensation of the receiver, reasonable expenses

es of receivership and transition of control, and costs incurred by the receiver in carrying out court instructions or rectifying deficiencies found. Rates shall be adjusted as provided in this section for any capitalized additions or replacements made as a condition for licensure or certification. Rates shall be adjusted as provided in this section for capitalized improvements done under *RCW 74.46.465.

(3) Except for rate adjustments granted for economic trends and conditions as authorized in this chapter to be effective each July 1st, all rate adjustments granted by the department for any other purpose, including those granted for capitalized additions or replacements or for staffing, whether made or not made as a condition of licensure or certification, shall be limited in total amount each fiscal year to the total current legislative appropriation, if any, specifically made to fund the medicaid share of such adjustments for the fiscal year.

(4) The department is authorized to adopt rules to ensure that funding granted for additional staffing will be cost-effective in providing increased quantity and quality of services to nursing facility residents and to ensure that spending limitations will not be exceeded.

(5) Funds disbursed representing rate adjustments granted under authority of this section and not spent by the contractor for the purposes granted are subject to immediate recovery by the department by means of recoupment from current contract payments or any other means authorized by law and contractors shall pay interest on such unused or misused funds at the rate of one percent per month from the date of disbursement to the date of recovery. If a contractor requests an administrative review of a department recovery action under rules established under RCW 74.46.780, such request shall not stay recoupment from current facility contract payments or other recovery.

(6) All rate component adjustments to fund the medicaid share of nursing facility new construction or refurbishing projects costing in excess of one million two hundred thousand dollars, or projects requiring state or federal approval, shall be based upon a minimum facility occupancy of eighty-five percent for the nursing services, food, administrative, operational, and property cost centers, and the return on investment (ROI), during the initial rate period in which the adjustment is granted, and shall be based upon a minimum facility occupancy of ninety percent for the nursing services, food, administrative, operational, and property cost centers, and the return on investment (ROI), for all rate periods thereafter. [1995 1st sp.s. c 18 § 102; 1993 sp.s. c 13 § 10; 1987 c 476 § 3; 1985 c 361 § 15; 1983 1st ex.s. c 67 § 21; 1981 1st ex.s. c 2 § 5; 1980 c 177 § 46.]

*Reviser's note: RCW 74.46.465 was repealed by RCW 74.46.595, effective June 30, 1998.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

Savings—1985 c 361: See note following RCW 74.46.020.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

74.46.460 Repealed. (Effective June 30, 1998.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.465 Repealed. (Effective June 30, 1998.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.470 Cost centers. (Effective until June 30, 1998.) (1) A contractor's nursing facility per resident day component rates for medical care recipients shall be determined as provided in this chapter utilizing net invested funds and desk-reviewed cost report data within the following cost centers:

- (a) Nursing services;
- (b) Food;
- (c) Administrative;
- (d) Operational; and
- (e) Property.

(2) There shall be for the time period January 1988 through June 1990 only an enhancement cost center established to reimburse contractors for specific legislatively authorized enhancements for nonadministrative wages and benefits to ensure that such enhancements are used exclusively for the legislatively authorized purposes. For purposes of settlement, funds appropriated to this cost center shall only be used for expenditures for which the legislative authorization is granted. Such funds may be used only in the following circumstances:

(a) The contractor has increased expenditures for which legislative authorization is granted to at least the highest level paid in any of the last three cost years, plus, beginning July 1, 1987, any percentage inflation adjustment as was granted each year under *RCW 74.46.495; and

(b) All funds shifted from the enhancement cost center are shown to have been expended for legislatively authorized enhancements.

(3) If the contractor does not spend the amount appropriated to this cost center in the legislatively authorized manner, then the amounts not appropriately spent shall be recouped at preliminary or final settlement pursuant to RCW 74.46.160.

(4) For purposes of this section, "nonadministrative wages and benefits" means wages and payroll taxes paid with respect to, and the employer share of the cost of benefits provided to, employees in job classes specified in an appropriation, which may not include administrators, assistant administrators, or administrators in training.

(5) Amounts expended in the enhancement cost center in excess of the minimum wage established under **RCW 74.46.430 are subject to all provisions contained in this chapter. [1995 1st sp.s. c 18 § 103; 1993 sp.s. c 13 § 11; 1987 c 476 § 4; 1983 1st ex.s. c 67 § 22; 1980 c 177 § 47.]

Reviser's note: *(1) RCW 74.46.495 was repealed by 1993 sp.s. c 13 § 19, effective July 1, 1993.

** (2) RCW 74.46.430 was repealed by RCW 74.46.595, effective June 30, 1998.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

74.46.470 Repealed. (Effective June 30, 1998.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.481 Nursing services cost center reimbursement rate. (Effective until June 30, 1998.) (1) The nursing services cost center shall include for reporting and audit purposes all costs related to the direct provision of nursing and related care, including fringe benefits and payroll taxes for the nursing and related care personnel, and the cost of nursing supplies. The department shall adopt by administrative rule a definition of "related care". For rates effective after June 30, 1991, nursing services costs, as reimbursed within this chapter, shall not include costs of any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period.

(2) The department shall adopt through administrative rules a method for establishing a nursing services cost center rate consistent with the principles stated in this section.

(3) Utilizing regression or other statistical technique, the department shall determine a reasonable limit on facility nursing staff taking into account facility patient characteristics. For purposes of this section, facility nursing staff refers to registered nurses, licensed practical nurses and nursing assistants employed by the facility or obtained through temporary labor contract arrangements. Effective January 1, 1988, the hours associated with the training of nursing assistants and the supervision of that training for nursing assistants shall not be included in the calculation of facility nursing staff. In selecting a measure of patient characteristics, the department shall take into account:

(a) The correlation between alternative measures and facility nursing staff; and

(b) The cost of collecting information for and computation of a measure.

If regression is used, the limit shall be set at predicted nursing staff plus 1.75 regression standard errors. If another statistical method is utilized, the limit shall be set at a level corresponding to 1.75 standard errors above predicted staffing computed according to a regression procedure. A regression calculated shall be effective for the entire biennium.

(4) No facility shall receive reimbursement for nursing staff levels in excess of the limit. However, nursing staff levels established under subsection (3) of this section shall not apply to the nursing services cost center reimbursement rate only for the pilot facility especially designed to meet the needs of persons living with AIDS as defined by RCW 70.24.017 and specifically authorized for this purpose under the 1989 amendment to the Washington state health plan.

(5) For July 1, 1995, rate setting only, the department shall divide into two peer groups nursing facilities located in the state of Washington providing services to medicaid residents: (a) Those facilities located within a metropolitan statistical area as defined and determined by the United States office of management and budget or other applicable federal office (MSA) and (b) those not located in such an area (non-MSA). The facilities in each peer group shall then be arrayed from lowest to highest by magnitude of per

resident day desk-reviewed, adjusted nursing services cost from the 1994 calendar report year, regardless of whether any such adjustments are contested by the nursing facility, and the median or fiftieth percentile cost for each peer group shall be determined. Nursing services component rates for facilities within each peer group shall be set at the lower of the facility's desk-reviewed, adjusted per resident day nursing services cost from the 1994 report period or the median cost for the facility's peer group, utilizing the same calendar year report data plus twenty-five percent. This rate shall be reduced or inflated as authorized by ***RCW 74.46.420. However, the per patient day peer group median cost plus twenty-five percent limit shall not apply to the nursing services cost center reimbursement rate only for the pilot facility especially designed to meet the needs of persons living with AIDS as defined by RCW 70.24.017 and specifically authorized for this purpose under the 1989 amendment to the Washington state health plan.

(6) For rates effective July 1, 1996, a nursing facility's noncost-rebased component rate in nursing services shall be that facility's nursing services component rate existing on June 30, 1996, reduced or inflated as authorized by ***RCW 74.46.420. The July 1, 1996, nursing services component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective nursing services rate as of June 30, 1996, excluding any rate increases granted pursuant to ***RCW 74.46.460.

(7) For rates effective July 1, 1997, a nursing facility's noncost-rebased component rate in nursing services shall be that facility's nursing services component rate existing on June 30, 1997, reduced or inflated as authorized by ***RCW 74.46.420. The July 1, 1997, nursing services component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective nursing services rate as of June 30, 1997, excluding any rate increases granted pursuant to ***RCW 74.46.460.

(8) Median cost limits for peer groups shall be calculated initially for July 1, 1995, rate setting as provided in this chapter on the basis of adjusted 1994 nursing services cost report information available to the department prior to the calculation of the new rates for July 1, 1995, regardless of whether the adjustments are contested or subject to pending administrative or judicial review. Median costs for peer groups shall be recalculated as provided in this chapter on the basis of the most recent adjusted cost information available to the department on October 31, 1995, and shall apply retroactively to July 1, 1995, rates, regardless of whether the adjustments are contested or subject to pending administrative or judicial review. Median cost limits, once calculated using October 31, 1995, adjusted cost information shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not.

(9) The department is authorized to determine on a systematic basis facilities with unmet patient care service needs. The department may increase the nursing services cost center prospective rate for a facility beyond the level determined in accordance with **subsection (6) of this section if the facility's actual and reported nursing staffing is one standard error or more below predicted staffing as determined according to the method selected pursuant to subsection (3) of this section and the facility has unmet

patient care service needs: PROVIDED, That prospective rate increases authorized by this subsection shall be funded only from legislative appropriations made for this purpose during the periods authorized by such appropriations or other laws and the increases shall be conditioned on specified improvements in patient care at such facilities.

(10) The department shall establish a method for identifying patients with exceptional care requirements and a method for establishing or negotiating on a consistent basis rates for such patients.

(11) The department, in consultation with interested parties, shall adopt rules to establish the criteria the department will use in reviewing any requests by a contractor for a prospective rate adjustment to be used to increase the number of nursing staff. These rules shall also specify the time period for submission and review of staffing requests: PROVIDED, That a decision on a staffing request shall not take longer than sixty days from the date the department receives such a complete request. In establishing the criteria, the department may consider, but is not limited to, the following:

(a) Increases in debility levels of contractors' residents determined in accordance with the department's assessment and reporting procedures and requirements utilizing the minimum data set;

(b) Staffing patterns for similar facilities in the same peer group;

(c) Physical plant of contractor; and

(d) Survey, inspection of care, and department consultation results. [1995 1st sp.s. c 18 § 104; 1993 sp.s. c 13 § 12; 1991 sp.s. c 8 § 16; 1990 c 207 § 1; 1987 c 476 § 5; 1983 1st ex.s. c 67 § 24.]

Reviser's note: *(1) The state health plan, developed by the governor under RCW 70.38.065, expired on June 30, 1990. See RCW 70.38.919.

***(2) Subsection (5) of this section was intended, but inadvertently not corrected, during the legislative process of enacting 1993 sp.s. c 13.

****(3) RCW 74.46.420 through 74.46.590 were repealed by RCW 74.46.595, effective June 30, 1998.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

74.46.481 Repealed. (Effective June 30, 1998.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.490 Food cost center reimbursement rate. (Effective until June 30, 1998.) (1) The food cost center shall include for reporting purposes all costs for bulk and raw food and beverages purchased for the dietary needs of medical care recipients.

(2) For July 1, 1995, rate setting only, the department shall divide into two peer groups nursing facilities located in the state of Washington providing services to medicaid residents: (a) Those facilities located within a metropolitan statistical area as defined and determined by the United States office of management and budget or other applicable federal office (MSA) and (b) those not located in such an area (non-MSA). The facilities in each peer group shall then be arrayed from lowest to highest by magnitude of per resident day desk-reviewed, adjusted food cost from the

1994 calendar report year, regardless of whether any such adjustments are contested by the nursing facility, and the median or fiftieth percentile cost for each peer group shall be determined. Food component rates for facilities within each peer group shall be set at the lower of the facility's desk-reviewed, adjusted per resident day food cost from the 1994 report period or the median cost for the facility's peer group, using the same calendar year report data, plus twenty-five percent. This rate shall be reduced or inflated as authorized by *RCW 74.46.420.

(3) For rates effective July 1, 1996, a nursing facility's noncost-rebased food component rate shall be that facility's food component rate existing on June 30, 1996, reduced or inflated as authorized by *RCW 74.46.420. The July 1, 1996, food component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective food component rate as of June 30, 1996, excluding any rate increases granted pursuant to *RCW 74.46.460.

(4) For rates effective July 1, 1997, a nursing facility's noncost-rebased food component rate shall be that facility's food component rate existing on June 30, 1997, reduced or inflated as authorized by *RCW 74.46.420. The July 1, 1997, food component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective food component rate as of June 30, 1997, excluding any rate increases granted pursuant to *RCW 74.46.460.

(5) Median cost limits for peer groups shall be calculated initially for July 1, 1995, rate setting as provided in this chapter on the basis of adjusted 1994 food cost report information available to the department prior to the calculation of the new rates for July 1, 1995, regardless of whether the adjustments are contested or subject to pending administrative or judicial review. Median costs for peer groups shall be recalculated as provided in this chapter on the basis of the most recent adjusted cost information available to the department on October 31, 1995, and shall apply retroactively to July 1, 1995, rates, regardless of whether the adjustments are contested or subject to pending administrative or judicial review. Median cost limits, once calculated utilizing October 31, 1995, adjusted cost information, shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not. [1995 1st sp.s. c 18 § 105; 1993 sp.s. c 13 § 13; 1983 1st ex.s. c 67 § 25; 1981 1st ex.s. c 2 § 6; 1980 c 177 § 49.]

***Reviser's note:** RCW 74.46.420 through 74.46.590 were repealed by RCW 74.46.595, effective June 30, 1998.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

74.46.490 Repealed. (Effective June 30, 1998.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.500 Administrative cost center reimbursement rate. (Effective until June 30, 1998.) (1) The administrative cost center shall include for cost reporting purposes all administrative, oversight, and management costs whether

facility on-site or allocated in accordance with a department-approved joint-cost allocation methodology. Such costs shall be identical to the cost report line item costs categorized under "general and administrative" in the "administration and operations" combined cost center existing prior to January 1, 1993, except for nursing supplies and purchased medical records.

(2) For July 1, 1995, rate setting only, the department shall divide into two peer groups nursing facilities located in the state of Washington providing services to medicaid residents: (a) Those facilities located within a metropolitan statistical area as defined and determined by the United States office of management and budget or other applicable federal office (MSA) and (b) those not located in such an area (non-MSA). The facilities in each peer group shall then be arrayed from lowest to highest by magnitude of per resident day desk-reviewed, adjusted administrative cost from the 1994 calendar report year, regardless of whether any such adjustments are contested by the nursing facility, and the median or fiftieth percentile cost for each peer group shall be determined. Administrative component rates for facilities within each peer group shall be set at the lower of the facility's desk-reviewed, adjusted per resident day administrative cost from the 1994 report period or the median cost for the facility's peer group, utilizing the same calendar year report data, plus ten percent. This rate shall be reduced or inflated as authorized by *RCW 74.46.420.

(3) For rates effective July 1, 1996, a nursing facility's noncost-rebased administrative component rate shall be that facility's administrative component rate existing on June 30, 1996, reduced or inflated as authorized by *RCW 74.46.420. The July 1, 1996, administrative component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective administrative component rate as of June 30, 1996, excluding any rate increases granted pursuant to *RCW 74.46.460.

(4) For rates effective July 1, 1997, a nursing facility's noncost-rebased administrative component rate shall be that facility's administrative component rate existing on June 30, 1997, reduced or inflated as authorized by *RCW 74.46.420. The July 1, 1997, administrative component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective administrative component rate as of June 30, 1997, excluding any rate increases granted pursuant to *RCW 74.46.460.

(5) Median cost limits for peer groups shall be calculated initially for July 1, 1995, rate setting as provided in this chapter on the basis of adjusted 1994 administrative cost report information available to the department prior to the calculation of the new rates for July 1, 1995, regardless of whether the adjustments are contested or subject to pending administrative or judicial review. Median costs for peer groups shall be recalculated as provided in this chapter on the basis of the most recent adjusted cost information available to the department on October 31, 1995, and shall apply retroactively to July 1, 1995, rates, regardless of whether the adjustments are contested or subject to pending administrative or judicial review. Median cost limits, once calculated utilizing October 31, 1995, adjusted cost information, shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not. [1995 1st sp.s.

c 18 § 106; 1993 sp.s. c 13 § 14; 1992 c 182 § 1; 1980 c 177 § 50.]

*Reviser's note: RCW 74.46.420 through 74.46.590 were repealed by RCW 74.46.595, effective June 30, 1998.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

74.46.500 Repealed. (Effective June 30, 1998.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.505 Operational cost center. (Effective until June 30, 1998.) (1) The operational cost center shall include for cost reporting purposes all allowable costs of the daily operation of the facility not included in nursing services and related care, food, administrative, or property costs, whether such costs are facility on-site or allocated in accordance with a department-approved joint-cost allocation methodology.

(2) For July 1, 1995, rate setting only, the department shall divide into two peer groups nursing facilities located in the state of Washington providing services to medicaid residents: (a) Those facilities located within a metropolitan statistical area as defined and determined by the United States office of management and budget or other applicable federal office (MSA) and (b) those not located in such an area (non-MSA). The facilities in each peer group shall then be arrayed from lowest to highest by magnitude of per resident day desk-reviewed, adjusted operational cost from the 1994 calendar report year, regardless of whether any such adjustments are contested by the nursing facility, and the median or fiftieth percentile cost for each peer group shall be determined. Operational component rates for facilities within each peer group shall be set at the lower of the facility's desk-reviewed, adjusted per resident day operational cost from the 1994 report period or the median cost for the facility's peer group, utilizing the same calendar year report data, plus twenty-five percent. This rate shall be reduced or inflated as authorized by *RCW 74.46.420.

(3) For rates effective July 1, 1996, a nursing facility's noncost-rebased operational component rate shall be that facility's operational component rate existing on June 30, 1996, reduced or inflated as authorized by *RCW 74.46.420. The July 1, 1996, operational component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective operational component rate as of June 30, 1996, excluding any rate increases granted pursuant to *RCW 74.46.460.

(4) For rates effective July 1, 1997, a nursing facility's noncost-rebased operational component rate shall be that facility's operational component rate existing on June 30, 1997, reduced or inflated as authorized by *RCW 74.46.420. The July 1, 1997, operational component rate used to calculate the return on investment (ROI) component rate shall be the inflated prospective operational component rate as of June 30, 1997, excluding any rate increases granted pursuant to *RCW 74.46.460.

(5) Median cost limits for peer groups shall be calculated initially for July 1, 1995, rate setting as provided in this chapter on the basis of adjusted 1994 operational cost report

information available to the department prior to the calculation of the new rate for July 1, 1995, regardless of whether the adjustments are contested or subject to pending administrative or judicial review. Median costs for peer groups shall be recalculated as provided in this chapter on the basis of the most recent adjusted cost information available to the department on October 31, 1995, and shall apply retroactively to July 1, 1995, rates, regardless of whether the adjustments are contested or subject to pending administrative or judicial review. Median cost limits, once calculated utilizing October 31, 1995, adjusted cost information, shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not. [1995 1st sp.s. c 18 § 107; 1993 sp.s. c 13 § 15.]

*Reviser's note: RCW 74.46.420 through 74.46.590 were repealed by RCW 74.46.595, effective June 30, 1998.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

74.46.505 Repealed. (*Effective June 30, 1998.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.510 Property cost center. (*Effective until June 30, 1998.*) (1) The property cost center rate for each facility shall be determined by dividing the sum of the reported allowable prior period actual depreciation, subject to RCW 74.46.310 through 74.46.380, adjusted for any capitalized additions or replacements approved by the department, and the retained savings from such cost center, as provided in RCW 74.46.180, by the greater of a facility's total resident days for the facility in the prior period or resident days as calculated on ninety or eighty-five percent facility occupancy as applicable. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the property cost center rate shall be adjusted to anticipated resident day level.

(2) A nursing facility's property rate shall be rebased annually, effective July 1, in accordance with this section and this chapter.

(3) When a certificate of need for a new facility is requested, the department, in reaching its decision, shall take into consideration per-bed land and building construction costs for the facility which shall not exceed a maximum to be established by the secretary. [1995 1st sp.s. c 18 § 108; 1993 sp.s. c 13 § 16; 1980 c 177 § 51.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

Effective dates—1980 c 177: See RCW 74.46.901.

74.46.510 Repealed. (*Effective June 30, 1998.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.530 Return on investment rate—Review. (*Effective until June 30, 1998.*) (1) The department shall establish for each medicaid nursing facility a return on investment (ROI) rate composed of two parts: A financing

allowance and a variable return allowance. The financing allowance part of a facility's return on investment component rate shall be rebased annually, effective July 1, in accordance with the provisions of this section and this chapter.

(a) The financing allowance shall be determined by multiplying the net invested funds of each facility by .10, and dividing by the greater of a nursing facility's total resident days from the most recent cost report period or resident days calculated on ninety percent or eighty-five percent facility occupancy as applicable. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the financing and variable return allowances shall be adjusted to the anticipated resident day level.

(b) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in RCW 74.46.330, 74.46.350, 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets, shall be utilized, except that the capitalized cost of land upon which the facility is located and such other contiguous land which is reasonable and necessary for use in the regular course of providing resident care shall also be included. Subject to provisions and limitations contained in this chapter, for land purchased by owners or lessors before July 18, 1984, capitalized cost of land shall be the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased after July 17, 1984, capitalized cost shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable to provide necessary information to determine net invested funds, the secretary shall have the authority to determine an amount for net invested funds based on an appraisal conducted according to RCW 74.46.360(1).

(c) In determining the variable return allowance:

(i) For July 1, 1995, rate setting only, the department, without utilizing peer groups, shall first rank all facilities in numerical order from highest to lowest according to their per resident day adjusted or audited, or both, allowable costs for nursing services, food, administrative, and operational costs combined for the 1994 calendar year cost report period.

(ii) The department shall then compute the variable return allowance by multiplying the appropriate percentage amounts, which shall not be less than one percent and not greater than four percent, by the sum of the facility's nursing services, food, administrative, and operational rate components. The percentage amounts will be based on groupings of facilities according to the rankings prescribed in (i) of this subsection (1)(c). The percentages calculated and assigned will remain the same for the variable return allowance paid in all July 1, 1996, and July 1, 1997, rates as well. Those groups of facilities with lower per diem costs shall receive higher percentage amounts than those with higher per diem costs.

(d) The sum of the financing allowance and the variable return allowance shall be the return on investment rate for each facility, and shall be added to the prospective rates of

each contractor as determined in *RCW 74.46.450 through 74.46.510.

(e) In the case of a facility which was leased by the contractor as of January 1, 1980, in an arm's-length agreement, which continues to be leased under the same lease agreement, and for which the annualized lease payment, plus any interest and depreciation expenses associated with contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total resident days, minus the property cost center determined according to *RCW 74.46.510, is more than the return on investment rate determined according to subsection (1)(d) of this section, the following shall apply:

(i) The financing allowance shall be recomputed substituting the fair market value of the assets as of January 1, 1982, as determined by the department of general administration through an appraisal procedure, less accumulated depreciation on the lessor's assets since January 1, 1982, for the net book value of the assets in determining net invested funds for the facility. A determination by the department of general administration of fair market value shall be final unless the procedure used to make such determination is shown to be arbitrary and capricious.

(ii) The sum of the financing allowance computed under subsection (1)(e)(i) of this section and the variable allowance shall be compared to the annualized lease payment, plus any interest and depreciation associated with contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total resident days, minus the property cost center rate determined according to *RCW 74.46.510. The lesser of the two amounts shall be called the alternate return on investment rate.

(iii) The return on investment rate determined according to subsection (1)(d) of this section or the alternate return on investment rate, whichever is greater, shall be the return on investment rate for the facility and shall be added to the prospective rates of the contractor as determined in *RCW 74.46.450 through 74.46.510.

(f) In the case of a facility which was leased by the contractor as of January 1, 1980, in an arm's-length agreement, if the lease is renewed or extended pursuant to a provision of the lease, the treatment provided in subsection (1)(e) of this section shall be applied except that in the case of renewals or extensions made subsequent to April 1, 1985, reimbursement for the annualized lease payment shall be no greater than the reimbursement for the annualized lease payment for the last year prior to the renewal or extension of the lease.

(2) Each biennium, beginning in 1985, the secretary shall review the adequacy of return on investment rates in relation to anticipated requirements for maintaining, reducing, or expanding nursing care capacity. The secretary shall report the results of such review to the legislature and make recommendations for adjustments in the return on investment rates utilized in this section, if appropriate. [1995 1st sp.s. c 18 § 109; 1993 sp.s. c 13 § 17; 1991 sp.s. c 8 § 17; 1985 c 361 § 17; 1983 1st ex.s. c 67 § 28; 1981 1st ex.s. c 2 § 7; 1980 c 177 § 53.]

*Reviser's note: RCW 74.46.420 through 74.46.590 were repealed by RCW 74.46.595, effective June 30, 1998.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Savings—1985 c 361: See note following RCW 74.46.020.

Effective dates—1983 1st ex.s. c 67; 1980 c 177: See RCW 74.46.901.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

74.46.530 Repealed. (Effective June 30, 1998.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.540 Repealed. (Effective June 30, 1998.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.550 Repealed. (Effective June 30, 1998.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.560 Notification of rates. (Effective until June 30, 1998.) The department will notify each contractor in writing of its prospective payment rates by the effective dates of the rates. Unless otherwise specified at the time it is issued, a rate will be effective from the first day of the month in which it is issued until a new rate becomes effective. If a rate is changed as the result of an appeals or exception procedure established in accordance with RCW 74.46.780, it will be effective as of the date the appealed rate became effective. [1995 1st sp.s. c 18 § 110; 1983 1st ex.s. c 67 § 30; 1980 c 177 § 56.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.46.560 Repealed. (Effective June 30, 1998.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.570 Adjustments required due to errors or omissions. (Effective until June 30, 1998.) (1) Prospective rates are subject to adjustment by the department as a result of errors or omissions by the department or by the contractor. The department will notify the contractor in writing of each adjustment and of the effective date of the adjustment, and of any amount due to the department or to the contractor as a result of the rate adjustment.

(2) If a contractor claims an error or omission based upon incorrect cost reporting, amended cost report pages shall be prepared and submitted by the contractor. Amended pages shall be accompanied by a certification signed by the licensed administrator of the nursing facility and a written justification explaining why the amendment is necessary. The certification and justification shall meet such criteria as are adopted by the department. Such amendments may be used to revise a prospective rate but shall not be used to revise a settlement if submitted after commencement of the field audit. All changes determined to be material by the department shall be subject to field audit. If changes are found to be incorrect or otherwise unacceptable, any rate adjustment based thereon shall be null and void and resulting payments or payment increases shall be subject to refund.

(3) The contractor shall pay an amount owed the department resulting from an error or omission as determined by the department on or after July 1, 1995, or commence repayment in accordance with a schedule determined and agreed to in writing by the department, within sixty days after receipt of notification of the rate adjustment. If a refund as determined by the department is not paid when due, the amount thereof may be deducted from current payments by the department. However, neither a timely filed request to pursue the department's administrative appeals or exception procedure nor commencement of judicial review, as may be available to the contractor in law, shall delay recovery.

(4) The department shall pay any amount owed the contractor as a result of a rate adjustment within thirty days after the contractor is notified of the rate adjustment.

(5) No adjustments will be made to a rate more than one hundred twenty days after the final audit narrative and summary for the period the rate was effective is sent to the contractor or, if no audit is held, more than one hundred twenty days after the preliminary settlement becomes the final settlement, except when a settlement is reopened as provided in RCW 74.46.170(3). [1995 1st sp.s. c 18 § 111; 1983 1st ex.s. c 67 § 31; 1980 c 177 § 57.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.46.570 Repealed. (*Effective June 30, 1998.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.580 Repealed. (*Effective June 30, 1998.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.590 Repealed. (*Effective June 30, 1998.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.46.595 Development of new system for establishing nursing home payment rates—Repeal of RCW 74.46.420 through 74.46.590, effective June 30, 1998. The legislature intends to adopt a new system for establishing nursing home payment rates no later than July 1, 1998. Any payments to nursing homes for services provided after June 30, 1998, shall be based on the new system. The system shall include case-mix reimbursement methods for paying for nursing services and shall match payments to patient care needs, while providing incentives for cost control and efficiency. To that end:

(1) In consultation with nursing facility provider associations, consumer groups, and the legislative budget committee, the department of social and health services shall design and develop alternative methods for matching nursing facility payments to patient care needs, while providing incentives for cost control and efficiency.

(2) The department shall report to the fiscal and health care policy committees of the legislature on the projected benefits and costs of these alternative methods by October 15th of 1995, 1996, and 1997. The October 1996 report shall additionally include a recommended time line for

implementing the new payment system no later than July 1, 1998.

(3) The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1998:

(a) RCW 74.46.420 and 1993 sp.s. c 13 § 7, 1985 c 361 § 18, 1983 1st ex.s. c 67 § 18, & 1980 c 177 § 42;

(b) RCW 74.46.430 and 1993 sp.s. c 13 § 8, 1987 2nd ex.s. c 1 § 2, 1987 c 476 § 2, 1983 1st ex.s. c 67 § 19, & 1980 c 177 § 43;

(c) RCW 74.46.440 and 1989 c 372 § 16 & 1980 c 177 § 44;

(d) RCW 74.46.450 and 1993 sp.s. c 13 § 9, 1983 1st ex.s. c 67 § 20, & 1980 c 177 § 45;

(e) RCW 74.46.460 and 1993 sp.s. c 13 § 10, 1987 c 476 § 3, 1985 c 361 § 15, 1983 1st ex.s. c 67 § 21, 1981 1st ex.s. c 2 § 5, & 1980 c 177 § 46;

(f) RCW 74.46.465 and 1987 c 476 § 8;

(g) RCW 74.46.470 and 1993 sp.s. c 13 § 11, 1987 c 476 § 4, 1983 1st ex.s. c 67 § 22, & 1980 c 177 § 47;

(h) RCW 74.46.481 and 1993 sp.s. c 13 § 12, 1991 sp.s. c 8 § 16, 1990 c 207 § 1, 1987 c 476 § 5, & 1983 1st ex.s. c 67 § 24;

(i) RCW 74.46.490 and 1993 sp.s. c 13 § 13, 1983 1st ex.s. c 67 § 25, 1981 1st ex.s. c 2 § 6, & 1980 c 177 § 49;

(j) RCW 74.46.500 and 1993 sp.s. c 13 § 14, 1992 c 182 § 1, & 1980 c 177 § 50;

(k) RCW 74.46.505 and 1993 sp.s. c 13 § 15;

(l) RCW 74.46.510 and 1993 sp.s. c 13 § 16 & 1980 c 177 § 51;

(m) RCW 74.46.530 and 1993 sp.s. c 13 § 17, 1991 sp.s. c 8 § 17, 1985 c 361 § 17, 1983 1st ex.s. c 67 § 28, 1981 1st ex.s. c 2 § 7, & 1980 c 177 § 53;

(n) RCW 74.46.540 and 1980 c 177 § 54;

(o) RCW 74.46.550 and 1983 1st ex.s. c 67 § 29 & 1980 c 177 § 55;

(p) RCW 74.46.560 and 1983 1st ex.s. c 67 § 30 & 1980 c 177 § 56;

(q) RCW 74.46.570 and 1983 1st ex.s. c 67 § 31 & 1980 c 177 § 57;

(r) RCW 74.46.580 and 1983 1st ex.s. c 67 § 32 & 1980 c 177 § 58; and

(s) RCW 74.46.590 and 1980 c 177 § 59. [1995 1st sp.s. c 18 § 98.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.46.640 Suspension of payments. (1) Payments to a contractor may be withheld by the department in each of the following circumstances:

(a) A required report is not properly completed and filed by the contractor within the appropriate time period, including any approved extension. Payments will be released as soon as a properly completed report is received;

(b) State auditors, department auditors, or authorized personnel in the course of their duties are refused access to a nursing facility or are not provided with existing appropriate records. Payments will be released as soon as such access or records are provided;

(c) A refund in connection with a preliminary or final settlement or rate adjustment is not paid by the contractor when due. The amount withheld will be limited to the

unpaid amount of the refund and any accumulated interest owed to the department as authorized by this chapter;

(d) Payment for the final sixty days of service under a contract will be held in the absence of adequate alternate security acceptable to the department pending final settlement when the contract is terminated; and

(e) Payment for services at any time during the contract period in the absence of adequate alternate security acceptable to the department, if a contractor's net medicaid overpayment liability for one or more nursing facilities or other debt to the department, as determined by preliminary settlement, final settlement, civil fines imposed by the department, third-party liabilities or other source, reaches or exceeds fifty thousand dollars, whether subject to good faith dispute or not, and for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Payments will be released as soon as practicable after acceptable security is provided or refund to the department is made.

(2) No payment will be withheld until written notification of the suspension is provided to the contractor, stating the reason for the withholding, except that neither a request to pursue the administrative appeals or exception procedure established by the department in rule nor commencement of judicial review, as may be available to the contractor in law, shall delay suspension of payment. [1995 1st sp.s. c 18 § 112; 1983 1st ex.s. c 67 § 34; 1980 c 177 § 64.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.46.690 Termination of contract—Settlement. (1)

When a facility contract is terminated for any reason, the old contractor shall submit final reports as required by RCW 74.46.040.

(2) Upon notification of a contract termination, the department shall determine by preliminary or final settlement calculations the amount of any overpayments made to the contractor, including overpayments disputed by the contractor. If preliminary or final settlements are unavailable for any period up to the date of contract termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information available to the department. The department shall also determine and add in the total of all other debts owed to the department regardless of source, including, but not limited to, interest owed to the department as authorized by this chapter, civil fines imposed by the department, or third-party liabilities.

(3) The old contractor shall provide security, in a form deemed adequate by the department, equal to the total amount of determined and estimated overpayments and all other debts from any source, whether or not the overpayments are the subject of good faith dispute. Security shall consist of:

- (a) Withheld payments due the contractor; or
- (b) A surety bond issued by a bonding company acceptable to the department; or
- (c) An assignment of funds to the department; or
- (d) Collateral acceptable to the department; or

(e) A purchaser's assumption of liability for the prior contractor's overpayment;

(f) A promissory note secured by a deed of trust; or

(g) Any combination of (a), (b), (c), (d), (e), or (f) of this subsection.

(4) A surety bond or assignment of funds shall:

(a) Be at least equal in amount to determined or estimated overpayments, whether or not the subject of good faith dispute, minus withheld payments;

(b) Be issued or accepted by a bonding company or financial institution licensed to transact business in Washington state;

(c) Be for a term, as determined by the department, sufficient to ensure effectiveness after final settlement and the exhaustion of any administrative appeals or exception procedure and judicial remedies, as may be available to and sought by the contractor, regarding payment, settlement, civil fine, interest assessment, or other debt issues: PROVIDED, That the bond or assignment shall initially be for a term of at least five years, and shall be forfeited if not renewed thereafter in an amount equal to any remaining combined overpayment and debt liability as determined by the department;

(d) Provide that the full amount of the bond or assignment, or both, shall be paid to the department if a properly completed final cost report is not filed in accordance with this chapter, or if financial records supporting this report are not preserved and made available to the auditor; and

(e) Provide that an amount equal to any recovery the department determines is due from the contractor from settlement or from any other source of debt to the department, but not exceeding the amount of the bond and assignment, shall be paid to the department if the contractor does not pay the refund and debt within sixty days following receipt of written demand for payment from the department to the contractor.

(5) The department shall release any payment withheld as security if alternate security is provided under subsection (3) of this section in an amount equivalent to determined and estimated overpayments.

(6) If the total of withheld payments, bonds, and assignments is less than the total of determined and estimated overpayments, the unsecured amount of such overpayments shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department with the county auditor of the county where the contractor resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) The contractor shall file a properly completed final cost report in accordance with the requirements of this chapter, which shall be audited by the department. A final settlement shall be determined within ninety days following completion of the audit process, including completion of any administrative appeals or exception procedure review of the audit requested by the contractor, but not including completion of any judicial review available to and commenced by the contractor.

(8) Following determination of settlement for all periods, security held pursuant to this section shall be released to the contractor after all overpayments, erroneous

payments, and debts determined in connection with final settlement, or otherwise, including accumulated interest owed the department, have been paid by the contractor.

(9) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

(10) Regardless of whether a contractor intends to terminate its medicaid contracts, if a contractor's net medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by preliminary settlement, final settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Such security shall meet the criteria in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not forthcoming. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department. This subsection shall apply to all overpayments and erroneous payments determined by preliminary or final settlements issued on or after July 1, 1995, regardless of what payment periods the settlements may cover and shall apply to all debts owed the department from any source, including interest debts, which become due on or after July 1, 1995. [1995 1st sp.s. c 18 § 113; 1985 c 361 § 3; 1983 1st ex.s. c 67 § 36; 1980 c 177 § 69.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.711 Resident personal funds—Conveyance upon death of resident. Upon the death of a resident with a personal fund deposited with the facility, the facility must convey within forty-five days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate; but in the case of a resident who received long-term care services, the funds and accounting shall be sent to the state of Washington, department of social and health services, office of financial recovery. The department shall establish a release procedure for use for burial expenses. [1995 1st sp.s. c 18 § 69.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.46.770 Contractor appeals—Challenges of laws, rules, or contract provisions. (1) For all nursing facility medicaid payment rates effective on or after July 1, 1995, and for all settlements and audits issued on or after July 1,

1995, regardless of what periods the settlements or audits may cover, if a contractor wishes to contest the way in which a rule relating to the medicaid payment rate system was applied to the contractor by the department, it shall pursue the appeals or exception procedure established by the department in rule authorized by RCW 74.46.780.

(2) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision or wishes to bring a challenge based in whole or in part on federal law, including but not limited to issues of procedural or substantive compliance with the federal medicaid minimum payment standard for long-term care facility services, the appeals or exception procedure established by the department in rule may not be used for these purposes. This prohibition shall apply regardless of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

(3) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision relating to the medicaid payment rate system, or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law. [1995 1st sp.s. c 18 § 114; 1983 1st ex.s. c 67 § 39; 1980 c 177 § 77.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

74.46.780 Appeals or exception procedure. For all nursing facility medicaid payment rates effective on or after July 1, 1995, and for all audits completed and settlements issued on or after July 1, 1995, regardless of what periods the payment rates, audits, or settlements may cover, the department shall establish in rule, consistent with federal requirements for nursing facilities participating in the medicaid program, an appeals or exception procedure that allows individual nursing care providers an opportunity to submit additional evidence and receive prompt administrative review of payment rates with respect to such issues as the department deems appropriate. [1995 1st sp.s. c 18 § 115; 1989 c 175 § 159; 1983 1st ex.s. c 67 § 40; 1980 c 177 § 78.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

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

Title 75

FOOD FISH AND SHELLFISH

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Chapter 75.08
ADMINISTRATION

Sections

- 75.08.011 Definitions. *(Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.)*
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- 75.08.500 Chinook and coho salmon—External marking of hatchery-produced fish—Findings.
- 75.08.510 Chinook and coho salmon—External marking of hatchery-produced fish—Program.
- 75.08.520 Chinook and coho salmon—External marking of hatchery-produced fish—Rules.

75.08.011 Definitions. *(Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.)* As used in this title or rules of the director, unless the context clearly requires otherwise:

(1) "Commission" means the fish and wildlife commission.

(2) "Director" means the director of fish and wildlife.

(3) "Department" means the department of fish and wildlife.

(4) "Person" means an individual or a public or private entity or organization. The term "person" includes local, state, and federal government agencies, and all business organizations, including corporations and partnerships.

(5) "Fisheries patrol officer" means a person appointed and commissioned by the commission, with authority to enforce this title, rules of the director, and other statutes as prescribed by the legislature. Fisheries patrol officers are peace officers.

(6) "Ex officio fisheries patrol officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fisheries patrol officer" also includes wildlife agents, special agents of the national marine fisheries service, United States fish and wildlife special agents, state parks commissioned officers, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(7) "To fish," "to harvest," and "to take" and their derivatives mean an effort to kill, injure, harass, or catch food fish or shellfish.

(8) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(9) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(10) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(11) "Resident" means a person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state.

(12) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(13) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that have been classified and that shall not be fished for except as authorized by rule of the commission. The term "food fish" includes all stages of development and the bodily parts of food fish species.

(14) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(15) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in Title 77 RCW, and includes:

Scientific Name	Common Name
<i>Oncorhynchus tshawytscha</i>	Chinook salmon
<i>Oncorhynchus kisutch</i>	Coho salmon
<i>Oncorhynchus keta</i>	Chum salmon
<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon

(16) "Commercial" means related to or connected with buying, selling, or bartering. Fishing for food fish or shellfish with gear unlawful for fishing for personal use, or possessing food fish or shellfish in excess of the limits permitted for personal use are commercial activities.

(17) "To process" and its derivatives mean preparing or preserving food fish or shellfish.

(18) "Personal use" means for the private use of the individual taking the food fish or shellfish and not for sale or barter.

(19) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(20) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful fishing, taking, or possession of food fish or shellfish. "Open season" includes the first and last days of the established time.

(21) "Fishery" means the taking of one or more particular species of food fish or shellfish with particular gear in a particular geographical area.

(22) "Limited-entry license" means a license subject to a license limitation program established in chapter 75.30 RCW.

(23) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta. [1995 1st sp.s. c 2 § 6; 1994 c 255 § 2. Prior: 1993 sp.s. c 2 § 20; 1993 c 340 § 47; prior: 1990 c 63 § 6; 1990 c 35 § 3; 1989 c 218 § 1; 1983 1st ex.s. c 46 § 4; 1975 1st ex.s. c 152 § 2; 1955 c 12 § 75.04.010; prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part. Formerly RCW 75.04.010.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.092.

[1995 RCW Supp.—page 928]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Intent—1990 c 35: See note following RCW 75.25.200.

75.08.013 Findings and intent. (Effective December 7, 1995, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.) The legislature supports the recommendations of the state fish and wildlife commission with regard to the commission's responsibilities in the merged department of fish and wildlife. It is the intent of the legislature that, beginning July 1, 1996, the commission assume regulatory authority for food fish and shellfish in addition to its existing authority for game fish and wildlife. It is also the intent of the legislature to provide to the commission the authority to review and approve department agreements, to review and approve the department's budget proposals, to adopt rules for the department, and to select commission staff and the director of the department.

The legislature finds that all fish, shellfish, and wildlife species should be managed under a single comprehensive set of goals, policies, and objectives, and that the decision-making authority should rest with the fish and wildlife commission. The commission acts in an open and deliberative process that encourages public involvement and increases public confidence in department decision making. [1995 1st sp.s. c 2 § 1.]

Referral to electorate—1995 1st sp.s. c 2: "This act shall be submitted to the people for their adoption and ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof." [1995 1st sp.s. c 2 § 46.]

75.08.014 Authority of director to administer department—Qualifications of director. (Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.) The director shall supervise the administration and operation of the department and perform the duties prescribed by law and delegated by the commission. The director may appoint and employ necessary personnel. The director may delegate, in writing, to department personnel the duties and powers necessary for efficient operation and administration of the department.

Only persons having general knowledge of the fisheries and wildlife resources and of the commercial and recreational fishing industry in this state are eligible for appointment as director. The director shall not have a financial interest in the fishing industry or a directly related industry. [1995 1st sp.s. c 2 § 22; 1993 sp.s. c 2 § 21; 1983 1st ex.s. c 46 § 6; 1953 c 207 § 10. Prior: (i) 1933 c 3 § 5; 1921 c 7 § 116; RRS § 10874. (ii) 1949 c 112 § 3, part; Rem. Supp. 1949 § 5780-201, part. (iii) 1949 c 112 § 5; Rem. Supp. 1949 § 5780-204. Formerly RCW 43.25.010.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.08.025 Agreements with department of defense. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The commission may negotiate agreements with the United States department of defense to coordinate fishing in state waters over which the department of defense has assumed control. [1995 1st sp.s. c 2 § 7; 1983 1st ex.s. c 46 § 8; 1955 c 12 § 75.08.025. Prior: 1953 c 207 § 11.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.040 Acquisition, use, and management of lands, water rights, rights of way, and personal property. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The commission may acquire by gift, easement, purchase, lease, or condemnation lands, water rights, and rights of way, and construct and maintain necessary facilities for purposes consistent with this title.

The commission may sell, lease, convey, or grant concessions upon real or personal property under the control of the department. [1995 1st sp.s. c 2 § 23; 1983 1st ex.s. c 46 § 9; 1955 c 212 § 1; 1955 c 12 § 75.08.040. Prior: 1949 c 112 § 7(2); Rem. Supp. 1949 § 5780-206(2).]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Department of fish and wildlife authorized to establish small works roster of public works contractors: RCW 39.04.150.

Tidelands reserved for recreational use and taking of fish and shellfish: RCW 79.94.390, 79.94.400.

75.08.045 Acceptance of funds or property for damage claims or conservation of fish resources. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The commission may accept money or real property from persons under conditions requiring the use of the property or money for the protection, rehabilitation, preservation, or conservation of the state food fish and shellfish resources, or in settlement of claims for damages to food fish and shellfish resources. The commission shall only accept real property useful for the protection, rehabilitation, preservation, or conservation of these fisheries resources. [1995 1st sp.s. c 2 § 24; 1983 1st ex.s. c 46 § 11; 1955 c 12 § 75.16.050. Prior: 1949 c 112 § 51; Rem. Supp. 1949 § 5780-325. Formerly RCW 75.16.050.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.047 Fish hatcheries—Volunteer group projects. The manager of a state fish hatchery operated by the department of fish and wildlife may allow nonprofit volunteer groups affiliated with the hatchery to undertake projects to raise donations, gifts, and grants that enhance support for

the hatchery or activities in the surrounding watershed that benefit the hatchery. The manager may provide agency personnel and services, if available, to assist in the projects and may allow the volunteer groups to conduct activities on the grounds of the hatchery.

The director of the department of fish and wildlife shall encourage and facilitate arrangements between hatchery managers and nonprofit volunteer groups and may establish guidelines for such arrangements. [1995 c 224 § 1.]

75.08.055 Agreements with United States to protect Columbia River fish—Fish cultural stations and protective devices. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) (1) The commission may enter into agreements with and receive funds from the United States for the construction, maintenance, and operation of fish cultural stations, laboratories, and devices in the Columbia River basin for improvement of feeding and spawning conditions for fish, for the protection of migratory fish from irrigation projects and for facilitating free migration of fish over obstructions.

(2) The commission and the department may acquire by gift, purchase, lease, easement, or condemnation the use of lands where the construction or improvement is to be carried on by the United States. [1995 1st sp.s. c 2 § 8; 1993 sp.s. c 2 § 23; 1987 c 506 § 94; 1983 1st ex.s. c 46 § 12; 1955 c 12 § 75.16.060. Prior: 1949 c 112 § 52; Rem. Supp. 1949 § 5780-326. Formerly RCW 75.16.060.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

75.08.058 Fish and wildlife harvest in federal exclusive economic zone—Rules. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The commission may adopt rules pertaining to harvest of fish and wildlife in the federal exclusive economic zone by vessels or individuals registered or licensed under the laws of this state. [1995 1st sp.s. c 2 § 9; 1993 sp.s. c 2 § 99.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 7, 60, 80, and 82-100: See RCW 75.54.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.08.070 Territorial authority of commission—Adoption of federal regulations and rules of fisheries commissions and compacts. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) Consistent with federal law, the commission's authority extends to all areas and waters within the territorial boundaries of the state, to the

offshore waters, and to the concurrent waters of the Columbia river.

Consistent with federal law, the commission's authority extends to fishing in offshore waters by residents of this state.

The commission may adopt rules consistent with the regulations adopted by the United States department of commerce for the offshore waters. The commission may adopt rules consistent with the recommendations or regulations of the Pacific marine fisheries commission, Columbia river compact, the Pacific salmon commission as provided in chapter 75.40 RCW, or the international Pacific halibut commission. [1995 1st sp.s. c 2 § 10; 1989 c 130 § 1; 1983 1st ex.s. c 46 § 14; 1955 c 12 § 75.08.070. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780-205, part.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.080 Scope of commission's authority to adopt rules—Application to private tideland owners or lessees of the state. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) (1) The commission may adopt, amend, or repeal rules as follows:

(a) Specifying the times when the taking of food fish or shellfish is lawful or unlawful.

(b) Specifying the areas and waters in which the taking and possession of food fish or shellfish is lawful or unlawful.

(c) Specifying and defining the gear, appliances, or other equipment and methods that may be used to take food fish or shellfish, and specifying the times, places, and manner in which the equipment may be used or possessed.

(d) Regulating the possession, disposal, landing, and sale of food fish or shellfish within the state, whether acquired within or without the state.

(e) Regulating the prevention and suppression of diseases and pests affecting food fish or shellfish.

(f) Regulating the size, sex, species, and quantities of food fish or shellfish that may be taken, possessed, sold, or disposed of.

(g) Specifying the statistical and biological reports required from fishermen, dealers, boathouses, or processors of food fish or shellfish.

(h) Classifying species of marine and freshwater life as food fish or shellfish.

(i) Classifying the species of food fish and shellfish that may be used for purposes other than human consumption.

(j) Other rules necessary to carry out this title and the purposes and duties of the department.

(2) Subsections (1) (a), (b), (c), (d), and (f) of this section do not apply to private tideland owners and lessees and the immediate family members of the owners or lessees of state tidelands, when they take or possess oysters, clams, cockles, borers, or mussels, excluding razor clams, produced on their own private tidelands or their leased state tidelands for personal use.

"Immediate family member" for the purposes of this section means a spouse, brother, sister, grandparent, parent, child, or grandchild.

[1995 RCW Supp.—page 930]

(3) Except for subsection (1)(g) of this section, this section does not apply to private sector cultured aquatic products as defined in RCW 15.85.020. Subsection (1)(g) of this section does apply to such products. [1995 1st sp.s. c 2 § 11; 1993 c 117 § 1; 1985 c 457 § 17; 1983 1st ex.s. c 46 § 15; 1980 c 55 § 1; 1955 c 12 § 75.08.080. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780-205, part.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.090 Adoption and certification of rules. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) (1) Rules of the commission shall be adopted by the commission or a designee in accordance with chapter 34.05 RCW.

(2) Rules of the commission shall be admitted as evidence in the courts of the state when accompanied by an affidavit from the commission or a designee certifying that the rule has been lawfully adopted and the affidavit is prima facie evidence of the adoption of the rule.

(3) The commission may designate department employees to act on the commission's behalf in the adoption and certification of rules. [1995 1st sp.s. c 2 § 12; 1983 1st ex.s. c 46 § 16; 1973 c 93 § 1; 1955 c 12 § 75.08.090. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780-205, part.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.110 Unofficial printings of laws or rules—Approval required. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) Provisions of this title or rules of the commission shall not be printed in a pamphlet unless the pamphlet is clearly marked as an unofficial version. This section does not apply to printings approved by the commission. [1995 1st sp.s. c 2 § 13; 1983 1st ex.s. c 46 § 17; 1955 c 12 § 75.08.110. Prior: 1949 c 112 § 16; Rem. Supp. 1949 § 5780-215.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.120 Commission may designate fishing areas. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The commission may designate the boundaries of fishing areas by driving piling or by establishing monuments or by description of landmarks or section lines and directional headings. [1995 1st sp.s. c 2 § 14; 1983 1st ex.s. c 46 § 18; 1955 c 12 § 75.08.120. Prior: 1949 c 112 § 10; Rem. Supp. 1949 § 5780-209.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.230 Disposition of moneys collected—Proceeds from sale of food fish or shellfish—Unanticipated receipts. (1) Except as provided in this section, state and county officers receiving the following moneys shall deposit them in the state general fund:

(a) The sale of licenses required under this title;
 (b) The sale of property seized or confiscated under this title;
 (c) Fines and forfeitures collected under this title;
 (d) The sale of real or personal property held for department purposes;

(e) Rentals or concessions of the department;
 (f) Moneys received for damages to food fish, shellfish or department property; and
 (g) Gifts.

(2) The director shall make weekly remittances to the state treasurer of moneys collected by the department.

(3) All fines and forfeitures collected or assessed by a district court for a violation of this title or rule of the director shall be remitted as provided in chapter 3.62 RCW.

(4) Proceeds from the sale of food fish or shellfish taken in test fishing conducted by the department, to the extent that these proceeds exceed the estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270 to reimburse the department for unanticipated costs for test fishing operations in excess of the allowance in the budget approved by the legislature.

(5) Proceeds from the sale of salmon carcasses and salmon eggs from state general funded hatcheries by the department of general administration shall be deposited in the regional fisheries enhancement group account established in RCW 75.50.100.

(6) Moneys received by the director under RCW 75.08.045, to the extent these moneys exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for the specific purpose for which the moneys were received, unless the moneys were received in settlement of a claim for damages to food fish or shellfish, in which case the moneys may be expended for the conservation of these resources.

(7) Proceeds from the sale of herring spawn on kelp fishery licenses by the department, to the extent those proceeds exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for herring management, enhancement, and enforcement. [1995 c 367 § 11; 1993 c 340 § 48; 1989 c 176 § 4; 1987 c 202 § 230; 1984 c 258 § 332; 1983 1st ex.s. c 46 § 23; 1979 c 151 § 175; 1977 ex.s. c 327 § 33; 1975 1st ex.s. c 223 § 1; 1969 ex.s. c 199 § 31; 1969 ex.s. c 16 § 1; 1965 ex.s. c 72 § 2; 1955 c 12 § 75.08.230. Prior: 1951 c 271 § 2; 1949 c 112 § 25; Rem. Supp. 1949 § 5780-223.]

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

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

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.25.100.

75.08.274 Taking food fish for propagation or scientific purposes—Permit required. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) Except by permit of the commission, it is unlawful to take food fish or shellfish for propagation or scientific purposes within state waters. [1995 1st sp.s. c 2 § 15; 1983 1st ex.s. c 46 § 28; 1971 c 35 § 1; 1955 c 12 § 75.16.010. Prior: 1949 c 112 § 42; Rem. Supp. 1949 § 5780-316. Formerly RCW 75.16.010.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.285 Prevention and suppression of diseases and pests. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The commission may prohibit the introduction, transportation or transplanting of food fish, shellfish, organisms, material, or other equipment which in the commission's judgment may transmit any disease or pests affecting food fish or shellfish. [1995 1st sp.s. c 2 § 16; 1983 1st ex.s. c 46 § 29; 1955 c 12 § 75.16.030. Prior: 1949 c 112 § 43; Rem. Supp. 1949 § 5780-317. Formerly RCW 75.16.030.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.295 Planting food fish or shellfish—Permit required. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) Except by permit of the commission, it is unlawful to release, plant, or place food fish or shellfish in state waters. [1995 1st sp.s. c 2 § 17; 1983 1st ex.s. c 46 § 30; 1955 c 12 § 75.16.020. Prior: 1949 c 112 § 40; Rem. Supp. 1949 § 5780-314. Formerly RCW 75.16.020.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.08.460 Recreational fishery enhancement plan—Progress reports. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The commission shall report to the governor and the appropriate legislative committees regarding its progress on the recreational fishery enhancement plan giving the following minimum information:

(1) By July 1, 1990, and by July 1st each succeeding year a report shall include:

(a) Progress on all programs within the plan that are referred to as already underway; and

(b) Specific anticipated needs for additional FTE's, additional capital funds or other needed resources, including whether or not current budgetary dollars are sufficient.

(2) By November 1, 1990, and by November 1st each succeeding year a report shall provide the many specificities omitted from the recreational fishery enhancement plan. They include but are not limited to the following:

(a) The name of the person assigned the responsibility and accountability for over-all management of the recreational fishery enhancement plan.

(b) The name of the person responsible and accountable for management of each regional program.

(c) The anticipated yearly costs related to each regional program.

(d) The specific dates relative to attainment of the recreational fishery enhancement plan goals, including a time-line program by region.

(e) Criteria used for measurement of the successful attainment of the recreational fishery enhancement plan. [1995 1st sp.s. c 2 § 18; 1990 c 91 § 2.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Purpose of plan—1990 c 91: "The legislature is aware that the Washington state department of fisheries introduced a broad new program titled "The Recreational Fishery Enhancement Plan" in October of 1989. The declared purpose of the plan is to emphasize recreational opportunities and develop the plan with emphasis on recreational salmon fishing.

The plan boldly adopts, as its chief goal, Governor Gardner's personal objective: Make Washington the recreational fishing capital of the nation. The director states this will be accomplished through a series of regional programs. The legislature commends the director for his recreational fishery enhancement plan and the various concepts it contains to meet the need for recreational emphasis.

The legislature recognizes that any plan such as the recreational fishery enhancement plan requires creative thinking, innovation, commitment, allocation of appropriate resources, and risk taking. Certain failures may occur in aspects of the programs but only through such far-sighted acceptance of risks will success be achieved.

Because of the importance of this effort to the state of Washington, the legislature and the thousands of Washington recreational fishers must be kept informed as to the progress and success of the recreational fishery enhancement plan." [1990 c 91 § 1.]

75.08.500 Chinook and coho salmon—External marking of hatchery-produced fish—Findings. The legislature declares that the state has a vital interest in the continuation of recreational fisheries for chinook salmon and coho salmon in mixed stock areas, and that the harvest of hatchery origin salmon should be encouraged while wild salmon should be afforded additional protection when required. A program of selective harvest shall be developed utilizing hatchery salmon that are externally marked in a conspicuous manner, regulations that promote the unharmed release of unmarked fish, when and where appropriate, and a public information program that educates the public about the need to protect depressed stocks of wild salmon.

The legislature further declares that the establishment of other incentives for commercial fishing and fish processing in Washington will complement the program of selective harvest in mixed stock fisheries anticipated by this legislation. [1995 c 372 § 1.]

75.08.510 Chinook and coho salmon—External marking of hatchery-produced fish—Program. The department shall mark appropriate coho salmon that are released from department operated hatcheries and rearing

ponds in such a manner that the fish are externally recognizable as hatchery origin salmon by fishers for the purpose of maximized catch while sustaining wild and hatchery reproduction.

The department shall mark all appropriate chinook salmon targeted for contribution to the Washington catch that are released from department operated hatcheries and rearing ponds in such a manner that the fish are externally recognizable as hatchery origin salmon by fishers.

The goal of the marking program is the annual marking by June 30, 1997, of all appropriate hatchery origin chinook and coho salmon produced by the department with marking to begin with the 1994 Puget Sound coho brood. The department may experiment with different methods for marking hatchery salmon with the primary objective of maximum survival of hatchery marked fish, maximum contribution to fisheries, and minimum cost consistent with the other goals.

The department shall coordinate with other entities that are producing hatchery chinook and coho salmon for release into public waters to enable the broadest application of the marking program to all hatchery produced chinook and coho salmon. The ultimate goal of the program is the coast-wide marking of appropriate hatchery origin chinook and coho salmon, and the protection of all wild chinook and coho salmon, where appropriate. [1995 c 372 § 2.]

75.08.520 Chinook and coho salmon—External marking of hatchery-produced fish—Rules. The department shall adopt rules to control the mixed stock chinook and coho fisheries of the state so as to sustain healthy stocks of wild salmon, allow the maximum survival of wild salmon, allow for spatially separated fisheries that target on hatchery stocks, foster the best techniques for releasing wild chinook and coho salmon, and contribute to the economic viability of the fishing businesses of the state. [1995 c 372 § 3.]

Chapter 75.12

UNLAWFUL ACTS

Sections

- 75.12.010 Limitations on commercial fishing for salmon in Puget Sound waters. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.12.015 Limitations on commercial fishing for chinook or coho salmon in Pacific Ocean and Straits of Juan de Fuca. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)

75.12.010 Limitations on commercial fishing for salmon in Puget Sound waters. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) (1) Except-as provided in this section, it is unlawful to fish commercially for salmon within the waters described in subsection (2) of this section.

(2) All waters east and south of a line commencing at a concrete monument on Angeles Point in Clallam county near the mouth of the Elwha River on which is inscribed "Angeles Point Monument" (latitude 48° 9' 3"north, longitude 123° 33' 01" west of Greenwich Meridian); thence

running east on a line 81° 30' true across the flashlight and bell buoy off Partridge Point and thence continued to longitude 122° 40' west; thence north to the southerly shore of Sinclair Island; thence along the southerly shore of the island to the most easterly point of the island; thence 46° true to Carter Point, the most southerly point of Lummi Island; thence northwesterly along the westerly shore line of Lummi Island to where the shore line intersects line of longitude 122° 40' west; thence north to the mainland, including: The southerly portion of Hale Passage, Bellingham Bay, Padilla Bay, Fidalgo Bay, Guemes Channel, Skagit Bay, Similk Bay, Saratoga Passage, Holmes Harbor, Possession Sound, Admiralty Inlet, Hood Canal, Puget Sound, and their inlets, passages, waters, waterways, and tributaries.

(3) The commission may authorize commercial fishing for sockeye salmon within the waters described in subsection (2) of this section during the period June 10 to July 25 and for other salmon from the second Monday of September through November 30, except during the hours between 4:00 p.m. of Friday and 4:00 p.m. of the following Sunday.

(4) The commission may authorize commercial fishing for salmon with gill net gear prior to the second Monday in September within the waters of Hale Passage, Bellingham Bay, Samish Bay, Padilla Bay, Fidalgo Bay, Guemes Channel, Skagit Bay, and Similk Bay, to wit: Those waters northerly and easterly of a line commencing at Stanwood, thence along the south shore of Skagit Bay to Rocky Point on Camano Island; thence northerly to Polnell Point on Whidbey Island.

(5) Whenever the commission determines that a stock or run of salmon cannot be harvested in the usual manner, and that the stock or run of salmon may be in danger of being wasted and surplus to natural or artificial spawning requirements, the commission may authorize units of gill net and purse seine gear in any number or equivalents, by time and area, to fully utilize the harvestable portions of these salmon runs for the economic well being of the citizens of this state. Gill net and purse seine gear other than emergency and test gear authorized by the director shall not be used in Lake Washington.

(6) The commission may authorize commercial fishing for pink salmon in each odd-numbered year from August 1 through September 1 in the waters lying inside of a line commencing at the most easterly point of Dungeness Spit and thence projected to Point Partridge on Whidbey Island and a line commencing at Olele Point and thence projected easterly to Bush Point on Whidbey Island. [1995 1st sp.s. c 2 § 25; 1983 1st ex.s. c 46 § 46; 1973 1st ex.s. c 220 § 2; 1971 ex.s. c 283 § 13; 1955 c 12 § 75.12.010. Prior: 1949 c 112 § 28; Rem. Supp. 1949 § 5780-301.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Legislative declaration: "The preservation of the fishing industry and food fish and shellfish resources of the state of Washington is vital to the state's economy, and effective measures and remedies are necessary to prevent the depletion of these resources." [1973 1st ex.s. c 220 § 1.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.28.113.

75.12.015 Limitations on commercial fishing for chinook or coho salmon in Pacific Ocean and Straits of Juan de Fuca. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) Except as provided in this section, it is unlawful to fish commercially for chinook or coho salmon in the Pacific Ocean and the Straits of Juan de Fuca.

(1) The commission may authorize commercial fishing for coho salmon from June 16 through October 31.

(2) The commission may authorize commercial fishing for chinook salmon from March 15 through October 31. [1995 1st sp.s. c 2 § 26; 1983 1st ex.s. c 46 § 48; 1955 c 12 § 75.18.020. Prior: 1953 c 147 § 3. Formerly RCW 75.18.020.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Chapter 75.20

CONSTRUCTION PROJECTS IN STATE WATERS

Sections

- 75.20.108 Hydraulic projects for removal or control of spartina, purple loosestrife, and aquatic noxious weeds—Approval may not be required—Rules—Definitions.
- 75.20.110 Columbia river anadromous fish sanctuary—Restrictions. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.20.140 Hydraulic appeals board—Procedures.
- 75.20.170 Watershed restoration projects—Hydraulic project approval—Permit processing.
- 75.20.320 Wetlands filled under RCW 75.20.300—Mitigation not required.

75.20.108 Hydraulic projects for removal or control of spartina, purple loosestrife, and aquatic noxious weeds—Approval may not be required—Rules—Definitions. (1) An activity conducted solely for the removal or control of spartina shall not require hydraulic project approval.

(2) An activity conducted solely for the removal or control of purple loosestrife and which is performed with hand-held tools, hand-held equipment, or equipment carried by a person when used shall not require hydraulic project approval.

(3) By June 30, 1997, the department of fish and wildlife shall develop rules for projects conducted solely for the removal or control of various aquatic noxious weeds other than spartina and purple loosestrife and for activities or projects for controlling purple loosestrife not covered by subsection (2) of this section, which projects will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Following the adoption of the rules, the department shall produce and distribute a pamphlet describing the methods of removing or controlling the aquatic noxious weeds that are approved under the rules. The pamphlet serves as the hydraulic project approval for any project that is conducted solely for the removal or control of such aquatic noxious weeds and that is conducted as described in the pamphlet; no further hydraulic project approval is required for such a project.

From time to time as information becomes available, the department shall adopt similar rules for additional aquatic noxious weeds or additional activities for removing or controlling aquatic noxious weeds not governed by subsection (1) or (2) of this section and shall produce and distribute one or more pamphlets describing these methods of removal or control. Such a pamphlet serves as the hydraulic project approval for any project that is conducted solely for the removal or control of such aquatic noxious weeds and that is conducted as described in the pamphlet; no further hydraulic project approval is required for such a project.

(4) As used in this section, "spartina," "purple loosestrife," and "aquatic noxious weeds" have the meanings prescribed by RCW 17.26.020.

(5) Nothing in this section shall prohibit the department of fish and wildlife from requiring a hydraulic project approval for those parts of hydraulic projects that are not specifically for the control or removal of spartina, purple loosestrife, or other aquatic noxious weeds. [1995 c 255 § 4.]

Severability—Effective date—1995 c 255: See RCW 17.26.900 and 17.26.901.

75.20.110 Columbia river anadromous fish sanctuary—Restrictions. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) (1) Except for the north fork of the Lewis river and the White Salmon river, all streams and rivers tributary to the Columbia river downstream from McNary dam are established as an anadromous fish sanctuary. This sanctuary is created to preserve and develop the food fish and game fish resources in these streams and rivers and to protect them against undue industrial encroachment.

(2) Within the sanctuary area:

(a) It is unlawful to construct a dam greater than twenty-five feet high within the migration range of anadromous fish as determined by the commission.

(b) Except by order of the commission, it is unlawful to divert water from rivers and streams in quantities that will reduce the respective stream flow below the annual average low flow, based upon data published in United States geological survey reports.

(3) The commission may acquire and abate a dam or other obstruction, or acquire any water right vested on a sanctuary stream or river, which is in conflict with the provisions of subsection (2) of this section.

(4) Subsection (2)(a) of this section does not apply to the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers. [1995 1st sp.s. c 2 § 27; 1993 sp.s. c 2 § 36; 1988 c 36 § 36; 1985 c 307 § 5; 1983 1st ex.s. c 46 § 76; 1961 c 4 § 1; Initiative Measure No. 25, approved November 8, 1960.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Severability—1961 c 4: "If any section or provision or part thereof of this act shall be held unconstitutional or for any other reason invalid, the invalidity of such section, provision or part thereof shall not affect the

validity of the remaining sections, provisions or parts thereof which are not judged to be invalid or unconstitutional." [1961 c 4 § 3 (Initiative Measure No. 25, approved November 8, 1960).]

75.20.140 Hydraulic appeals board—Procedures.

(1) In all appeals, the hydraulic appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter 34.05 RCW.

(2) In all appeals, the hydraulic appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings.

(3) All proceedings before the hydraulic appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. Such rules shall be published and distributed.

(4) Judicial review of a decision of the hydraulic appeals board may be obtained only pursuant to RCW 34.05.510 through 34.05.598. [1995 c 382 § 7; 1989 c 175 § 161; 1986 c 173 § 5.]

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

75.20.170 Watershed restoration projects—Hydraulic project approval—Permit processing. A hydraulic project approval required by the department for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. [1995 c 378 § 14.]

75.20.320 Wetlands filled under RCW 75.20.300—Mitigation not required. The department may not require mitigation for adverse impacts on fish life or habitat that occurred at the time a wetland was filled, if the wetland was filled under the provisions of RCW 75.20.300. [1995 c 328 § 1.]

Chapter 75.24

SHELLFISH

Sections

- 75.24.030 Sale or lease of state oyster reserves. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.24.100 Geoduck clams, commercial harvesting—Unlawful acts—Gear requirements. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.24.130 Establishment of reserves on state shellfish lands. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)

75.24.030 Sale or lease of state oyster reserves. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) Only upon recommendation of the commission may the state oyster reserves be sold, leased, or otherwise disposed of by the department of natural resources. [1995 1st sp.s. c 2 § 28; 1983 1st ex.s. c 46 § 79; 1955 c 12 § 75.24.030. Prior: 1949 c 112 § 55; Rem. Supp. 1949 § 5780-402.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.24.100 Geoduck clams, commercial harvesting—Unlawful acts—Gear requirements. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) (1) It is unlawful to take geoduck clams for commercial purposes outside the harvest area designated in a current department of natural resources geoduck harvesting agreement issued under RCW 79.96.080. It is unlawful to commercially harvest geoduck clams from bottoms that are shallower than eighteen feet below mean lower low water (0.0 ft.), or that lie in an area bounded by the line of ordinary high tide (mean high tide) and a line two hundred yards seaward from and parallel to the line of ordinary high tide. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Commercial geoduck harvesting shall be done with a hand-held, manually operated water jet or suction device guided and controlled from under water by a diver. Periodically, the commission shall determine the effect of each type or unit of gear upon the geoduck population or the substrate they inhabit. The commission may require modification of the gear or stop its use if it is being operated in a wasteful or destructive manner or if its operation may cause permanent damage to the bottom or adjacent shellfish populations. [1995 1st sp.s. c 2 § 29; 1993 c 340 § 51; 1984 c 80 § 2. Prior: 1983 1st ex.s. c 46 § 85; 1983 c 3 § 193; 1979 ex.s. c 141 § 1; 1969 ex.s. c 253 § 1.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Liberal construction—1969 ex.s. c 253: "The provisions of this act shall be liberally construed." [1969 ex.s. c 253 § 5.]

Severability—1969 ex.s. c 253: "If any provisions of this 1969 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." [1969 ex.s. c 253 § 6.]

Designation of aquatic lands for geoduck harvesting: RCW 79.96.085.

Diver license for harvesting geoducks: RCW 75.28.750.

75.24.130 Establishment of reserves on state shellfish lands. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The commission may examine the clam, mussel, and oyster beds located on aquatic lands belonging to the state and request the commissioner of public lands to withdraw these lands from sale and lease for the purpose of establishing reserves or public beaches. The commission shall conserve, protect, and develop these reserves and the oyster, shrimp, clam, and mussel beds on state lands. [1995 1st sp.s. c 2 § 30; 1983 1st ex.s. c 46 § 89; 1955 c 12 § 75.08.060. Prior: 1949 c 112 § 7(5); Rem. Supp. 1949 § 5780-206(5). Formerly RCW 75.08.060.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Chapter 75.25

RECREATIONAL LICENSES

Sections

75.25.095 Family fishing days. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)

75.25.095 Family fishing days. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The commission may adopt rules designating times and places for the purposes of family fishing days when a recreational fishing license is not required to fish for food fish or shellfish. All other applicable laws and rules shall remain in effect. [1995 1st sp.s. c 2 § 31; 1990 c 34 § 2.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Legislative finding—1990 c 34: "The legislature finds that conservation and wise use of the state's food fish and shellfish resources are of paramount importance. The legislature finds that public awareness and enjoyment is critical to conserving the state's food fish and shellfish resources. The legislature finds that public awareness can be increased if the departments of wildlife and fisheries jointly participate in a national fishing week program by scheduling free family fishing days on the same days." [1990 c 34 § 1.]

Chapter 75.28

COMMERCIAL LICENSES

Sections

75.28.011 Transfer of licenses—Restrictions—Fees—Inheritability.

75.28.034 No commercial fishery during year—License requirement waived or license fees refunded.

75.28.095 Charter licenses and angler permits—Fees—"Charter boat" defined—Oregon charter boats.

75.28.011 Transfer of licenses—Restrictions—Fees—Inheritability. (1) Unless otherwise provided in this title, a license issued under this chapter is not transferable from the license holder to any other person.

(2) The following restrictions apply to transfers of commercial fishery licenses, salmon delivery licenses, and salmon charter licenses that are transferable between license holders:

(a) The license holder shall surrender the previously issued license to the department.

(b) The department shall complete no more than one transfer of the license in any seven-day period.

(c) The fee to transfer a license from one license holder to another is:

(i) The same as the resident license renewal fee if the license is not limited under chapter 75.30 RCW;

(ii) Three and one-half times the resident renewal fee if the license is not a commercial salmon license and the license is limited under chapter 75.30 RCW;

(iii) Fifty dollars if the license is a commercial salmon license and is limited under chapter 75.30 RCW; or

(iv) If a license is transferred from a resident to a nonresident, the difference between the resident and nonresident license fees at the time of transfer, to be paid by the transferee.

(3) A commercial license that is transferable under this title survives the death of the holder. Though such licenses are not personal property, they shall be treated as analogous to personal property for purposes of inheritance and intestacy. Such licenses are subject to state laws governing wills, trusts, estates, intestate succession, and community property, except that such licenses are exempt from claims of creditors of the estate and tax liens. The surviving spouse, estate, or beneficiary of the estate may apply for a renewal of the license. There is no fee for transfer of a license from a license holder to the license holder's surviving spouse or estate, or to a beneficiary of the estate. [1995 c 228 § 1; 1993 sp.s. c 17 § 34.]

Contingent effective date—1993 sp.s. c 17 §§ 34-47: "Sections 34 through 47 of this act shall take effect only if Senate Bill No. 5124 becomes law by August 1, 1993." [1993 sp.s. c 17 § 48.] Senate Bill No. 5124 [1993 c 340] did become law. Sections 34 through 47 of 1993 sp.s. c 17 did become law.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

75.28.034 No commercial fishery during year—License requirement waived or license fees refunded. If, for any reason, the department does not allow any opportunity for a commercial fishery during a calendar year, the department shall either: (1) Waive the requirement to obtain a license for that commercial fishery for that year; or (2) refund applicable license fees upon return of the license. [1995 c 227 § 1.]

75.28.095 Charter licenses and angler permits—Fees—"Charter boat" defined—Oregon charter boats. (1) The director shall issue the charter licenses and angler permits listed in this section according to the requirements of this title. The licenses and permits and their annual fees and surcharges are:

License or Permit	Annual Fee (RCW 75.50.100 Surcharge)		Governing Section
	Resident	Nonresident	
(a) Nonsalmon charter	\$225	\$375	
(b) Salmon charter	\$380 (plus \$100)	\$685 (plus \$100)	RCW 75.30.065
(c) Salmon angler	\$ 0	\$ 0	RCW 75.30.070
(d) Salmon roe	\$ 95	\$ 95	RCW 75.28.690

(2) Except as provided in subsection (5) of this section, it is unlawful to operate a vessel as a charter boat from which salmon or salmon and other food fish or shellfish are taken without a salmon charter license designating the vessel. The director may issue a salmon charter license only to a person who meets the qualifications of RCW 75.30.065.

(3) Except as provided in subsections (2) and (5) of this section, it is unlawful to operate a vessel as a charter boat from which food fish or shellfish are taken without a nonsalmon charter license. As used in this subsection, "food fish" does not include salmon.

(4) "Charter boat" means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use, and that brings food fish or shellfish into state ports or

brings food fish or shellfish taken from state waters into United States ports. The director may specify by rule when a vessel is a "charter boat" within this definition. "Charter boat" does not mean a vessel used by a guide for clients fishing for food fish for personal use in freshwater rivers, streams, and lakes, other than Lake Washington or that part of the Columbia River below the bridge at Longview.

(5) A charter boat licensed in Oregon may fish without a Washington charter license under the same rules as Washington charter boat operators in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point, as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations. [1995 c 104 § 1; 1993 sp.s. c 17 § 41. Prior: (1993 c 340 § 21 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 2; 1989 c 147 § 1; 1989 c 47 § 2; 1988 c 9 § 1; 1983 1st ex.s. c 46 § 112; 1979 c 60 § 1; 1977 ex.s. c 327 § 5; 1971 ex.s. c 283 § 15; 1969 c 90 § 1.]

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 75.28.011.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Severability—1979 c 60: "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 60 § 4.]

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—1977 ex.s. c 327: "The long range economic development goals for the state of Washington shall include the restoration of salmon runs to provide an increased supply of this valuable renewable resource for the benefit of commercial and recreational users and the economic well-being of the state. For the purpose of providing funds for the planning, acquisition, construction, improvement, and operation of salmon enhancement facilities within the state it is the intent of the legislature that the revenues received from fees from the issuance of vessel delivery permits, charter boat licenses, trolling gear licenses, gill net gear licenses, purse seine gear licenses, reef net gear licenses, anadromous salmon angling licenses and all moneys received from all privilege fees and fish sales taxes collected on fresh or frozen salmon or parts thereof be utilized to fund such costs.

The salmon enhancement program funded by commercial and recreational fishing fees and taxes shall be for the express benefit of all persons whose fishing activities fall under the management authority of the Washington department of fisheries and who actively participate in the funding of the enhancement costs through the fees and taxes set forth in chapters 75.28 and 82.27 RCW or through other adequate funding methods." [1980 c 98 § 8; 1977 ex.s. c 327 § 1. Formerly RCW 75.18.100.]

Declaration of state policy—1977 ex.s. c 327: "The legislature, recognizing that anadromous salmon within the waters of the state and offshore waters are fished for both recreational and commercial purposes and that the recreational anadromous salmon fishery is a major recreational and economic asset to the state and improves the quality of life for all residents of the state, declares that it is the policy of the state to enhance and improve recreational anadromous salmon fishing in the state." [1977 ex.s. c 327 § 10. Formerly RCW 75.28.600.]

Severability—1977 ex.s. c 327: "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 327 § 34.]

Effective date—1977 ex.s. c 327: "This 1977 amendatory act shall take effect on January 1, 1978." [1977 ex.s. c 327 § 35.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.28.113.

Limitation on issuance of salmon charter boat licenses: RCW 75.30.065.

Salmon charter boats—Angler permit, when required: RCW 75.30.070.

Chapter 75.30

LICENSE LIMITATION PROGRAMS

Sections

- 75.30.021 No harvest opportunity during year—License requirements waived—Effect on license limitation programs.
- 75.30.050 Advisory review boards.
- 75.30.060 Administrative review of department's decision—Hearing—Procedures. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.30.120 Commercial salmon fishing licenses and delivery licenses—Limitations—Transfer.
- 75.30.350 Crab fishery—License required—Dungeness crab-coastal fishery license—Dungeness crab-coastal class B fishery license—Coastal crab and replacement vessel defined.

75.30.021 No harvest opportunity during year—License requirements waived—Effect on license limitation programs. (1) The department shall waive license requirements, including landing or poundage requirements, if, during the calendar year that a license issued pursuant to chapter 75.28 RCW is valid, no harvest opportunity occurs in the fishery corresponding to the license.

(2) For each license limitation program, where the person failed to hold the license and failed to make landing or poundage requirements because of a license waiver by the department during the previous year, the person shall qualify for a license by establishing that the person held the license during the last year in which the license was not waived. [1995 c 227 § 2.]

75.30.050 Advisory review boards. (1) The director shall appoint three-member advisory review boards to hear cases as provided in RCW 75.30.060. Members shall be from:

(a) The commercial crab fishing industry in cases involving Dungeness crab—Puget Sound fishery licenses;

(b) The commercial herring fishery in cases involving herring fishery licenses;

(c) The commercial sea urchin and sea cucumber fishery in cases involving sea urchin and sea cucumber dive fishery licenses;

(d) The commercial ocean pink shrimp industry (*Pandalus jordani*) in cases involving ocean pink shrimp delivery licenses; and

(e) The commercial coastal crab fishery in cases involving Dungeness crab—coastal fishery licenses and Dungeness crab—coastal class B fishery licenses. The members shall include one person from the commercial crab processors, one Dungeness crab—coastal fishery license holder, and one citizen representative of a coastal community.

(2) Members shall serve at the discretion of the director and shall be reimbursed for travel expenses as provided in RCW 43.03.050, 43.03.060, and 43.03.065. [1995 c 269 § 3101. Prior: 1994 sp.s. c 9 § 807; 1994 c 260 § 18; prior: 1993 c 376 § 9; 1993 c 340 § 27; 1990 c 61 § 3; 1989 c 37 § 3; 1986 c 198 § 7; 1983 1st ex.s. c 46 § 138; 1977 ex.s. c 106 § 5.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Finding—Severability—1994 c 260: See notes following RCW 75.30.350.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 75.30.350.

Findings—Effective date—1993 c 376: See notes following RCW 75.28.720.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Legislative finding—1990 c 61: See note following RCW 75.30.220.

Legislative finding—1989 c 37: See note following RCW 75.30.210.

Legislative findings—Severability—1977 ex.s. c 106: See notes following RCW 75.30.065.

75.30.060 Administrative review of department's decision—Hearing—Procedures. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) A person aggrieved by a decision of the department under this chapter may request administrative review under the informal procedure established by this section.

In an informal hearing before a review board, the rules of evidence do not apply. A record of the proceeding shall be kept as provided by chapter 34.05 RCW. After hearing the case the review board shall notify in writing the commission and the initiating party whether the review board agrees or disagrees with the department's decision and the reasons for the board's findings. Upon receipt of the board's findings the commission may order such relief as the commission deems appropriate under the circumstances.

Nothing in this section: (1) Impairs an aggrieved person's right to proceed under chapter 34.05 RCW; or (2) imposes a liability on members of a review board for their actions under this section. [1995 1st sp.s. c 2 § 32; 1983 1st ex.s. c 46 § 139; 1977 ex.s. c 106 § 6.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Legislative findings—Severability—1977 ex.s. c 106: See notes following RCW 75.30.065.

75.30.120 Commercial salmon fishing licenses and delivery licenses—Limitations—Transfer. (1) Except as provided in subsection (2) of this section, after May 6, 1974, the director shall issue no new commercial salmon fishery licenses or salmon delivery licenses. A person may renew an existing license only if the person held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another person.

(2) Where the person failed to obtain the license during the previous year because of a license suspension, the person may qualify for a license by establishing that the person held such a license during the last year in which the license was not suspended.

(3) Subject to the restrictions in RCW 75.28.011, commercial salmon fishery licenses and salmon delivery licenses are transferable from one license holder to another. [1995 c 135 § 7. Prior: 1993 c 340 § 32; 1993 c 100 § 1;

1983 1st ex.s. c 46 § 146; 1979 c 135 § 1; 1977 ex.s. c 230 § 1; 1977 ex.s. c 106 § 7; 1974 ex.s. c 184 § 2. Formerly RCW 75.28.455.]

Intent—1995 c 135: See note following RCW 29.04.160.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Legislative findings—Severability—1977 ex.s. c 106: See notes following RCW 75.30.065.

Legislative intent—1974 ex.s. c 184: "The legislature finds that the protection, welfare, and economic good of the commercial salmon fishing industry is of paramount importance to the people of this state. Scientific advancement has increased the efficiency of salmon fishing gear. There presently exists an overabundance of commercial salmon fishing gear in our state waters which causes great pressure on the salmon fishery resource. This situation results in great economic waste to the state and prohibits conservation programs from achieving their goals. The public welfare requires that the number of commercial salmon fishing licenses and salmon delivery permits issued by the state be limited to insure that sound conservation programs can be scientifically carried out. It is the intention of the legislature to preserve this valuable natural resource so that our food supplies from such resource can continue to meet the ever increasing demands placed on it by the people of this state." [1983 1st ex.s. c 46 § 136; 1974 ex.s. c 184 § 1. Formerly RCW 75.28.450.]

Severability—1974 ex.s. c 184: "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." [1974 ex.s. c 184 § 11.]

75.30.350 Crab fishery—License required—Dungeness crab-coastal fishery license—Dungeness crab-coastal class B fishery license—Coastal crab and replacement vessel defined. (1) Effective January 1, 1995, it is unlawful to fish for coastal crab in Washington state waters without a Dungeness crab—coastal or a Dungeness crab—coastal class B fishery license. Gear used must consist of one buoy attached to each crab pot. Each crab pot must be fished individually.

(2) A Dungeness crab—coastal fishery license is transferable. Except as provided in subsection (3) of this section, such a license shall only be issued to a person who proved active historical participation in the coastal crab fishery by having designated, after December 31, 1993, a vessel or a replacement vessel on the qualifying license that singly or in combination meets the following criteria:

(a) Made a minimum of eight coastal crab landings totaling a minimum of five thousand pounds per season in at least two of the four qualifying seasons identified in subsection (5) of this section, as documented by valid Washington state shellfish receiving tickets; and showed historical and continuous participation in the coastal crab fishery by having held one of the following licenses or their equivalents each calendar year beginning 1990 through 1993, and was designated on the qualifying license of the person who held one of the following licenses in 1994:

(i) Crab pot—Non-Puget Sound license, issued under RCW 75.28.130(1)(b);

(ii) Nonsalmon delivery license, issued under RCW 75.28.125;

(iii) Salmon troll license, issued under RCW 75.28.110;

(iv) Salmon delivery license, issued under RCW 75.28.113;

(v) Food fish trawl license, issued under RCW 75.28.120; or

(vi) Shrimp trawl license, issued under RCW 75.28.130; or

(b) Made a minimum of four Washington landings of coastal crab totaling two thousand pounds during the period from December 1, 1991, to March 20, 1992, and made a minimum of eight crab landings totaling a minimum of five thousand pounds of coastal crab during each of the following periods: December 1, 1991, to September 15, 1992; December 1, 1992, to September 15, 1993; and December 1, 1993, to September 15, 1994. For landings made after December 31, 1993, the vessel shall have been designated on the qualifying license of the person making the landings; or

(c) Made any number of coastal crab landings totaling a minimum of twenty thousand pounds per season in at least two of the four qualifying seasons identified in subsection (5) of this section, as documented by valid Washington state shellfish receiving tickets, showed historical and continuous participation in the coastal crab fishery by having held one of the qualifying licenses each calendar year beginning 1990 through 1993, and the vessel was designated on the qualifying license of the person who held that license in 1994.

(3) A Dungeness crab-coastal fishery license shall be issued to a person who had a new vessel under construction between December 1, 1988, and September 15, 1992, if the vessel made coastal crab landings totaling a minimum of five thousand pounds by September 15, 1993, and the new vessel was designated on the qualifying license of the person who held that license in 1994. All landings shall be documented by valid Washington state shellfish receiving tickets. License applications under this subsection may be subject to review by the advisory review board in accordance with RCW 75.30.050. For purposes of this subsection, "under construction" means either:

(a)(i) A contract for any part of the work was signed before September 15, 1992; and

(ii) The contract for the vessel under construction was not transferred or otherwise alienated from the contract holder between the date of the contract and the issuance of the Dungeness crab-coastal fishery license; and

(iii) Construction had not been completed before December 1, 1988; or

(b)(i) The keel was laid before September 15, 1992; and

(ii) Vessel ownership was not transferred or otherwise alienated from the owner between the time the keel was laid and the issuance of the Dungeness crab-coastal fishery license; and

(iii) Construction had not been completed before December 1, 1988.

(4) A Dungeness crab—coastal class B fishery license is not transferable. Such a license shall be issued to persons who do not meet the qualification criteria for a Dungeness crab—coastal fishery license, if the person has designated on a qualifying license after December 31, 1993, a vessel or replacement vessel that, singly or in combination, made a minimum of four landings totaling a minimum of two thousand pounds of coastal crab, documented by valid Washington state shellfish receiving tickets, during at least one of the four qualifying seasons, and if the person has participated continuously in the coastal crab fishery by having held or by having owned a vessel that held one or more of the licenses listed in subsection (2) of this section in each calendar year subsequent to the qualifying season in which qualifying landings were made through 1994. Dungeness crab—coastal class B fishery licenses cease to

exist after December 31, 1999, and the continuing license provisions of RCW 34.05.422(3) are not applicable.

(5) The four qualifying seasons for purposes of this section are:

- (a) December 1, 1988, through September 15, 1989;
- (b) December 1, 1989, through September 15, 1990;
- (c) December 1, 1990, through September 15, 1991; and
- (d) December 1, 1991, through September 15, 1992.

(6) For purposes of this section and RCW 75.30.420, "coastal crab" means Dungeness crab (cancer magister) taken in all Washington territorial and offshore waters south of the United States-Canada boundary and west of the Bonilla-Tatoosh line (a line from the western end of Cape Flattery to Tatoosh Island lighthouse, then to the buoy adjacent to Duntz Rock, then in a straight line to Bonilla Point of Vancouver island), Grays Harbor, Willapa Bay, and the Columbia river.

(7) For purposes of this section, "replacement vessel" means a vessel used in the coastal crab fishery in 1994, and that replaces a vessel used in the coastal crab fishery during any period from 1988 through 1993, and which vessel's licensing and catch history, together with the licensing and catch history of the vessel it replaces, qualifies a single applicant for a Dungeness crab—coastal or Dungeness crab—coastal class B fishery license. A Dungeness crab—coastal or Dungeness crab—coastal class B fishery license may only be issued to a person who designated a vessel in the 1994 coastal crab fishery and who designated the same vessel in 1995. [1995 c 252 § 1; 1994 c 260 § 2.]

Finding—1994 c 260: "The legislature finds that the commercial crab fishery in coastal and offshore waters is overcapitalized. The legislature further finds that this overcapitalization has led to the economic destabilization of the coastal crab industry, and can cause excessive harvesting pressures on the coastal crab resources of Washington state. In order to provide for the economic well-being of the Washington crab industry and to protect the livelihood of Washington crab fishers who have historically and continuously participated in the coastal crab fishery, the legislature finds that it is in the best interests of the economic well-being of the coastal crab industry to reduce the number of fishers taking crab in coastal waters, to reduce the number of vessels landing crab taken in offshore waters, to limit the number of future licenses, and to limit fleet capacity by limiting vessel size." [1994 c 260 § 1.]

Severability—1994 c 260: "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." [1994 c 260 § 24.]

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: "Sections 1 through 5, 9 through 19, and 21 through 24 of this act shall take effect January 1, 1995." [1994 c 260 § 25.]

Chapter 75.40 COMPACTS

Sections

- 75.40.020 Columbia River Compact—Commission to represent state. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.40.040 Pacific Marine Fisheries Compact—Representatives of state on Pacific Marine Fisheries Commission. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.40.060 Treaty between United States and Canada concerning Pacific salmon. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)

75.40.020 Columbia River Compact—Commission to represent state. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The commission may give to the state of Oregon such consent and approbation of the state of Washington as is necessary under the compact set out in RCW 75.40.010. For the purposes of RCW 75.40.010, the states of Washington and Oregon have concurrent jurisdiction in the concurrent waters of the Columbia river as defined in RCW 75.08.011. [1995 1st sp.s. c 2 § 19; 1983 1st ex.s. c 46 § 150; 1955 c 12 § 75.40.020. Prior: 1949 c 112 § 81; Rem. Supp. 1949 § 5780-702.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.40.040 Pacific Marine Fisheries Compact—Representatives of state on Pacific Marine Fisheries Commission. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) A member selected by or a designee of the fish and wildlife commission, ex officio, and two appointees of the governor representing the fishing industry shall act as the representatives of this state on the Pacific Marine Fisheries Commission. The appointees of the governor are subject to confirmation by the state senate. [1995 1st sp.s. c 2 § 20; 1983 1st ex.s. c 46 § 152; 1963 c 171 § 2; 1955 c 12 § 75.40.040. Prior: 1949 c 112 § 82(2); Rem. Supp. 1949 § 5780-703(2).]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.40.060 Treaty between United States and Canada concerning Pacific salmon. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The commission may adopt and enforce the provisions of the treaty between the government of the United States and the government of Canada concerning Pacific salmon, treaty document number 99-2, entered into force March 18, 1985, at Quebec City, Canada, and the regulations of the commission adopted under authority of the treaty. [1995 1st sp.s. c 2 § 21; 1989 c 130 § 2; 1983 1st ex.s. c 46 § 153; 1955 c 12 § 75.40.060. Prior: 1949 c 112 § 83; Rem. Supp. 1949 § 5780-704.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Chapter 75.44

PROGRAM TO PURCHASE FISHING VESSELS AND LICENSES

Sections

- 75.44.140 Rules—Administration of program.

75.44.140 Rules—Administration of program. The director shall adopt rules for the administration of the program. To assist the department in the administration of the program, the director may contract with persons not employed by the state and may enlist the aid of other state agencies. [1995 c 269 § 3201; 1983 1st ex.s. c 46 § 159; 1979 ex.s. c 43 § 4; 1975-'76 2nd ex.s. c 34 § 172; 1975 1st ex.s. c 183 § 8. Formerly RCW 75.28.530.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Legislative finding and intent—1975 1st ex.s. c 183: See note following RCW 75.44.100.

Chapter 75.50

SALMON ENHANCEMENT PROGRAM

Sections

- 75.50.010 Legislative findings. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.50.020 Long-term regional policy statements. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.50.030 Salmon enhancement plan—Enhancement projects. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.50.040 Commission to monitor enhancement projects and enhancement plan. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.50.050 Annual report to legislature. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.50.070 Regional fisheries enhancement group authorized. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.50.100 Regional fisheries enhancement group account—Revenue sources, uses, and limitations. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.50.110 Regional fisheries enhancement group advisory board. (*Effective unless Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.50.110 Regional fisheries enhancement group advisory board. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.50.115 Regional fisheries enhancement group advisory board—Duties and authority.
- 75.50.120 Enhancement efforts—Biennial report.
- 75.50.130 Skagit river salmon recovery plan. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 75.50.150 Coordination with regional enhancement groups—Findings.
- 75.50.160 Impediments to anadromous fish passage—Identification and removal—Report to legislature.
- 75.50.170 Fish passage barrier removal program.
- 75.50.180 Field testing of remote site incubators.

75.50.010 Legislative findings. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) Currently, many of the salmon stocks of Washington state are critically reduced from their sustainable level. The best interests of all fishing groups and the citizens as a whole are served by a

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stable and productive salmon resource. Immediate action is needed to reverse the severe decline of the resource and to insure its very survival. The legislature finds a state of emergency exists and that immediate action is required to restore its fishery.

Disagreement and strife have dominated the salmon fisheries for many years. Conflicts among the various fishing interests have only served to erode the resource. It is time for the state of Washington to make a major commitment to increasing productivity of the resource and to move forward with an effective rehabilitation and enhancement program. The commission is directed to dedicate its efforts and the efforts of the department to seek resolution to the many conflicts that involve the resource.

Success of the enhancement program can only occur if projects efficiently produce salmon or restore habitat. The expectation of the program is to optimize the efficient use of funding on projects that will increase artificially and naturally produced salmon, restore and improve habitat, or identify ways to increase the survival of salmon. The full utilization of state resources and cooperative efforts with interested groups are essential to the success of the program. [1995 1st sp.s. c 2 § 33; 1993 sp.s. c 2 § 45; 1985 c 458 § 1.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.50.020 Long-term regional policy statements. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) (1) The commission shall develop long-term regional policy statements regarding the salmon fishery resources before December 1, 1985. The commission shall consider the following in formulating and updating regional policy statements:

- (a) Existing resource needs;
- (b) Potential for creation of new resources;
- (c) Successful existing programs, both within and outside the state;
- (d) Balanced utilization of natural and hatchery production;
- (e) Desires of the fishing interest;
- (f) Need for additional data or research;
- (g) Federal court orders; and
- (h) Salmon advisory council recommendations.

(2) The commission shall review and update each policy statement at least once each year. [1995 1st sp.s. c 2 § 34; 1985 c 458 § 2.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.50.030 Salmon enhancement plan—Enhancement projects. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) (1) The commission shall develop a detailed salmon enhancement plan with proposed enhance-

ment projects. The plan and the regional policy statements shall be submitted to the secretary of the senate and chief clerk of the house of representatives for legislative distribution by June 30, 1986. The enhancement plan and regional policy statements shall be provided by June 30, 1986, to the natural resources committees of the house of representatives and the senate. The commission shall provide a maximum opportunity for the public to participate in the development of the salmon enhancement plan. To insure full participation by all interested parties, the commission shall solicit and consider enhancement project proposals from Indian tribes, sports fishermen, commercial fishermen, private aquaculturists, and other interested groups or individuals for potential inclusion in the salmon enhancement plan. Joint or cooperative enhancement projects shall be considered for funding.

(2) The following criteria shall be used by the commission in formulating the project proposals:

- (a) Compatibility with the long-term policy statement;
- (b) Benefit/cost analysis;
- (c) Needs of all fishing interests;
- (d) Compatibility with regional plans, including harvest management plans;
- (e) Likely increase in resource productivity;
- (f) Direct applicability of any research;
- (g) Salmon advisory council recommendations;
- (h) Compatibility with federal court orders;
- (i) Coordination with the salmon and steelhead advisory commission program;
- (j) Economic impact to the state;
- (k) Technical feasibility; and
- (l) Preservation of native salmon runs.

(3) The commission shall not approve projects that serve as replacement funding for projects that exist prior to May 21, 1985, unless no other sources of funds are available.

(4) The commission shall prioritize various projects and establish a recommended implementation time schedule. [1995 1st sp.s. c 2 § 35; 1985 c 458 § 3.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.50.040 Commission to monitor enhancement projects and enhancement plan. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) Upon approval by the legislature of funds for its implementation, the commission shall monitor the progress of projects detailed in the salmon enhancement plan.

The commission shall be responsible for establishing criteria which shall be used to measure the success of each project in the salmon enhancement plan. [1995 1st sp.s. c 2 § 36; 1985 c 458 § 4.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.50.050 Annual report to legislature. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The

commission shall report to the legislature on or before October 30th of each year on the progress and performance of each project. The report shall contain an analysis of the successes and failures of the program to enable optimum development of the program. The report shall include estimates of funding levels necessary to operate the projects in future years.

The commission shall submit the reports and any additional recommendations to the chairs of the committees on ways and means and the committees on natural resources of the senate and house of representatives. [1995 1st sp.s. c 2 § 37; 1987 c 505 § 72; 1985 c 458 § 5.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

75.50.070 Regional fisheries enhancement group authorized. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The legislature finds that it is in the best interest of the salmon resource of the state to encourage the development of regional fisheries enhancement groups. The accomplishments of one existing group, the Grays Harbor fisheries enhancement task force, have been widely recognized as being exemplary. The legislature recognizes the potential benefits to the state that would occur if each region of the state had a similar group of dedicated citizens working to enhance the salmon resource.

The legislature authorizes the formation of regional fisheries enhancement groups. These groups shall be eligible for state financial support and shall be actively supported by the commission and the department. The regional groups shall be operated on a strictly nonprofit basis, and shall seek to maximize the efforts of volunteer and private donations to improve the salmon resource for all citizens of the state. [1995 1st sp.s. c 2 § 38; 1993 sp.s. c 2 § 46; 1989 c 426 § 1.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Severability—1989 c 426: "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 426 § 10.]

75.50.100 Regional fisheries enhancement group account—Revenue sources, uses, and limitations. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The dedicated regional fisheries enhancement group account is created in the custody of the state treasurer. Only the commission or the commission's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

A surcharge of one dollar shall be collected on each recreational personal use food fish license sold in the state.

A surcharge of one hundred dollars shall be collected on each commercial salmon fishery license, each salmon delivery license, and each salmon charter license sold in the state. The department shall study methods for collecting and making available, an annual list, including names and addresses, of all persons who obtain recreational and commercial salmon fishing licenses. This list may be used to assist formation of the regional fisheries enhancement groups and allow the broadest participation of license holders in enhancement efforts. The results of the study shall be reported to the house of representatives fisheries and wildlife committee and the senate environment and natural resources committee by October 1, 1990. All receipts shall be placed in the regional fisheries enhancement group account and shall be used exclusively for regional fisheries enhancement group projects for the purposes of RCW 75.50.110. Funds from the regional fisheries enhancement group account shall not serve as replacement funding for department operated salmon projects that exist on January 1, 1991.

All revenue from the department's sale of salmon carcasses and eggs that return to group facilities shall be deposited in the regional fisheries enhancement group account for use by the regional fisheries enhancement group that produced the surplus. The commission shall adopt rules to implement this section pursuant to chapter 34.05 RCW. [1995 1st sp.s. c 2 § 39. Prior: 1993 sp.s. c 17 § 11; 1993 c 340 § 53; 1990 c 58 § 3.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 75.25.091.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 75.28.010.

Effective date—1990 c 58 § 3: "Section 3 of this act shall take effect January 1, 1991." [1990 c 58 § 6.]

Findings—1990 c 58: See note following RCW 75.50.090.

75.50.110 Regional fisheries enhancement group advisory board. (*Effective unless Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) (1) A regional fisheries enhancement group advisory board is established to make recommendations to the director. The members shall be appointed by the director and consist of two commercial fishing representatives, two recreational fishing representatives, and three at-large positions. At least two of the advisory board members shall be members of a regional fisheries enhancement group. Advisory board members shall serve three-year terms. The advisory board membership shall include two members serving ex officio to be nominated, one through the Northwest Indian fisheries commission, and one through the Columbia river intertribal fish commission. The chair of the regional fisheries enhancement group advisory board shall be elected annually by members of the regional fisheries enhancement [group] advisory board. The advisory board shall meet at least quarterly. All meetings of the advisory board shall be open to the public under the open public meetings act, chapter 42.30 RCW.

The department shall invite the advisory board to comment and provide input into all relevant policy initia-

tives, including, but not limited to, wild stock, hatcheries, and habitat restoration efforts.

(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 may use account funds to provide agency assistance to the groups, to provide professional, administrative or clerical services to the advisory board, or to implement the training and technical [assistance] services plan as developed by the advisory board pursuant to RCW 75.50.115. The level of account funds used by the department shall be determined by the director after review of recommendation by the regional fisheries enhancement group advisory board and shall not exceed twenty percent of annual contributions to the account. [1995 c 367 § 5; 1990 c 58 § 4.]

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

Findings—1990 c 58: See note following RCW 75.50.090.

75.50.110 Regional fisheries enhancement group advisory board. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) (1) A regional fisheries enhancement group advisory board is established to make recommendations to the commission. The members shall be appointed by the commission and consist of two commercial fishing representatives, two recreational fishing representatives, and three at-large positions. At least two of the advisory board members shall be members of a regional fisheries enhancement group. Advisory board members shall serve three-year terms. The advisory board membership shall include two members serving ex officio to be nominated, one through the Northwest Indian fisheries commission, and one through the Columbia river intertribal fish commission. The chair of the regional fisheries enhancement group advisory board shall be elected annually by members of the regional fisheries enhancement [group] advisory board. The advisory board shall meet at least quarterly. All meetings of the advisory board shall be open to the public under the open public meetings act, chapter 42.30 RCW.

The department shall invite the advisory board to comment and provide input into all relevant policy initiatives, including, but not limited to, wild stock, hatcheries, and habitat restoration efforts.

(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 may use account funds to provide agency assistance to the groups, to provide professional, administrative or clerical services to the advisory board, or to implement the training and technical [assistance] services plan as developed by the advisory board pursuant to RCW 75.50.115. The level of account funds used by the department shall be determined by the commission after review of recommendation by the regional fisheries enhancement group advisory board and shall not exceed twenty percent of annual contributions to the account. [1995 1st sp.s. c 2 § 40; 1995 c 367 § 5; 1990 c 58 § 4.]

Reviser's note: This section was amended by 1995 c 367 § 5 and by 1995 1st sp.s. c 2 § 40, 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).

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

Findings—1990 c 58: See note following RCW 75.50.090.

75.50.115 Regional fisheries enhancement group advisory board—Duties and authority. (1) The regional fisheries enhancement group advisory board shall:

(a) Assess the training and technical assistance needs of the regional fisheries enhancement groups;

(b) Develop a training and technical assistance services plan in order to provide timely, topical technical assistance and training services to regional fisheries enhancement groups. The plan shall be provided to the director and to the senate and house of representatives natural resources committees no later than October 1, 1995, and shall be updated not less than every year. The advisory board shall provide ample opportunity for the public and interested parties to participate in the development of the plan. The plan shall include but is not limited to:

(i) Establishment of an information clearinghouse service that is readily available to regional fisheries enhancement groups. The information clearinghouse shall collect, collate, and make available a broad range of information on subjects that affect the development, implementation, and operation of diverse fisheries and habitat enhancement projects. The information clearinghouse service may include periodical news and informational bulletins;

(ii) An ongoing program in order to provide direct, on-site technical assistance and services to regional fisheries enhancement groups. The advisory board shall assist regional fisheries enhancement groups in soliciting federal, state, and local agencies, tribal governments, institutions of higher education, and private business for the purpose of providing technical assistance and services to regional fisheries enhancement group projects; and

(iii) A cost estimate for implementing the plan;

(c) Propose a budget to the director for operation of the advisory board and implementation of the technical assistance plan;

(d) Make recommendations to the director regarding regional enhancement group project proposals and funding of those proposals; and

(e) Establish criteria for the redistribution of unspent project funds for any regional enhancement group that has a year ending balance exceeding one hundred thousand dollars.

(2) The regional fisheries enhancement group advisory board may:

(a) Facilitate resolution of disputes between regional fisheries enhancement groups and the department;

(b) Promote community and governmental partnerships that enhance the salmon resource and habitat;

(c) Promote environmental ethics and watershed stewardship;

(d) Advocate for watershed management and restoration;

(e) Coordinate regional fisheries enhancement group workshops and training;

(f) Monitor and evaluate regional fisheries enhancement projects;

(g) Provide guidance to regional fisheries enhancement groups; and

(h) Develop recommendations to the director to address identified impediments to the success of regional fisheries enhancement groups. [1995 c 367 § 6.]

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

75.50.120 Enhancement efforts—Biennial report.

The department and the regional fisheries enhancement group advisory board shall report biennially to the senate and the house of representatives natural resources committees, the senate ways and means committee and house of representatives fiscal committees, or any successor committees beginning October 1, 1991. The report shall include but not be limited to the following:

(1) An evaluation of enhancement efforts;

(2) A description of projects;

(3) A region by region accounting of financial contributions and expenditures including the enhancement group account funds;

(4) Volunteer participation and member affiliation, including an inventory of volunteer hours dedicated to the program;

(5) An evaluation of technical assistance training efforts and agency participation;

(6) Identification of impediments to regional fisheries enhancement group success; and

(7) Suggestions for legislative action that would further the enhancement of salmonid resources. [1995 c 367 § 7; 1990 c 58 § 5.]

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

Findings—1990 c 58: See note following RCW 75.50.090.

75.50.130 Skagit river salmon recovery plan. (Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.)

The commission shall prepare a salmon recovery plan for the Skagit river. The plan shall include strategies for employing displaced timber workers to conduct salmon restoration and other tasks identified in the plan. The plan shall incorporate the best available technology in order to achieve maximum restoration of depressed salmon stocks. The plan must encourage the restoration of natural spawning areas and natural rearing of salmon but must not preclude the development of an active hatchery program. [1995 1st sp.s. c 2 § 41; 1993 sp.s. c 2 § 48; 1992 c 88 § 1.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

75.50.150 Coordination with regional enhancement groups—Findings. The legislature finds that:

(1) Regional enhancement groups are a valuable resource for anadromous fish recovery. They improve critical fish habitat and directly contribute to anadromous fish populations through fish restoration technology.

(2) Due to a decrease in recreational and commercial salmon license sales, regional enhancement groups are receiving fewer financial resources at a time when recovery efforts are needed most.

(3) To maintain regional enhancement groups as an effective enhancement resource, technical assets of state agencies must be coordinated and utilized to maximize the financial resources of regional enhancement groups and overall fish recovery efforts. [1995 c 367 § 1.]

Severability—1995 c 367: "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." [1995 c 367 § 12.]

Effective date—1995 c 367: "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 immediately [May 16, 1995]." [1995 c 367 § 13.]

75.50.160 Impediments to anadromous fish passage—Identification and removal—Report to legislature. The department's habitat division shall work with cities, counties, and regional fisheries enhancement groups to develop a program to identify and expedite the removal of human-made or caused impediments to anadromous fish passage. A priority shall be given to projects that immediately increase access to available and improved spawning and rearing habitat for depressed, threatened, and endangered stocks. The department may contract with cities and counties to assist in the identification and removal of impediments to anadromous fish passage.

A report on the progress of impediment identification and removal and the need for any additional legislative action shall be submitted to the senate and the house of representatives natural resources committees no later than January 1, 1996. [1995 c 367 § 2.]

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

75.50.170 Fish passage barrier removal program. To maximize available state resources, the department and the department of transportation shall work in partnership with the regional fisheries enhancement group advisory board to identify cooperative projects to eliminate fish passage barriers caused by state roads and highways. The advisory board may provide input to the department to aid in identifying priority barrier removal projects that can be accomplished with the assistance of regional fisheries enhancement groups. The department of transportation shall provide engineering and other technical services to assist regional fisheries enhancement groups with fish passage barrier removal projects, provided that the barrier removal projects have been identified as a priority by the department of fish and wildlife and the department of transportation has received an appropriation to continue the fish barrier removal program. [1995 c 367 § 3.]

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

75.50.180 Field testing of remote site incubators.

The department shall coordinate with the regional fisheries enhancement group advisory board to field test coho and chinook salmon remote site incubators. The purpose of field testing efforts shall be to gather conclusive scientific data on the effectiveness of coho and chinook remote site incubators. [1995 c 367 § 10.]

Severability—Effective date—1995 c 367: See notes following RCW 75.50.150.

Chapter 75.52

VOLUNTEER COOPERATIVE FISH AND WILDLIFE ENHANCEMENT PROGRAM

Sections

75.52.050 Commission to establish rules—Subjects. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)

75.52.050 Commission to establish rules—Subjects. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) The commission shall establish by rule:

(1) The procedure for entering a cooperative agreement and the application forms for a permit to release fish or wildlife required by RCW 75.08.295 or 77.16.150. The procedure shall indicate the information required from the volunteer group as well as the process of review by the department. The process of review shall include the means to coordinate with other agencies and Indian tribes when appropriate and to coordinate the review of any necessary hydraulic permit approval applications.

(2) The procedure for providing within forty-five days of receipt of a proposal a written response to the volunteer group indicating the date by which an acceptance or rejection of the proposal can be expected, the reason why the date was selected, and a written summary of the process of review. The response should also include any suggested modifications to the proposal which would increase its likelihood of approval and the date by which such modified proposal could be expected to be accepted. If the proposal is rejected, the department must provide in writing the reasons for rejection. The volunteer group may request the director or the director's designee to review information provided in the response.

(3) The priority of the uses to which eggs, seed, juveniles, or brood stock are put. Use by cooperative projects shall be second in priority only to the needs of programs of the department or of other public agencies within the territorial boundaries of the state. Sales of eggs, seed, juveniles, or brood stock have a lower priority than use for cooperative projects.

(4) The procedure for notice in writing to a volunteer group of cause to revoke the agreement for the project and the procedure for revocation. Revocation shall be documented in writing to the volunteer group. Cause for revocation may include: (a) The unavailability of adequate biological or financial resources; (b) the development of unacceptable biological or resource management conflicts; or (c) a violation of agreement provisions. Notice of cause to revoke for a violation of agreement provisions may specify a

reasonable period of time within which the volunteer group must comply with any violated provisions of the agreement.

(5) An appropriate method of distributing among volunteer groups fish, bird, or animal food or other supplies available for the program. [1995 1st sp.s. c 2 § 42; 1984 c 72 § 5.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Title 76

FORESTS AND FOREST PRODUCTS

Chapters

- 76.04 Forest protection.**
- 76.09 Forest practices.**
- 76.48 Specialized forest products.**

Chapter 76.04

FOREST PROTECTION

Sections

- 76.04.165 Legislative declaration—Forest protection zones.
- 76.04.167 Legislative declaration—Coordinated forest fire protection and suppression.
- 76.04.175 Fire suppression equipment—Comparison of costs.
- 76.04.177 Fire suppression equipment—Requirement to utilize private equipment.

76.04.165 Legislative declaration—Forest protection zones. (1) The legislature finds and declares that forest lands within the state are increasingly being used for residential purposes; that the risk to life and property is increasing from forest fires which may destroy developed property; that, based on the primary missions for the respective fire control agencies established in this chapter, adjustment of the geographic areas of responsibility has not kept pace with the increasing use of forest lands for residential purposes; and that the department should work with the state's other fire control agencies to define geographic areas of responsibility that are more consistent with their respective primary missions.

(2) To accomplish the purposes of subsection (1) of this section, the department shall establish a procedure to clarify its geographic areas of responsibility. The areas of department protection shall be called forest protection zones. The forest protection zones shall include all forest land which the department is obligated to protect but shall not include forest land within rural fire districts or municipal fire districts which affected local fire control agencies agree, by mutual consent with the department, is not appropriate for department protection. Forest land not included within a forest protection zone established by mutual agreement of the department and a rural fire district or a municipal fire district shall not be assessed under RCW 76.04.610 or 76.04.630.

(3) After the department and any affected local fire protection agencies have agreed on the boundary of a forest

protection zone, the department shall establish the boundary by rule under chapter 34.05 RCW.

(4) Except by agreement of the affected parties, the establishment of forest protection zones shall not alter any mutual aid agreement. [1995 c 151 § 2; 1988 c 273 § 2.]

76.04.167 Legislative declaration—Coordinated forest fire protection and suppression. (1) The legislature hereby finds and declares that forest wild fires are a threat to public health and safety and can cause catastrophic damage to public and private resources, including clean air, clean water, fish and wildlife habitat, timber resources, forest soils, scenic beauty, recreational opportunities, structures, and other improvements; and that it is in the public interest to protect forests and forest resources by preventing and suppressing forest wild fires.

(2) The legislature hereby finds and declares that it is in the public interest to establish and maintain a complete, cooperative, and coordinated forest fire protection and suppression program for the state; that, second only to saving lives, the primary mission of the department is protecting forest resources and suppressing forest wild fires; that a primary mission of rural fire districts and municipal fire departments is protecting improved property and suppressing structural fires; and that the most effective way to protect structures is for the department to focus its efforts and resources on aggressively suppressing forest wild fires.

(3) The legislature also acknowledges the natural role of fire in forest ecosystems, and finds and declares it in the public interest to use fire under controlled conditions to prevent wild fires by maintaining healthy forests and eliminating sources of fuel. [1995 c 151 § 1.]

76.04.175 Fire suppression equipment—Comparison of costs. (1) The department shall, by June 1 of each year, establish a list of fire suppression equipment, such as portable showers, kitchens, water tanks, dozers, and hauling equipment, provided by the department so that the cost by unit or category can be determined and can be compared to the expense of utilizing private vendors.

(2) The department shall establish a roster of quotes by vendors who are able to provide equipment to respond to incidents involving wildfires on department-protected lands. The department shall use these quotes from private vendors to make a comparison with the costs established in subsection (1) of this section. The department shall utilize the most effective and efficient resource available for responding to wildfires. [1995 c 113 § 2.]

Finding—Intent—1995 c 113: "The legislature finds that it is frequently in the best interest of the state to utilize fire suppression equipment from private vendors whenever possible in responding to incidents involving wildfires on department-protected lands. It is the intent of the legislature to encourage the department of natural resources to utilize kitchen, shower, and other fire suppression equipment from private vendors as allowed in RCW 76.04.015(4)(b), when such utilization will be most effective and efficient." [1995 c 113 § 1.]

76.04.177 Fire suppression equipment—Requirement to utilize private equipment. Before constructing or purchasing any equipment listed in RCW 76.04.175(1) for wildfire suppression, the department shall compare the per use cost of the equipment to be purchased

or constructed with the per use cost of utilizing private equipment. If utilizing private equipment is more effective and efficient, the department may not construct or purchase the equipment but shall utilize the equipment from the lowest responsive bidder. [1995 c 113 § 3.]

Finding—Intent—1995 c 113: See note following RCW 76.04.175.

Chapter 76.09 FOREST PRACTICES

Sections

76.09.030 Forest practices board—Created—Membership—Terms—Vacancies—Meetings—Compensation, travel expenses—Staff.

76.09.030 Forest practices board—Created—Membership—Terms—Vacancies—Meetings—Compensation, travel expenses—Staff. (1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:

(a) The commissioner of public lands or the commissioner's designee;

(b) The director of the department of community, trade, and economic development or the director's designee;

(c) The director of the department of agriculture or the director's designee;

(d) The director of the department of ecology or the director's designee;

(e) An elected member of a county legislative authority appointed by the governor: **PROVIDED**, That such member's service on the board shall be conditioned on the member's continued service as an elected county official; and

(f) Six members of the general public appointed by the governor, one of whom shall be an owner of not more than five hundred acres of forest land, and one of whom shall be an independent logging contractor.

(2) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his or her successor is appointed and qualified. The commissioner of public lands or the commissioner's designee shall be the chairman of the board.

(3) The board shall meet at such times and places as shall be designated by the chairman or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

(4) Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(5) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties. [1995 c 399 § 207; 1993 c 257 § 1; 1987 c 330 § 1301; 1985 c 466 § 70; 1984 c 287 § 108; 1975-'76 2nd ex.s. c 34 § 173; 1975 1st ex.s. c 200 § 1; 1974 ex.s. c 137 § 3.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.085.

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.

Chapter 76.48 SPECIALIZED FOREST PRODUCTS

Sections

76.48.020 Definitions.
76.48.030 Unlawful acts.
76.48.040 Agencies responsible for enforcement of chapter.
76.48.050 Specialized forest products permits—Expiration—Specifications.
76.48.060 Specialized forest products permits—Required—Forms—Filing.
76.48.062 Validation of specialized forest product permits—Authorized agents.
76.48.070 Transporting or possessing cedar or other specialized forest products—Requirements.
76.48.075 Specialized forest products from out-of-state.
76.48.085 Purchase of specialized forest products—Required records.
76.48.086 Records of buyers available for research.
76.48.092 Repealed.
76.48.096 Cedar processors—Obtaining from suppliers not having specialized forest products permit unlawful.
76.48.098 Cedar processors—Display of valid registration certificate required.
76.48.100 Exemptions.
76.48.110 Violations—Seizure and disposition of products—Disposition of proceeds.
76.48.120 False, fraudulent, stolen or forged specialized forest products permit, sales invoice, bill of lading, etc.—Penalty.
76.48.130 Penalties.
76.48.200 Assistance and training for minority groups.

76.48.020 Definitions. Unless otherwise required by the context, as used in this chapter:

(1) "Christmas trees" means any evergreen trees or the top thereof, commonly known as Christmas trees, with limbs and branches, with or without roots, including fir, pine, spruce, cedar, and other coniferous species.

(2) "Native ornamental trees and shrubs" means any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.

(3) "Cut or picked evergreen foliage," commonly known as brush, means evergreen boughs, huckleberry, salal, fern, Oregon grape, rhododendron, mosses, bear grass, scotch broom (*Cytisus scoparius*) and other cut or picked evergreen products. "Cut or picked evergreen foliage" does not mean cones or seeds.

(4) "Cedar products" means cedar shakeboards, shake and shingle bolts, and rounds one to three feet in length.

(5) "Cedar salvage" means cedar chunks, slabs, stumps, and logs having a volume greater than one cubic foot and being harvested or transported from areas not associated with

the concurrent logging of timber stands (a) under a forest practices application approved or notification received by the department of natural resources, or (b) under a contract or permit issued by an agency of the United States government.

(6) "Processed cedar products" means cedar shakes, shingles, fence posts, hop poles, pickets, stakes, rails, or rounds less than one foot in length.

(7) "Cedar processor" means any person who purchases, takes, or retains possession of cedar products or cedar salvage for later sale in the same or modified form following removal and delivery from the land where harvested.

(8) "Cascara bark" means the bark of a Cascara tree.

(9) "Wild edible mushrooms" means edible mushrooms not cultivated or propagated by artificial means.

(10) "Specialized forest products" means Christmas trees, native ornamental trees and shrubs, cut or picked evergreen foliage, cedar products, cedar salvage, processed cedar products, wild edible mushrooms, and Cascara bark.

(11) "Person" includes the plural and all corporations, foreign or domestic, copartnerships, firms, and associations of persons.

(12) "Harvest" means to separate, by cutting, prying, picking, peeling, breaking, pulling, splitting, or otherwise removing, a specialized forest product (a) from its physical connection or contact with the land or vegetation upon which it is or was growing or (b) from the position in which it is lying upon the land.

(13) "Transportation" means the physical conveyance of specialized forest products outside or off of a harvest site by any means.

(14) "Landowner" means, with regard to real property, the private owner, the state of Washington or any political subdivision, the federal government, or a person who by deed, contract, or lease has authority to harvest and sell forest products of the property. "Landowner" does not include the purchaser or successful high bidder at a public or private timber sale.

(15) "Authorization" means a properly completed preprinted form authorizing the transportation or possession of Christmas trees which contains the information required by RCW 76.48.080, a sample of which is filed before the harvesting occurs with the sheriff of the county in which the harvesting is to occur.

(16) "Harvest site" means each location where one or more persons are engaged in harvesting specialized forest products close enough to each other that communication can be conducted with an investigating law enforcement officer in a normal conversational tone.

(17) "Specialized forest products permit" means a printed document in a form specified by the department of natural resources, or true copy thereof, that is signed by a landowner or his or her authorized agent or representative, referred to in this chapter as "permitters" and validated by the county sheriff and authorizes a designated person, referred to in this chapter as "permittee", who has also signed the permit, to harvest and transport a designated specialized forest product from land owned or controlled and specified by the permittor and that is located in the county where the permit is issued.

(18) "Sheriff" means, for the purpose of validating specialized forest products permits, the county sheriff, deputy

sheriff, or an authorized employee of the sheriff's office or an agent of the office.

(19) "True copy" means a replica of a validated specialized forest products permit as reproduced by a copy machine capable of effectively reproducing the information contained on the permittee's copy of the specialized forest products permit. A copy is made true by the permittee or the permittee and permittor signing in the space provided on the face of the copy. A true copy will be effective until the expiration date of the specialized forest products permit unless the permittee or the permittee and permittor specify an earlier date. A permittor may require the actual signatures of both the permittee and permittor for execution of a true copy by so indicating in the space provided on the original copy of the specialized forest products permit. A permittee, or, if so indicated, the permittee and permittor, may condition the use of the true copy to harvesting only, transportation only, possession only, or any combination thereof.

(20) "Permit area" means a designated tract of land that may contain single or multiple harvest sites. [1995 c 366 § 1; 1992 c 184 § 1; 1979 ex.s. c 94 § 1; 1977 ex.s. c 147 § 1; 1967 ex.s. c 47 § 3.]

Severability—1995 c 366: "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." [1995 c 366 § 19.]

76.48.030 Unlawful acts. It is unlawful for any person to:

(1) Harvest specialized forest products as described in RCW 76.48.020, in the quantities specified in RCW 76.48.060, without first obtaining a validated specialized forest products permit;

(2) Engage in activities or phases of harvesting specialized forest products not authorized by the permit; or

(3) Harvest specialized forest products in any lesser quantities than those specified in RCW 76.48.060, as now or hereafter amended, without first obtaining permission from the landowner or his or her duly authorized agent or representative. [1995 c 366 § 2; 1979 ex.s. c 94 § 2; 1977 ex.s. c 147 § 2; 1967 ex.s. c 47 § 4.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.040 Agencies responsible for enforcement of chapter. Agencies charged with the enforcement of this chapter shall include, but not be limited to, the Washington state patrol, county sheriffs and their deputies, county or municipal police forces, authorized personnel of the United States forest service, and authorized personnel of the departments of natural resources and fish and wildlife. Primary enforcement responsibility lies in the county sheriffs and their deputies. The legislature encourages county sheriffs' offices to enter into interlocal agreements with these other agencies in order to receive additional assistance with their enforcement responsibilities. [1995 c 366 § 3; 1994 c 264 § 51; 1988 c 36 § 49; 1979 ex.s. c 94 § 3; 1977 ex.s. c 147 § 3; 1967 ex.s. c 47 § 5.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.050 Specialized forest products permits—Expiration—Specifications. Specialized forest products permits shall consist of properly completed permit forms validated by the sheriff of the county in which the specialized forest products are to be harvested. Each permit shall be separately numbered and the permits shall be issued by consecutive numbers. All specialized forest products permits shall expire at the end of the calendar year in which issued, or sooner, at the discretion of the permittor. A properly completed specialized forest products permit form shall include:

- (1) The date of its execution and expiration;
- (2) The name, address, telephone number, if any, and signature of the permittor;
- (3) The name, address, telephone number, if any, and signature of the permittee;
- (4) The type of specialized forest products to be harvested or transported;
- (5) The approximate amount or volume of specialized forest products to be harvested or transported;
- (6) The legal description of the property from which the specialized forest products are to be harvested or transported, including the name of the county, or the state or province if outside the state of Washington;
- (7) A description by local landmarks of where the harvesting is to occur, or from where the specialized forest products are to be transported;
- (8) The number from some type of valid picture identification; and
- (9) Any other condition or limitation which the permittor may specify.

Except for the harvesting of Christmas trees, the permit or true copy thereof must be carried by the permittee and available for inspection at all times. For the harvesting of Christmas trees only a single permit or true copy thereof is necessary to be available at the harvest site. [1995 c 366 § 4; 1979 ex.s. c 94 § 4; 1977 ex.s. c 147 § 4; 1967 ex.s. c 47 § 6.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.060 Specialized forest products permits—Required—Forms—Filing. A specialized forest products permit validated by the county sheriff shall be obtained by a person prior to harvesting from any lands, including his or her own, more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any cedar products, cedar salvage, processed cedar products, or more than five pounds of Cascara bark, or more than three United States gallons of a single species of wild edible mushroom and more than an aggregate total of nine United States gallons of wild edible mushrooms, plus one wild edible mushroom. Specialized forest products permit forms shall be provided by the department of natural resources, and shall be made available through the office of the county sheriff to permittees or permittors in reasonable quantities. A permit form shall be completed in triplicate for each permittor's property on which a permittee harvests specialized forest products. A properly completed permit form shall be mailed or presented for validation to the sheriff of the county in which the specialized forest products are to be harvested. Before a

permit form is validated by the sheriff, sufficient personal identification may be required to reasonably identify the person mailing or presenting the permit form and the sheriff may conduct other investigations as deemed necessary to determine the validity of the information alleged on the form. When the sheriff is reasonably satisfied as to the truth of the information, the form shall be validated with the sheriff's validation stamp. Upon validation, the form shall become the specialized forest products permit authorizing the harvesting, possession, or transportation of specialized forest products, subject to any other conditions or limitations which the permittor may specify. Two copies of the permit shall be given or mailed to the permittor, or one copy shall be given or mailed to the permittee and the other copy given or mailed to the permittee. The original permit shall be retained in the office of the county sheriff validating the permit. In the event a single land ownership is situated in two or more counties, a specialized forest product permit shall be completed as to the land situated in each county. While engaged in harvesting of specialized forest products, permittees, or their agents or employees, must have readily available at each harvest site a valid permit or true copy of the permit. [1995 c 366 § 5; 1992 c 184 § 2; 1979 ex.s. c 94 § 5; 1977 ex.s. c 147 § 5; 1967 ex.s. c 47 § 7.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.062 Validation of specialized forest product permits—Authorized agents. County sheriffs may contract with other entities to serve as authorized agents to validate specialized forest product permits. These entities include the United States forest service, the bureau of land management, the department of natural resources, local police departments, and other entities as decided upon by the county sheriffs' departments. An entity that contracts with a county sheriff to serve as an authorized agent to validate specialized forest product permits may make reasonable efforts to verify the information provided on the permit form such as the section, township, and range of the area where harvesting is to occur. [1995 c 366 § 15.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.070 Transporting or possessing cedar or other specialized forest products—Requirements. (1) Except as provided in RCW 76.48.100 and 76.48.075, it is unlawful for any person (a) to possess, (b) to transport, or (c) to possess and transport within the state of Washington, subject to any other conditions or limitations specified in the specialized forest products permit by the permittor, more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any processed cedar products, or more than five pounds of Cascara bark, or more than three gallons of a single species of wild edible mushrooms and more than an aggregate total of nine gallons of wild edible mushrooms, plus one wild edible mushroom without having in his or her possession a written authorization, sales invoice, bill of lading, or specialized forest products permit or a true copy thereof evidencing his or her title to or authority to have possession of specialized forest products being so possessed or transported.

(2) It is unlawful for any person either (a) to possess, (b) to transport, or (c) to possess and transport within the state of Washington any cedar products or cedar salvage without having in his or her possession a specialized forest products permit or a true copy thereof evidencing his or her title to or authority to have possession of the materials being so possessed or transported. [1995 c 366 § 6; 1992 c 184 § 3; 1979 ex.s. c 94 § 6; 1977 ex.s. c 147 § 6; 1967 ex.s. c 47 § 8.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.075 Specialized forest products from out-of-state. (1) It is unlawful for any person to transport or cause to be transported into this state from any other state or province specialized forest products, except those harvested from that person's own property, without: (a) First acquiring and having readily available for inspection a document indicating the true origin of the specialized forest products as being outside the state, or (b) without acquiring a specialized forest products permit as provided in subsection (4) of this section.

(2) Any person transporting or causing to be transported specialized forest products into this state from any other state or province shall, upon request of any person to whom the specialized forest products are sold or delivered or upon request of any law enforcement officer, prepare and sign a statement indicating the true origin of the specialized forest products, the date of delivery, and the license number of the vehicle making delivery, and shall leave the statement with the person making the request.

(3) It is unlawful for any person to possess specialized forest products, transported into this state, with knowledge that the products were introduced into this state in violation of this chapter.

(4) When any person transporting or causing to be transported into this state specialized forest products elects to acquire a specialized forest products permit, the specialized forest products transported into this state shall be deemed to be harvested in the county of entry, and the sheriff of that county may validate the permit as if the products were so harvested, except that the permit shall also indicate the actual harvest site outside the state.

(5) A cedar processor shall comply with RCW 76.48.096 by requiring a person transporting specialized forest products into this state from any other state or province to display a specialized forest products permit, or true copy thereof, or other document indicating the true origin of the specialized forest products as being outside the state. The cedar processor shall make and maintain a record of the purchase, taking possession, or retention of cedar products and cedar salvage in compliance with RCW 76.48.094.

(6) If, under official inquiry, investigation, or other authorized proceeding regarding specialized forest products not covered by a valid specialized forest products permit or other acceptable document, the inspecting law enforcement officer has probable cause to believe that the specialized forest products were harvested in this state or wrongfully obtained in another state or province, the officer may take into custody and detain, for a reasonable time, the specialized forest products, all supporting documents, invoices, and

bills of lading, and the vehicle in which the products were transported until the true origin of the specialized forest products can be determined. [1995 c 366 § 7; 1979 ex.s. c 94 § 15.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.085 Purchase of specialized forest products—Required records. Buyers who purchase specialized forest products are required to record (1) the permit number; (2) the type of forest product purchased; (3) the permit holder's name; and (4) the amount of forest product purchased. The buyer shall keep a record of this information for a period of one year from the date of purchase and make the records available for inspection by authorized enforcement officials.

The buyer of specialized forest products must record the license plate number of the vehicle transporting the forest products on the bill of sale, as well as the seller's permit number on the bill of sale. This section shall not apply to transactions involving Christmas trees.

The [This] section shall not apply to buyers of specialized forest products at the retail sales level. [1995 c 366 § 14.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.086 Records of buyers available for research. Records of buyers of specialized forest products collected under the requirements of RCW 76.48.085 may be made available to colleges and universities for the purpose of research. [1995 c 366 § 16.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.092 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.096 Cedar processors—Obtaining from suppliers not having specialized forest products permit unlawful. It is unlawful for any cedar processor to purchase, take possession, or retain cedar products or cedar salvage subsequent to the harvesting and prior to the retail sale of the products, unless the supplier thereof displays a specialized forest products permit, or true copy thereof that appears to be valid, or obtains the information under RCW 76.48.075(5). [1995 c 366 § 8; 1979 ex.s. c 94 § 10; 1977 ex.s. c 147 § 12.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.098 Cedar processors—Display of valid registration certificate required. Every cedar processor shall prominently display a valid registration certificate, or copy thereof, obtained from the department of revenue under RCW 82.32.030 at each location where the processor receives cedar products or cedar salvage.

Permittees shall sell cedar products or cedar salvage only to cedar processors displaying registration certificates which appear to be valid. [1995 c 366 § 9; 1979 ex.s. c 94 § 11; 1977 ex.s. c 147 § 13.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.100 Exemptions. The provisions of this chapter do not apply to:

(1) Nursery grown products.

(2) Logs (except as included in the definition of "cedar salvage" under RCW 76.48.020), poles, pilings, or other major forest products from which substantially all of the limbs and branches have been removed, and cedar salvage when harvested concurrently with timber stands (a) under an approved forest practices application or notification, or (b) under a contract or permit issued by an agency of the United States government.

(3) The activities of a landowner, his or her agent, or representative, or of a lessee of land in carrying on noncommercial property management, maintenance, or improvements on or in connection with the land of the landowner or lessee. [1995 c 366 § 10; 1979 ex.s. c 94 § 12; 1977 ex.s. c 147 § 7; 1967 ex.s. c 47 § 11.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.110 Violations—Seizure and disposition of products—Disposition of proceeds. Whenever any law enforcement officer has probable cause to believe that a person is harvesting or is in possession of or transporting specialized forest products in violation of the provisions of this chapter, he or she may, at the time of making an arrest, seize and take possession of any specialized forest products found. The law enforcement officer shall provide reasonable protection for the specialized forest products involved during the period of litigation or he or she shall dispose of the specialized forest products at the discretion or order of the court before which the arrested person is ordered to appear.

Upon any disposition of the case by the court, the court shall make a reasonable effort to return the specialized forest products to its rightful owner or pay the proceeds of any sale of specialized forest products less any reasonable expenses of the sale to the rightful owner. If for any reason, the proceeds of the sale cannot be disposed of to the rightful owner, the proceeds, less the reasonable expenses of the sale, shall be paid to the treasurer of the county in which the violation occurred. The county treasurer shall deposit the same in the county general fund. The return of the specialized forest products or the payment of the proceeds of any sale of products seized to the owner shall not preclude the court from imposing any fine or penalty upon the violator for the violation of the provisions of this chapter. [1995 c 366 § 11; 1979 ex.s. c 94 § 13; 1977 ex.s. c 147 § 8; 1967 ex.s. c 47 § 12.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.120 False, fraudulent, stolen or forged specialized forest products permit, sales invoice, bill of lading, etc.—Penalty. It is unlawful for any person, upon official inquiry, investigation, or other authorized proceedings, to offer as genuine any paper, document, or other instrument in writing purporting to be a specialized forest products permit, or true copy thereof, authorization, sales invoice, or bill of lading, or to make any representation of authority to possess or conduct harvesting or transporting of specialized forest products, knowing the same to be in any manner false, fraudulent, forged, or stolen.

Any person who knowingly or intentionally violates this section is guilty of forgery, and shall be punished as a class C felony providing for imprisonment in a state correctional

institution for a maximum term fixed by the court of not more than five years or by a fine of not more than five thousand dollars, or by both imprisonment and fine.

Whenever any law enforcement officer reasonably suspects that a specialized forest products permit or true copy thereof, authorization, sales invoice, or bill of lading is forged, fraudulent, or stolen, it may be retained by the officer until its authenticity can be verified. [1995 c 366 § 12; 1979 ex.s. c 94 § 14; 1977 ex.s. c 147 § 9; 1967 ex.s. c 47 § 13.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.130 Penalties. A person who violates a provision of this chapter, other than the provisions contained in RCW 76.48.120, as now or hereafter amended, is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for not to exceed one year or by both a fine and imprisonment. [1995 c 366 § 13; 1977 ex.s. c 147 § 10; 1967 ex.s. c 47 § 14.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.200 Assistance and training for minority groups. Minority groups have long been participants in the specialized forest products industry. The legislature encourages agencies serving minority communities, community-based organizations, refugee centers, social service agencies, agencies and organizations with expertise in the specialized forest products industry, and other interested groups to work cooperatively to accomplish the following purposes:

(1) To provide assistance and make referrals on translation services and to assist in translating educational materials, laws, and rules regarding specialized forest products;

(2) To hold clinics to teach techniques for effective picking; and

(3) To work with both minority and nonminority permittees in order to protect resources and foster understanding between minority and nonminority permittees.

To the extent practicable within their existing resources, the commission on Asian-American affairs, the commission on Hispanic affairs, and the department of natural resources are encouraged to coordinate this effort. [1995 c 366 § 17.]

Severability—1995 c 366: See note following RCW 76.48.020.

Title 77

GAME AND GAME FISH

Chapters

- 77.04 Department of wildlife.
- 77.12 Powers and duties.
- 77.16 Prohibited acts and penalties.
- 77.32 Licenses.

Chapter 77.04

DEPARTMENT OF WILDLIFE

Sections

- 77.04.040 Commission—Qualifications of members. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 77.04.055 Commission—Duties. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 77.04.080 Director—Qualifications—Salary—Powers. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*)
- 77.04.090 Rule-making authority—Certified copy as evidence.

77.04.040 Commission—Qualifications of members. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) Persons eligible for appointment as members of the commission shall have general knowledge of the habits and distribution of fish and wildlife and shall not hold another state, county, or municipal elective or appointive office. In making these appointments, the governor shall seek to maintain a balance reflecting all aspects of fish and wildlife, including representation recommended by organized groups representing sportfishers, commercial fishers, hunters, private landowners, and environmentalists. Persons eligible for appointment as fish and wildlife commissioners shall comply with the provisions of chapters 42.52 and 42.17 RCW. [1995 1st sp.s. c 2 § 3; 1993 sp.s. c 2 § 61; 1987 c 506 § 6; 1980 c 78 § 5; 1955 c 36 § 77.04.040. Prior: 1947 c 275 § 4; Rem. Supp. 1947 § 5992-14.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.04.055 Commission—Duties. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) (1) In establishing policies to preserve, protect, and perpetuate wildlife, fish, and wildlife and fish habitat, the commission shall meet annually with the governor to:

(a) Review and prescribe basic goals and objectives related to those policies; and

(b) Review the performance of the department in implementing fish and wildlife policies.

The commission shall maximize fishing, hunting, and outdoor recreational opportunities compatible with healthy and diverse fish and wildlife populations.

(2) The commission shall establish hunting, trapping, and fishing seasons and prescribe the time, place, manner, and methods that may be used to harvest or enjoy game fish and wildlife.

(3) The commission shall establish provisions regulating food fish and shellfish as provided in RCW 75.08.080.

(4) The commission shall have final approval authority for tribal, interstate, international, and any other department agreements relating to fish and wildlife.

(5) The commission shall adopt rules to implement the state's fish and wildlife laws.

(6) The commission shall have final approval authority for the department's budget proposals.

(7) The commission shall select its own staff and shall appoint the director of the department. The director and commission staff shall serve at the pleasure of the commission. [1995 1st sp.s. c 2 § 4; 1993 sp.s. c 2 § 62; 1990 c 84 § 2; 1987 c 506 § 7.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.04.080 Director—Qualifications—Salary—Powers. (*Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.*) Persons eligible for appointment as director shall have practical knowledge of the habits and distribution of fish and wildlife. The director shall receive the salary fixed by the governor under RCW 43.03.040.

The director is the ex officio secretary of the commission and shall attend its meetings and keep a record of its business.

The director may appoint and employ necessary departmental personnel. The director may delegate to department personnel the duties and powers necessary for efficient operation and administration of the department. [1995 1st sp.s. c 2 § 5; 1993 sp.s. c 2 § 64; 1987 c 506 § 9; 1980 c 78 § 8; 1955 c 36 § 77.04.080. Prior: 1947 c 275 § 8; Rem. Supp. 1947 § 5992-18.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.04.090 Rule-making authority—Certified copy as evidence. The commission shall adopt permanent rules and amendments to or repeals of existing rules by approval of four members by resolution, entered and recorded in the minutes of the commission: PROVIDED, That the commission may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule. The commission shall adopt emergency rules by approval of four members. The commission or the director, when adopting emergency rules under RCW 77.12.150, shall adopt rules in conformance with chapter 34.05 RCW. Judicial notice shall be taken

of the rules filed and published as provided in RCW 34.05.380 and 34.05.210.

A copy of an emergency rule, certified as a true copy by a member of the commission, the director, or by a person authorized in writing by the director to make the certification, is admissible in court as prima facie evidence of the adoption and validity of the rule. [1995 c 403 § 111; 1984 c 240 § 1; 1980 c 78 § 16; 1955 c 36 § 77.12.050. Prior: 1947 c 275 § 15; Rem. Supp. 1947 § 5992-25. Formerly RCW 77.12.050.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Chapter 77.12

POWERS AND DUTIES

Sections

- 77.12.035 Protection of grizzly bears—Limitation on transplantation or introduction—Negotiations with federal and state agencies.
 77.12.265 Trapping or killing wildlife doing damage—Limitations—Procedures.
 77.12.710 Game fish production—Double by year 2000.

77.12.035 Protection of grizzly bears—Limitation on transplantation or introduction—Negotiations with federal and state agencies. The department shall protect grizzly bears and develop management programs on publicly owned lands that will encourage the natural regeneration of grizzly bears in areas with suitable habitat. Grizzly bears shall not be transplanted or introduced into the state. Only grizzly bears that are native to Washington state may be utilized by the department for management programs. The department is directed to fully participate in all discussions and negotiations with federal and state agencies relating to grizzly bear management and shall fully communicate, support, and implement the policies of this section. [1995 c 370 § 1.]

77.12.265 Trapping or killing wildlife doing damage—Limitations—Procedures. The owner, the owner's immediate family member, the owner's documented employee, or tenant of real property may trap or kill on that property, without the licenses required under RCW 77.32.010, wild animals or wild birds, other than an endangered species, that are damaging crops, domestic animals, fowl, or other property. Except in emergency situations, deer, elk, and protected wildlife shall not be killed without a permit issued and conditioned by the director. The director may delegate this authority.

For the purposes of this section, "emergency" means an unforeseen circumstance beyond the control of the landowner or tenant that presents a real and immediate threat to crops, domestic animals, fowl, or other property.

Alternatively, when sufficient time for the issuance of a permit by the director is not available, verbal permission may be given by the appropriate department regional administrator to owners or tenants of real property to trap or

kill on that property any deer, elk, or protected wildlife which is damaging crops, domestic animals, fowl, or other property. The regional administrator may delegate, in writing, a member of the regional staff to give the required permission in these emergency situations. Nothing in this section authorizes in any situation the trapping, hunting, or killing of an endangered species.

Except for coyotes and Columbian ground squirrels, wildlife trapped or killed under this section remain the property of the state, and the person trapping or killing the wildlife shall notify the department immediately. The director shall dispose of wildlife so taken within three working days of receiving such a notification.

If the department receives recurring complaints regarding property being damaged as described in this section from the owner or tenant of real property, or receives such complaints from several such owners or tenants in a locale, the commission shall consider conducting a special hunt or special hunts to reduce the potential for such damage.

For purposes of this section, "crop" means an agricultural or horticultural product growing or harvested and includes wild shrubs and range land vegetation on privately owned cattle ranching lands. On such lands, the land owner or lessee may declare an emergency when the department has not responded within forty-eight hours after having been contacted by the land owner or lessee regarding crop damage by wild animals or wild birds. However, the department shall not allow claims for damage to wild shrubs or range land vegetation on such lands.

Deer and elk shall not be killed under the authority of this section on privately owned cattle ranching lands that were closed to public hunting during the previous hunting season, except for land closures which are coordinated with the department to protect property and livestock.

The department shall work closely with landowners and tenants suffering game damage problems to control damage without killing the animals when practical, to increase the harvest of damage-causing animals in hunting seasons, or to kill the animals when no other practical means of damage control is feasible.

For the purposes of this section, "immediate family member" means spouse, brother, sister, grandparent, parent, child, or grandchild. [1995 c 210 § 1; 1987 c 506 § 35; 1985 c 355 § 1; 1980 c 78 § 91; 1955 c 36 § 77.16.230. Prior: 1949 c 238 § 2; 1947 c 275 § 62; Rem. Supp. 1949 § 5992-71. Formerly RCW 77.16.230.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.710 Game fish production—Double by year 2000. The legislature hereby directs the department to determine the feasibility and cost of doubling the state-wide game fish production by the year 2000. The department shall seek to equalize the effort and investment expended on anadromous and resident game fish programs. The department shall provide the legislature with a specific plan for legislative approval that will outline the feasibility of increasing game fish production by one hundred percent over current levels by the year 2000. The plan shall contain specific provisions to increase both hatchery and naturally

spawning game fish to a level that will support the production goal established in this section consistent with department policies. Steelhead trout, searun cutthroat trout, resident trout, and warmwater fish producing areas of the state shall be included in the plan. The department shall provide the plan to the house of representatives and senate ways and means, environment and natural resources, environmental affairs, fisheries and wildlife, and natural resources committees by December 31, 1990.

The plan shall include the following critical elements:

- (1) Methods of determining current catch and production, and catch and production in the year 2000;
- (2) Methods of involving fishing groups, including Indian tribes, in a cooperative manner;
- (3) Methods for using low capital cost projects to produce game fish as inexpensively as possible;
- (4) Methods for renovating and modernizing all existing hatcheries and rearing ponds to maximize production capability;
- (5) Methods for increasing the productivity of natural spawning game fish;
- (6) Application of new technology to increase hatchery and natural productivity;
- (7) Analysis of the potential for private contractors to produce game fish for public fisheries;
- (8) Methods to optimize public volunteer efforts and cooperative projects for maximum efficiency;
- (9) Methods for development of trophy game fish fisheries;
- (10) Elements of coordination with the Pacific Northwest Power Council programs to ensure maximum Columbia river benefits;
- (11) The role that should be played by private consulting companies in developing and implementing the plan;
- (12) Coordination with federal fish and wildlife agencies, Indian tribes, and department fish production programs;
- (13) Future needs for game fish predator control measures;
- (14) Development of disease control measures;
- (15) Methods for obtaining access to waters currently not available to anglers; and
- (16) Development of research programs to support game fish management and enhancement programs.

The department, in cooperation with the department of revenue, shall assess various funding mechanisms and make recommendations to the legislature in the plan. The department, in cooperation with the department of community, trade, and economic development, shall prepare an analysis of the economic benefits to the state that will occur when the game fish production is increased by one hundred percent in the year 2000. [1995 c 399 § 208; 1993 sp.s. c 2 § 70; 1990 c 110 § 2.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Finding—1990 c 110: "The legislature finds that the anadromous and resident game fish resource of the state can be greatly increased to benefit recreational fishermen and the economy of the state. Investments in the increase of anadromous and resident game fish stocks will provide benefits many times the cost of the program and will act as a catalyst for many additional benefits in the tourism and associated industries, while enhancing the livability of the state." [1990 c 110 § 1.]

Chapter 77.16

PROHIBITED ACTS AND PENALTIES

Sections

77.16.135 Assault on wildlife agent or other law enforcement—Revoke licenses and privileges. *(Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.)*

77.16.135 Assault on wildlife agent or other law enforcement—Revoke licenses and privileges. *(Effective July 1, 1996, if Referendum Bill No. 45 is approved by the electorate at the November 1995 general election.)* (1) The commission shall revoke all licenses and privileges extended under Title 77 RCW of a person convicted of assault on a state wildlife agent or other law enforcement officer provided that:

(a) The wildlife agent or other law enforcement officer was on duty at the time of the assault; and

(b) The wildlife agent or other law enforcement officer was enforcing the provisions of Title 77 RCW.

(2) For the purposes of this section, the definition of assault includes:

(a) RCW 9A.32.030; murder in the first degree;

(b) RCW 9A.32.050; murder in the second degree;

(c) RCW 9A.32.060; manslaughter in the first degree;

(d) RCW 9A.32.070; manslaughter in the second degree;

(e) RCW 9A.36.011; assault in the first degree;

(f) RCW 9A.36.021; assault in the second degree; and

(g) RCW 9A.36.031; assault in the third degree.

(3) For the purposes of this section, a conviction includes:

(a) A determination of guilt by the court;

(b) The entering of a guilty plea to the charge or charges by the accused;

(c) A forfeiture of bail or a vacation of bail posted to the court; or

(d) The imposition of a deferred or suspended sentence by the court.

(4) No license described under Title 77 RCW shall be reissued to a person violating this section for a minimum of ten years, at which time a person may petition the director for a reinstatement of his or her license or licenses. The ten-year period shall be tolled during any time the convicted person is incarcerated in any state or local correctional or penal institution, in community supervision, or home detention for an offense under this section. Upon review by the director, and if all provisions of the court that imposed sentencing have been completed, the director may reinstate in whole or in part the licenses and privileges under Title 77 RCW. [1995 1st sp.s. c 2 § 43; 1993 sp.s. c 2 § 74; 1991 c 211 § 1.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 75.08.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Chapter 77.32
LICENSES

Sections

- 77.32.050 Licenses, permits, tags, and stamps issued by authorized officials, others—Procedures—Rules.
- 77.32.060 Licenses, permits, tags, and stamps—Amount of fees to be retained by license dealers.
- 77.32.070 Information required from license applicants—Reports on taking of wildlife.
- 77.32.090 Licenses, permits, tags, and stamps—Rules for form, display, procedures.
- 77.32.250 Licenses nontransferable—Inspection procedures.
- 77.32.256 Duplicate licenses, rebates, permits, tags, and stamps—Fees.
- 77.32.352 January waterfowl hunting season—Hunting license exemption.
- 77.32.360 Steelhead catch record card—Rules.

77.32.050 Licenses, permits, tags, and stamps issued by authorized officials, others—Procedures—Rules. Licenses, permits, tags, and stamps required by this chapter shall be issued under the authority of the commission. The director may authorize department personnel, county auditors, or other reputable citizens to issue licenses, permits, tags, and stamps and collect the appropriate fees. The authorized persons shall pay on demand or before the tenth day of the following month the fees collected and shall make reports as required by the director. The director may adopt rules for issuing licenses, permits, tags, and stamps, collecting and paying fees, and making reports. [1995 c 116 § 1; 1987 c 506 § 77; 1981 c 310 § 16; 1980 c 78 § 106; 1979 ex.s. c 3 § 2; 1955 c 36 § 77.32.050. Prior: 1953 c 75 § 2; 1947 c 275 § 97; Rem. Supp. 1947 § 5992-106.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.060 Licenses, permits, tags, and stamps—Amount of fees to be retained by license dealers. The director may adopt rules establishing the amount a license dealer may charge and keep for each license, tag, permit, or stamp issued. The director shall establish the amount to be retained by dealers to be at least fifty cents for each license issued, and twenty-five cents for each tag, permit, or stamp issued. The director shall report to the next regular session of the legislature explaining any increase in the amount retained by license dealers. Fees retained by dealers shall be uniform throughout the state. [1995 c 116 § 2; 1987 c 506 § 78; 1985 c 464 § 1; 1981 c 310 § 17; 1980 c 78 § 107; 1979 ex.s. c 3 § 3; 1970 ex.s. c 29 § 2; 1957 c 176 § 2; 1955 c 36 § 77.32.060. Prior: 1953 c 75 § 3; 1947 c 275 § 98; Rem. Supp. 1947 § 5992-107.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: "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 464 § 13.]

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

[1995 RCW Supp—page 954]

Effective date—1970 ex.s. c 29: "The effective date of this 1970 amendatory act shall be January 1, 1971." [1970 ex.s. c 29 § 16.]

Effective date—1957 c 176: "Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 13 above shall become effective on January 1, 1958." [1957 c 176 § 15.]

77.32.070 Information required from license applicants—Reports on taking of wildlife. Applicants for a license, permit, tag, or stamp shall furnish the information required by the director. The director may adopt rules requiring licensees or permittees to keep records and make reports concerning the taking of wildlife. [1995 c 116 § 3; 1987 c 506 § 79; 1981 c 310 § 18; 1980 c 78 § 108; 1955 c 36 § 77.32.070. Prior: 1947 c 275 § 99; Rem. Supp. 1947 § 5992-108.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.090 Licenses, permits, tags, and stamps—Rules for form, display, procedures. The director may adopt rules pertaining to the form, period of validity, use, possession, and display of licenses, permits, tags, and stamps required by this chapter. [1995 c 116 § 4; 1987 c 506 § 80; 1981 c 310 § 19; 1980 c 78 § 109; 1955 c 36 § 77.32.090. Prior: 1947 c 275 § 101; Rem. Supp. 1947 § 5992-110.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.250 Licenses nontransferable—Inspection procedures. Licenses, permits, tags, and stamps required by this chapter shall not be transferred and, unless otherwise provided in this chapter, are void on January 1st following the year for which the license, permit, tag, or stamp was issued.

Upon request of a wildlife agent or ex officio wildlife agent, persons licensed, operating under a permit, or possessing wildlife under the authority of this chapter shall produce required licenses, permits, tags, or stamps for inspection and write their signatures for comparison and in addition display their wildlife. Failure to comply with the request is prima facie evidence that the person has no license or is not the person named. [1995 c 116 § 5; 1981 c 310 § 29; 1980 c 78 § 120; 1955 c 36 § 77.32.250. Prior: 1947 c 275 § 114; Rem. Supp. 1947 § 5992-123.]

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.256 Duplicate licenses, rebates, permits, tags, and stamps—Fees. The director shall by rule establish the conditions for issuance of duplicate licenses, rebates, permits, tags, and stamps required by this chapter. The fee for a duplicate provided under this section is ten dollars for those licenses that are ten dollars and over, and for those

licenses under ten dollars the duplicate fee is the value of the license. [1995 c 116 § 6; 1994 c 255 § 13; 1991 sp.s. c 7 § 7; 1987 c 506 § 86; 1985 c 464 § 7; 1981 c 310 § 30; 1980 c 78 § 121; 1975 1st ex.s. c 15 § 32.]

Effective date—1994 c 255 §§ 1-13: See note following RCW 77.32.092.

Effective date—1991 sp.s. c 7: See note following RCW 77.32.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.101.

77.32.352 January waterfowl hunting season—Hunting license exemption. Hunters who have a valid hunting license, and a valid migratory waterfowl stamp that may be used after December 31 of the year of issuance, are not required to purchase a new hunting license in order to use the migratory waterfowl stamp during the period in which a waterfowl hunting season exists in the month of January in the year following the issuance of the migratory waterfowl stamp and hunting license. [1995 c 59 § 1.]

77.32.360 Steelhead catch record card—Rules. (1) Each person who returns a steelhead catch record card to an authorized license dealer within thirty days following the period for which it was issued shall be given a credit equal to five dollars towards that day's purchase of any license, permit, transport tag, or stamp required by this chapter. This subsection does not apply to annual steelhead catch record cards for persons under the age of fifteen.

(2) Catch record cards necessary for proper management of the state's game fish resources shall be administered under rules adopted by the director and issued at no charge. [1995 c 116 § 7; 1991 sp.s. c 7 § 10; 1990 c 84 § 7; 1987 c 506 § 88; 1985 c 464 § 10; 1981 c 310 § 13.]

Effective date—1991 sp.s. c 7: See note following RCW 77.32.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Title 78

MINES, MINERALS, AND PETROLEUM

Chapters

- 78.08** Location of mining claims.
- 78.44** Surface mining.
- 78.56** Metals mining and milling operations.

Chapter 78.08

LOCATION OF MINING CLAIMS

Sections

- 78.08.060** Staking of claim—Requisites—Right of person diligently engaged in search.
- 78.08.081** Assessment work, affidavit of work performed or affidavit of fees paid.

78.08.060 Staking of claim—Requisites—Right of person diligently engaged in search. (1) Before filing such notice for record, the discoverer shall locate his or her claim by posting at the discovery at the time of discovery a notice containing the name of the lode, the name of the locator or locators, and the date of discovery, and marking the surface boundaries of the claim by placing substantial posts or stone monuments bearing the name of the lode and date of location; one post or monument must appear at each corner of such claim; such posts or monuments must be not less than three feet high; if posts are used they shall be not less than four inches in diameter and shall be set in the ground in a substantial manner. If any such claim be located on ground that is covered wholly or in part with brush or trees, such brush shall be cut and trees be marked or blazed along the lines of such claim to indicate the location of such lines.

(2) Prior to valid discovery the actual possession and right of possession of one diligently engaged in the search for minerals shall be exclusive as regards prospecting during continuance of such possession and diligent search. As used in this section, "diligently engaged" shall mean performing not less than one hundred dollars worth of annual assessment work on or for the benefit of the claim or paying any fee or fees in lieu of assessment work in such year or years it is required under federal law, or any larger amount that may be designated now or later by the federal government for annual assessment work. [1995 c 114 § 1; 1965 c 151 § 1; 1963 c 64 § 1; 1949 c 12 § 1; 1899 c 45 § 2; RRS § 8623.]

78.08.081 Assessment work, affidavit of work performed or affidavit of fees paid. Within thirty days after the expiration of the period of time fixed for the performance of annual labor or the making of improvements upon any quartz or lode mining claim or premises, the person in whose behalf such work or improvement was made or some person for him or her knowing the facts, shall make and record in the office of the county auditor of the county wherein such claims are situate either an affidavit or oath of labor performed on such claim, or affidavit or oath of fee or fees paid to the federal government in lieu of the annual labor requirement. Such affidavit shall state the exact amount of fee or fees paid, or the kind of labor, including the number of feet of shaft, tunnel or open cut made on such claim, or any other kind of improvements allowed by law made thereon. When both fee and labor requirements have been waived by the federal government, such affidavit will contain a statement to that effect and the state shall not require labor to be performed. Such affidavit shall contain the section, township and range in which such lode is located if the location be in a surveyed area. [1995 c 114 § 2; 1979 ex.s. c 30 § 16; 1955 c 357 § 3; 1899 c 45 § 6; RRS § 8627.]

Chapter 78.44
SURFACE MINING

Sections

78.44.087 Performance security required—Department authority.

78.44.087 Performance security required—Department authority. (1) The department shall not issue a reclamation permit until the applicant has deposited with the department an acceptable performance security on forms prescribed and furnished by the department. A public or governmental agency shall not be required to post performance security nor shall a permit holder be required to post surface mining performance security with more than one state or local agency.

(2) This performance security may be:

- (a) Bank letters of credit acceptable to the department;
- (b) A cash deposit;
- (c) Negotiable securities acceptable to the department;
- (d) An assignment of a savings account;
- (e) A savings certificate in a Washington bank on an assignment form prescribed by the department;
- (f) Assignments of interests in real property within the state of Washington; or

(g) A corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under Title 48 RCW and authorized by the department.

(3) The performance security shall be conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules adopted under it.

(4) The department shall have the authority to determine the amount of the performance security using a standardized performance security formula developed by the department. The amount of the security shall be determined by the department and based on the estimated costs of completing reclamation according to the approved reclamation plan or minimum standards and related administrative overhead for the area to be surface mined during (a) the next twelve-month period, (b) the following twenty-four months, and (c) any previously disturbed areas on which the reclamation has not been satisfactorily completed and approved.

(5) The department may increase or decrease the amount of the performance security at any time to compensate for a change in the disturbed area, the depth of excavation, a modification of the reclamation plan, or any other alteration in the conditions of the mine that affects the cost of reclamation. The department may, for any reason, refuse any performance security not deemed adequate.

(6) Liability under the performance security shall be maintained until reclamation is completed according to the approved reclamation plan to the satisfaction of the department unless released as hereinafter provided. Liability under the performance security may be released only upon written notification by the department. Notification shall be given upon completion of compliance or acceptance by the department of a substitute performance security. The liability of the surety shall not exceed the amount of security required by this section and the department's reasonable legal fees to recover the security.

(7) Any interest or appreciation on the performance security shall be held by the department until reclamation is completed to its satisfaction. At such time, the interest shall be remitted to the permit holder; except that such interest or appreciation may be used by the department to effect reclamation in the event that the permit holder fails to comply with the provisions of this chapter and the costs of reclamation exceed the face value of the performance security.

(8) Except as provided in this section, no other state agency or local government shall require performance security for the purposes of surface mine reclamation and only one agency of government shall require and hold the performance security. The department may enter into written agreements with federal agencies in order to avoid redundant bonding of surface mines straddling boundaries between federally controlled and other lands within Washington state. [1995 c 223 § 3; 1994 c 232 § 23; 1993 c 518 § 15.]

Severability—1994 c 232: See RCW 78.56.900.

Effective date—1994 c 232 §§ 1-5, 9-17, and 23-31: See RCW 78.56.901.

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

Chapter 78.56

METALS MINING AND MILLING OPERATIONS

Sections

- 78.56.110 Performance security required—Conditions—Department of ecology authority to adopt requirements—Liability under performance security.
- 78.56.120 Remediation or mitigation by department of ecology—Order to submit performance security.

78.56.110 Performance security required—Conditions—Department of ecology authority to adopt requirements—Liability under performance security. (1) The department of ecology shall not issue necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the department of ecology a performance security which is acceptable to the department of ecology based on the requirements of subsection (2) of this section. This performance security may be:

- (a) Bank letters of credit;
- (b) A cash deposit;
- (c) Negotiable securities;
- (d) An assignment of a savings account;
- (e) A savings certificate in a Washington bank; or
- (f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW.

The department of ecology may, for any reason, refuse any performance security not deemed adequate.

(2) The performance security shall be conditioned on the faithful performance of the applicant or operator in meeting the following obligations:

(a) Compliance with the environmental protection laws of the state of Washington administered by the department of ecology, or permit conditions administered by the department of ecology, associated with the construction, operation, and closure pertaining to metals mining and milling opera-

tions, and with the related environmental protection ordinances and permit conditions established by local government when requested by local government;

(b) Reclamation of metals mining and milling operations that do not meet the threshold of surface mining as defined by RCW 78.44.031(17);

(c) Postclosure environmental monitoring as determined by the department of ecology; and

(d) Provision of sufficient funding as determined by the department of ecology for cleanup of potential problems revealed during or after closure.

(3) The department of ecology may, if it deems appropriate, adopt rules for determining the amount of the performance security, requirements for the performance security, requirements for the issuer of the performance security, and any other requirements necessary for the implementation of this section.

(4) The department of ecology may increase or decrease the amount of the performance security at any time to compensate for any alteration in the operation that affects meeting the obligations in subsection (2) of this section. At a minimum, the department shall review the adequacy of the performance security every two years.

(5) Liability under the performance security shall be maintained until the obligations in subsection (2) of this section are met to the satisfaction of the department of ecology. Liability under the performance security may be released only upon written notification by the department of ecology.

(6) Any interest or appreciation on the performance security shall be held by the department of ecology until the obligations in subsection (2) of this section have been met to the satisfaction of the department of ecology. At such time, the interest shall be remitted to the applicant or operator. However, if the applicant or operator fails to comply with the obligations of subsection (2) of this section, the interest or appreciation may be used by the department of ecology to comply with the obligations.

(7) Only one agency may require a performance security to satisfy the deposit requirements of RCW 78.44.087, and only one agency may require a performance security to satisfy the deposit requirements of this section. However, a single performance security, when acceptable to both the department of ecology and the department of natural resources, may be utilized by both agencies to satisfy the requirements of this section and RCW 78.44.087. [1995 c 223 § 1; 1994 c 232 § 11.]

78.56.120 Remediation or mitigation by department of ecology—Order to submit performance security. The department of ecology may, with staff, equipment, and material under its control, or by contract with others, remediate or mitigate any impact of a metals mining and milling operation when it finds that the operator or permit holder has failed to comply with relevant statutes, rules, or permits, and the operator or permit holder has failed to take adequate or timely action to rectify these impacts.

If the department intends to remediate or mitigate such impacts, the department shall issue an order to submit performance security requiring the permit holder or surety to submit to the department the amount of moneys posted

pursuant to RCW 78.56.110. If the amount specified in the order to submit performance security is not paid within twenty days after issuance of the notice, the attorney general upon request of the department shall bring an action on behalf of the state in a superior court to recover the amount specified and associated legal fees.

The department may proceed at any time after issuing the order to submit performance security to remediate or mitigate adverse impacts.

The department shall keep a record of all expenses incurred in carrying out any remediation or mitigation activities authorized under this section, including:

(1) Remediation or mitigation;

(2) A reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized; and

(3) Administrative and legal expenses related to remediation or mitigation.

The department shall refund to the surety or permit holder all amounts received in excess of the amount of expenses incurred. If the amount received is less than the expenses incurred, the attorney general, upon request of the department of ecology, may bring an action against the permit holder on behalf of the state in the superior court to recover the remaining costs listed in this section. [1995 c 223 § 2; 1994 c 232 § 12.]

Title 79

PUBLIC LANDS

Chapters

- 79.08** General provisions.
79.12 Sales and leases of public lands and materials.
79.24 Capitol building lands.
79.90 Aquatic lands—In general.

Chapter 79.08

GENERAL PROVISIONS

Sections

- 79.08.1078** State trust lands—Withdrawal—Revocation or modification of withdrawal when used for recreational purposes—Hearing—Notice—Board to determine most beneficial use in accordance with policy.

79.08.1078 State trust lands—Withdrawal—Revocation or modification of withdrawal when used for recreational purposes—Hearing—Notice—Board to determine most beneficial use in accordance with policy.

(1) A public hearing may be held prior to any withdrawal of state trust lands and shall be held prior to any revocation of withdrawal or modification of withdrawal of state trust lands used for recreational purposes by the department of natural resources or by other state agencies.

(2) The department shall cause notice of the withdrawal, revocation of withdrawal or modification of withdrawal of state trust lands as described in subsection (1) of this section to be published by advertisement once a week for four

weeks prior to the public hearing in at least one newspaper published and of general circulation in the county or counties in which the state trust lands are situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office, in the district office in which the land is situated, and in the office of the county auditor in the county where the land is situated thirty days prior to the public hearing. The notice shall specify the time and place of the public hearing and shall describe with particularity each parcel of state trust lands involved in said hearing.

(3) The board of natural resources shall administer the hearing according to its prescribed rules and regulations.

(4) The board of natural resources shall determine the most beneficial use or combination of uses of the state trust lands. Its decision will be conclusive as to the matter: PROVIDED, HOWEVER, That said decisions as to uses shall conform to applicable state plans and policy guidelines adopted by the department of community, trade, and economic development. [1995 c 399 § 209; 1985 c 6 § 24; 1969 ex.s. c 129 § 1.]

Purchase of withdrawn state trust lands by state parks and recreation commission: RCW 43.51.270.

Reconveyance of state forest land to counties for park purposes: RCW 76.12.072 through 76.12.075.

Chapter 79.12

SALES AND LEASES OF PUBLIC LANDS AND MATERIALS

Sections

79.12.025 Amateur radio electronic repeater sites and units—Reduced rental rates—Frequencies.

79.12.025 Amateur radio electronic repeater sites and units—Reduced rental rates—Frequencies. The department of natural resources shall determine the lease rate for amateur radio electronic repeater sites and units available for public service communication. For the amateur operator to qualify for a rent of one hundred dollars per year per site, the amateur operator shall do one of the following: (1) Register and remain in good standing with the state's radio amateur civil emergency services and amateur radio emergency services organizations, or (2) if an amateur group, sign a statement of public service developed by the department.

The legislature's biennial appropriations shall account for the estimated difference between the one hundred dollar per year, per site, per lessee paid by the qualified amateur operators and the fair market amateur rent, as established by the department.

The amateur radio regulatory authority approved by the federal communication commission shall assign the radio frequencies used by amateur radio lessees. The department shall develop guidelines to determine which lessees are to receive reduced rental fees as moneys are available by legislative appropriation to pay a portion of the rent for electronic repeaters operated by amateur radio operators. [1995 c 105 § 1; 1988 c 209 § 2.]

Chapter 79.24

CAPITOL BUILDING LANDS

Sections

79.24.580 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement account.

79.24.580 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement account. After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.92.110(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to such lands; and for volunteer cooperative fish and game projects. During the fiscal biennium ending June 30, 1995, the funds may be appropriated for shellfish management, enforcement, and enhancement and for developing and implementing plans for population monitoring and restoration of native wild salmon stock. During the fiscal biennium ending June 30, 1997, the funds may be appropriated for shellfish management, enforcement, and enhancement and for developing and implementing plans for population monitoring and restoration of native wild salmon stock. [1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 1987 c 350 § 1; 1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Finding—1994 c 219: See note following RCW 43.88.030.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.165.070.

Effective date—1987 c 350: "This act shall take effect July 1, 1989." [1987 c 350 § 3.]

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

Severability—Effective date—1984 c 221: See RCW 79.90.901 and 79.90.902.

Chapter 79.90

AQUATIC LANDS—IN GENERAL

Sections

79.90.457 Authority to exchange state-owned tidelands and shorelands—Rules—Limitation.

79.90.565 Archaeological activities on state-owned aquatic lands—Agreements, leases, or other conveyances.

79.90.457 Authority to exchange state-owned tidelands and shorelands—Rules—Limitation. The department of natural resources may exchange state-owned tidelands and shorelands with private and other public landowners if the exchange is in the public interest and will actively contribute to the public benefits established in RCW 79.90.455. The board of natural resources shall adopt rules

which establish criteria for determining when a proposed exchange is in the public interest and actively contributes to the public benefits established in RCW 79.90.455. The department may not exchange state-owned harbor areas or waterways. [1995 c 357 § 1.]

79.90.565 Archaeological activities on state-owned aquatic lands—Agreements, leases, or other conveyances. After consultation with the director of community, trade, and economic development, the department of natural resources may enter into agreements, leases, or other conveyances for archaeological activities on state-owned aquatic lands. Such agreements, leases, or other conveyances may contain such conditions as are required for the department of natural resources to comply with its legal rights and duties. All such agreements, leases, or other conveyances, shall be issued in accordance with the terms of chapters 79.90 through 79.96 RCW. [1995 c 399 § 210; 1988 c 124 § 9.]

Severability—Intent—Application—1988 c 124: See RCW 27.53.901 and notes following RCW 27.53.030.

Title 80

PUBLIC UTILITIES

Chapters

- 80.01 Utilities and transportation commission.**
- 80.04 Regulations—General.**
- 80.08 Securities.**
- 80.12 Transfers of property.**
- 80.16 Affiliated interests.**
- 80.28 Gas, electrical, and water companies.**
- 80.36 Telecommunications.**
- 80.50 Energy facilities—Site locations.**
- 80.52 Energy financing voter approval act.**

Chapter 80.01

UTILITIES AND TRANSPORTATION COMMISSION

Sections

- 80.01.050 Quorum—Hearings—Actions deemed those of the commission.**
- 80.01.060 Administrative law judges—Powers—Designated persons for emergency adjudications.**

80.01.050 Quorum—Hearings—Actions deemed those of the commission. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission, and may hold hearings at any time or place within or without the state. Any investigation, inquiry, or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner or any employee designated and authorized by the commission as provided in RCW 80.01.060. All investigations, inquiries, and hearings of the commission, and all findings, orders, or decisions, made by a commissioner, when approved and confirmed by the commission and filed in its office, shall be and be deemed to be the

orders or decisions of the commission. [1995 c 331 § 2; 1961 c 14 § 80.01.050. Prior: 1949 c 117 § 6; Rem. Supp. 1949 § 10964-115-6. Formerly RCW 43.53.060.]

80.01.060 Administrative law judges—Powers—Designated persons for emergency adjudications. (1) The commission may designate employees of the commission as hearing examiners, administrative law judges, and review judges when it deems such action necessary for its general administration. The designated employees have power to administer oaths, to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony, to examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules as the commission may adopt.

(2) In general rate increase filings by a natural gas, electric, or telecommunications company, the designated employee may preside, but may not enter an initial order unless expressly agreed to in writing by the company making the filing. In all other cases, the designated employee may enter an initial order including findings of fact and conclusions of law in accordance with RCW 34.05.461(1) (a) and (c) and (3) through (9) or 34.05.485. RCW 34.05.461 (1)(b) and (2) do not apply to entry of orders under this section. The designated employee may not enter final orders, except that the commission may designate persons by rule to preside and enter final orders in emergency adjudications under RCW 34.05.479.

(3) If the designated employee does not enter an initial order as provided in subsection (2) of this section, then a majority of the members of the commission who are to enter the final order must hear or review substantially all of the record submitted by any party. [1995 c 331 § 3; 1991 c 48 § 1; 1981 c 67 § 35; 1961 c 14 § 80.01.060. Prior: 1925 ex.s. c 164 § 1; RRS § 10779-1. Formerly RCW 43.53.070.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Chapter 80.04

REGULATIONS—GENERAL

Sections

- 80.04.010 Definitions.**
- 80.04.110 Complaints—Hearings—Water systems not meeting board of health standards—Drinking water standards—Nonmunicipal water systems audits.**
- 80.04.530 Local exchange company that serves less than two percent of state's access lines—Regulatory exemptions—Reporting requirements.**

80.04.010 Definitions. As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

"Automatic location identification" means a system by which information about a caller's location, including the seven-digit number or ten-digit number used to place a 911 call or a different seven-digit number or ten-digit number to which a return call can be made from the public switched network, is forwarded to a public safety answering point for display.

"Automatic number identification" means a system that allows for the automatic display of the seven-digit or ten-digit number used to place a 911 call.

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Competitive telecommunications company" means a telecommunications company which has been classified as such by the commission pursuant to RCW 80.36.320.

"Competitive telecommunications service" means a service which has been classified as such by the commission pursuant to RCW 80.36.330.

"Corporation" includes a corporation, company, association or joint stock association.

"Person" includes an individual, a firm or partnership.

"Gas plant" includes all real estate, fixtures and personal property, owned, leased, controlled, used or to be used for or in connection with the transmission, distribution, sale or furnishing of natural gas, or the manufacture, transmission, distribution, sale or furnishing of other type gas, for light, heat or power.

"Gas company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

"Electric plant" includes all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

"Electrical company" includes any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others), and every city or town owning, operating or managing any electric plant for hire within this state. "Electrical company" does not include a company or person employing a cogeneration facility solely for the generation of electricity for its own use or the use of its tenants or for sale to an electrical company, state or local public agency, municipal corporation, or quasi municipal corporation engaged in the sale or distribution of electrical energy, but not for sale to others, unless such company or person is otherwise an electrical company.

"LATA" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Private telecommunications system" means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

"Private shared telecommunications services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to interexchange telecommunications companies.

"Private switch automatic location identification service" means a service that enables automatic location identification to be provided to a public safety answering point for 911 calls originating from station lines served by a private switch system.

"Radio communications service company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide radio communications service, radio paging, or cellular communications service for hire, sale, or resale.

"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 this state.

"Noncompetitive telecommunications service" means any service which has not been classified as competitive by the commission.

"Facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service.

"Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Water system" includes all real estate, easements, fixtures, personal property, dams, dikes, head gates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.

"Water 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, controlling, operating, or managing any water system for hire within this state: PROVIDED, That for purposes of commission jurisdiction it shall not include any water system serving less than one hundred customers where the average annual gross

revenue per customer does not exceed three hundred dollars per year, which revenue figure may be increased annually by the commission by rule adopted pursuant to chapter 34.05 RCW to reflect the rate of inflation as determined by the implicit price deflator of the United States department of commerce: AND PROVIDED FURTHER, That such measurement of customers or revenues shall include all portions of water companies having common ownership or control, regardless of location or corporate designation. "Control" as used herein shall be defined by the commission by rule and shall not include management by a satellite agency as defined in chapter 70.116 RCW if the satellite agency is not an owner of the water company. "Water company" also includes, for auditing purposes only, nonmunicipal water systems which are referred to the commission pursuant to an administrative order from the department, or the city or county as provided in RCW 80.04.110. However, water companies exempt from commission regulation shall be subject to the provisions of chapter 19.86 RCW. A water company cannot be removed from regulation except with the approval of the commission. Water companies subject to regulation may petition the commission for removal from regulation if the number of customers falls below one hundred or the average annual revenue per customer falls below three hundred dollars. The commission is authorized to maintain continued regulation if it finds that the public interest so requires.

"Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel.

"Public service company" includes every gas company, electrical company, telecommunications company, and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

"Local exchange company" means a telecommunications company providing local exchange telecommunications service.

"Department" means the department of health.

The term "service" is used in this title in its broadest and most inclusive sense. [1995 c 243 § 2; 1991 c 100 § 1; 1989 c 101 § 2; 1987 c 229 § 1. Prior: 1985 c 450 § 2; 1985 c 167 § 1; 1985 c 161 § 1; 1979 ex.s. c 191 § 10; 1977 ex.s. c 47 § 1; 1963 c 59 § 1; 1961 c 14 § 80.04.010; prior: 1955 c 316 § 2; prior: 1929 c 223 § 1, part; 1923 c 116 § 1, part; 1911 c 117 § 8, part; RRS § 10344, part.]

Findings—Severability—1995 c 243: See notes following RCW 80.36.555.

Severability—Legislative review—1985 c 450: See RCW 80.36.900 and 80.36.901.

Severability—1979 ex.s. c 191: See RCW 82.35.900.

80.04.110 Complaints—Hearings—Water systems not meeting board of health standards—Drinking water standards—Nonmunicipal water systems audits. (1) Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or

municipal corporation, or by the public counsel section of the office of the attorney general, or its successor, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: PROVIDED, That no complaint shall be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telecommunications company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water or telecommunications service, or at least twenty-five percent of the consumers or purchasers of the company's service: PROVIDED, FURTHER, That when two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

(2) All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: PROVIDED, All grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

(3) Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or corporation complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. The commission shall enter its final order with respect to a complaint filed by any entity or person other

than the commission within ten months from the date of filing of the complaint, unless the date is extended for cause. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission. Such rules may include the requirement that a complainant use informal processes before filing a formal complaint.

(4) The commission shall, as appropriate, audit a nonmunicipal water system upon receipt of an administrative order from the department, or the city or county in which the water system is located, finding that the water delivered by a system does not meet state board of health standards adopted under RCW 43.20.050(2)(a) or standards adopted under chapters 70.116 and 70.119A RCW, and the results of the audit shall be provided to the requesting department, city, or county. However, the number of nonmunicipal water systems referred to the commission in any one calendar year shall not exceed twenty percent of the water companies subject to commission regulation as defined in RCW 80.04.010.

Every nonmunicipal water system referred to the commission for audit under this section shall pay to the commission an audit fee in an amount, based on the system's twelve-month audited period, equal to the fee required to be paid by regulated companies under RCW 80.24.010.

(5) Any customer or purchaser of service from a water system or company that is subject to commission regulation may file a complaint with the commission if he or she has reason to believe that the water delivered by the system to the customer does not meet state drinking water standards under chapter 43.20 or 70.116 RCW. The commission shall investigate such a complaint, and shall request that the state department of health or local health department of the county in which the system is located test the water for compliance with state drinking water standards, and provide the results of such testing to the commission. The commission may decide not to investigate the complaint if it determines that the complaint has been filed in bad faith, or for the purpose of harassment of the water system or company, or for other reasons has no substantial merit. The water system or company shall bear the expense for the testing. After the commission has received the complaint from the customer and during the pendency of the commission investigation, the water system or company shall not take any steps to terminate service to the customer or to collect any amounts alleged to be owed to the company by the customer. The commission may issue an order or take any other action to ensure that no such steps are taken by the system or company. The customer may, at the customer's option and expense, obtain a water quality test by a licensed or otherwise qualified water testing laboratory, of the water delivered to the customer by the water system or company, and provide the results of such a test to the commission. If the commission determines that the water does not meet state drinking water standards, it shall exercise its authority over the system or company as provided in this title, and may, where appropriate, order a refund to the customer on a pro rata basis for the substandard water delivered to the customer, and shall order reimbursement to the customer for the cost incurred by the customer, if any, in obtaining a water quality test. [1995 c 376 § 12. Prior: 1991 c 134 § 1; 1991 c 100 § 2; prior: 1989 c 207 § 2; 1989 c 101 § 17; 1985 c

450 § 11; 1961 c 14 § 80.04.110; prior: 1913 c 145 § 1; 1911 c 117 § 80; RRS § 10422.]

Findings—1995 c 376: See note following RCW 70.116.060.

Severability—Legislative review—1985 c 450: See RCW 80.36.900 and 80.36.901.

Drinking water standards: Chapters 43.21A, 70.119A, and 80.28 RCW.

80.04.530 Local exchange company that serves less than two percent of state's access lines—Regulatory exemptions—Reporting requirements. (1)(a) Except as provided in (b) of this subsection, the following do not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington: RCW 80.04.080, 80.04.300 through 80.04.330, and, except for RCW 80.08.140, chapters 80.08, 80.12, and 80.16 RCW.

(b) Nothing in this subsection (1) shall affect the commission's authority over the rates, service, accounts, valuations, estimates, or determinations of costs, as well as the authority to determine whether any expenditure is fair, reasonable, and commensurate with the service, material, supplies, or equipment received.

(c) For purposes of this subsection, the number of access lines served by a local exchange company includes the number of access lines served in this state by any affiliate of that local exchange company.

(2) Any local exchange company for which an exemption is provided under this section shall not be required to file reports or data with the commission, except each such company shall file with the commission an annual report that consists of its annual balance sheet and results of operations, both presented on a Washington state jurisdictional basis. This requirement may be satisfied by the filing of information or reports and underlying studies filed with exchange carrier entities or regulatory agencies if the jurisdictionally separated results of operations for Washington state can be obtained from the information or reports. This subsection shall not be applied to exempt a local exchange company from an obligation to respond to data requests in an adjudicative proceeding in which it is a party.

(3) The commission may, in response to customer complaints or on its own motion and after notice and hearing, establish additional reporting requirements for a specific local exchange company. [1995 c 110 § 1.]

Chapter 80.08 SECURITIES

Sections

80.08.160 Small local exchange company—Chapter does not apply.

80.08.160 Small local exchange company—Chapter does not apply. Subject to RCW 80.04.530(1), this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington. [1995 c 110 § 2.]

Chapter 80.12

TRANSFERS OF PROPERTY

Sections

80.12.045 Small local exchange company—Chapter does not apply.

80.12.045 Small local exchange company—Chapter does not apply. Subject to RCW 80.04.530(1), this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington. [1995 c 110 § 3.]

Chapter 80.16

AFFILIATED INTERESTS

Sections

80.16.055 Small local exchange company—Chapter does not apply.

80.16.055 Small local exchange company—Chapter does not apply. Subject to RCW 80.04.530(1), this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington. [1995 c 110 § 4.]

Chapter 80.28

GAS, ELECTRICAL, AND WATER COMPANIES

Sections

80.28.010 Duties as to rates, services, and facilities—Limitations on termination of utility service for residential heating.
80.28.212 Safety rules—Civil penalty for violation of RCW 80.28.210 or regulations issued thereunder—Level of penalty—Compromise—Disposition of penalty.

80.28.010 Duties as to rates, services, and facilities—Limitations on termination of utility service for residential heating. (1) All charges made, demanded or received by any gas company, electrical company or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.

(2) Every gas company, electrical company and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any gas company, electrical company or water company, affecting or pertaining to the sale or distribution of its product, shall be just and reasonable.

(4) Utility service for residential space heating shall not be terminated between November 15 through March 15 if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

(b) Provides self-certification of household income for the prior twelve months to a grantee of the department of community, trade, and economic development which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

(c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

(d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15 and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer shall not be eligible for protections under this chapter until the past due bill is paid. The plan shall not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

(f) Agrees to pay the moneys owed even if he or she moves.

(5) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

(b) Assist the customer in fulfilling the requirements under this section;

(c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area;

(d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this subsection. Customers who qualify for payment plans under this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected; and

(e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer

contacts the utility and fulfills the other requirements of this section.

(6) A payment plan implemented under this section is consistent with RCW 80.28.080.

(7) Every gas company and electrical company shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(8) Every gas company, electrical company and water company shall construct and maintain such facilities in connection with the manufacture and distribution of its product as will be efficient and safe to its employees and the public.

(9) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter.

(10) In establishing rates or charges for water service, water companies as defined in RCW 80.04.010 may consider the achievement of water conservation goals and the discouragement of wasteful water use practices. [1995 c 399 § 211. Prior: 1991 c 347 § 22; 1991 c 165 § 4; 1990 1st ex.s. c 1 § 5; 1986 c 245 § 5; 1985 c 6 § 25; 1984 c 251 § 4; 1961 c 14 § 80.28.010; prior: 1911 c 117 § 26; RRS § 10362.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Findings—1991 c 165: See note following RCW 35.21.300.

80.28.212 Safety rules—Civil penalty for violation of RCW 80.28.210 or regulations issued thereunder—Level of penalty—Compromise—Disposition of penalty.

Any gas company which violates any provision of RCW 80.28.210 as now exists or is later amended or of any regulation issued thereunder, shall be subject to a civil penalty to be directly assessed by the commission. The level of such penalty shall be set by rule by the commission and shall not exceed the penalties specified in federal pipeline safety laws (49 U.S.C. 60101 et seq.) in effect on July 23, 1995. Any civil penalty may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon and compromised, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the gas company charged in attempting to achieve compliance after notification of the violation, shall be considered.

The amount of the penalty, when finally determined, or the amount agreed upon and compromised, may be recovered in a civil action in the superior court of Thurston county or of some other county in which such violator may do business. In all such actions for recovery the procedure and rules of evidence shall be the same as in ordinary civil actions. All penalties recovered under this title shall be paid into the state treasury and credited to the public service revolving fund. [1995 c 247 § 1; 1969 ex.s. c 210 § 3.]

Chapter 80.36

TELECOMMUNICATIONS

Sections

80.36.135	Alternative regulation of telecommunications companies.
80.36.555	Enhanced 911 service—Residential service required.
80.36.560	Enhanced 911 service—Business service required.

80.36.135 Alternative regulation of telecommunications companies. (1) The legislature declares that:

(a) Changes in technology and the structure of the telecommunications industry may produce conditions under which traditional rate of return, rate base regulation of telecommunications companies may not in all cases provide the most efficient and effective means of achieving the public policy goals of this state as declared in RCW 80.36.300, this section, and RCW 80.36.145. The commission should be authorized to employ an alternative form of regulation if that alternative is better suited to achieving those policy goals.

(b) Because of the great diversity in the scope and type of services provided by telecommunications companies, alternative regulatory arrangements that meet the varying circumstances of different companies and their ratepayers may be desirable.

(2) Subject to the conditions set forth in this chapter and RCW 80.04.130, the commission may regulate telecommunications companies subject before July 23, 1989, to traditional rate of return, rate base regulation by authorizing an alternative form of regulation. The commission may determine the manner and extent of any alternative forms of regulation as may in the public interest be appropriate. In addition to the public policy goals declared in RCW 80.36.300, the commission shall consider, in determining the appropriateness of any proposed alternative form of regulation, whether it will:

- (a) Reduce regulatory delay and costs;
- (b) Encourage innovation in services;
- (c) Promote efficiency;
- (d) Facilitate the broad dissemination of technological improvements to all classes of ratepayers;
- (e) Enhance the ability of telecommunications companies to respond to competition;
- (f) Ensure that telecommunications companies do not have the opportunity to exercise substantial market power absent effective competition or effective regulatory constraints; and

(g) Provide fair, just, and reasonable rates for all ratepayers.

The commission shall make written findings of fact as to each of the above-stated policy goals in ruling on any proposed alternative form of regulation.

(3) A telecommunications company or companies subject to traditional rate of return, rate base regulation may petition the commission to establish an alternative form of regulation. The company or companies shall submit with the petition a plan for an alternative form of regulation. The plan shall contain a proposal for transition to the alternative form of regulation. The commission shall review and may modify or reject the proposed plan. The commission also may initiate consideration of alternative forms of regulation for a company or companies on its own motion. The commission may approve the plan or modified plan and

authorize its implementation, if it finds, after notice and hearing, that the plan or modified plan:

(a) Is in the public interest;

(b) Is necessary to respond to such changes in technology and the structure of the intrastate telecommunications industry as are in fact occurring;

(c) Is better suited to achieving the policy goals set forth in RCW 80.36.300 and this section than the traditional rate of return, rate base regulation;

(d) Ensures that ratepayers will benefit from any efficiency gains and cost savings arising out of the regulatory change and will afford ratepayers the opportunity to benefit from improvements in productivity due to technological change;

(e) Will not result in a degradation of the quality or availability of efficient telecommunications services;

(f) Will produce fair, just, and reasonable rates for telecommunications services; and

(g) Will not unduly or unreasonably prejudice or disadvantage any particular customer class.

(4) Not later than sixty days from the entry of the commission's order, the company or companies affected by the order may file with the commission an election not to proceed with the alternative form of regulation as authorized by the commission. If a company elects to appeal to the courts the final order of the commission authorizing an alternative form of regulation, it shall not change its election to proceed or not proceed after the appeal is concluded. The pendency of a petition by a company for judicial review of the final order shall not serve to extend the sixty-day period.

(5) The commission may waive such regulatory requirements under Title 80 RCW for a telecommunications company subject to an alternative form of regulation as may be appropriate to facilitate the implementation of this section: PROVIDED, That the commission may not grant the authority to price list services except as provided in RCW 80.36.300 through 80.36.370, the regulatory flexibility act, nor may it waive any statutory requirements or grants of legal rights to any person contained in this chapter and chapter 80.04 RCW as amended, except as otherwise expressly provided. The commission may waive different regulatory requirements for different companies or services if such different treatment is in the public interest.

(6) Upon petition by any person, or upon its own motion, the commission may rescind its approval of an alternative form of regulation if, after notice and hearing, it finds that the conditions set forth in subsection (3) of this section can no longer be satisfied. The commission or any person may file a complaint alleging that the rates charged by a telecommunications company under an alternative form of regulation are unfair, unjust, unreasonable, unduly discriminatory, or are otherwise not consistent with the requirements of chapter 101, Laws of 1989: PROVIDED, That the complainant shall bear the burden of proving the allegations in the complaint. [1995 c 110 § 5; 1989 c 101 § 1.]

80.36.555 Enhanced 911 service—Residential service required. By January 1, 1997, or one year after enhanced 911 service becomes available or a private switch automatic location identification service approved by the

Washington utilities and transportation commission is available from the serving local exchange telecommunications company, whichever is later, any private shared telecommunications services provider that provides service to residential customers shall assure that the telecommunications system is connected to the public switched network such that calls to 911 result in automatic location identification for each residential unit in a format that is compatible with the existing or planned county enhanced 911 system. [1995 c 243 § 3.]

Findings—1995 c 243: "The legislature finds that citizens of the state increasingly rely on the dependability of enhanced 911, a system that allows the person answering an emergency call to immediately determine the location of the emergency without the need of the caller to speak. The legislature further finds that in some cases, calls made from telephones connected to private telephone systems may not be precisely located by the answerer, eliminating some of the benefit of enhanced 911, and that this condition could additionally imperil citizens calling from these locations in an emergency. The legislature also finds that until national standards have been developed to address this condition, information-forwarding requirements should be mandated for only those settings with the most risk, including schools, residences, and some business settings." [1995 c 243 § 1.]

Severability—1995 c 243: "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." [1995 c 243 § 12.]

80.36.560 Enhanced 911 service—Business service required. By January 1, 1997, or one year after enhanced 911 service becomes available or a private switch automatic location identification service approved by the Washington utilities and transportation commission is available from the serving local exchange telecommunications company, whichever is later, any commercial shared services provider of private shared telecommunications services for hire or resale to the general public to multiple unaffiliated business users from a single system shall assure that such a system is connected to the public switched network such that calls to 911 result in automatic location identification for each telephone in a format that is compatible with the existing or planned county enhanced 911 system. This section shall apply only to providers of service to businesses containing a physical area exceeding twenty-five thousand square feet, or businesses on more than one floor of a building, or businesses in multiple buildings. [1995 c 243 § 5.]

Findings—Severability—1995 c 243: See notes following RCW 80.36.555.

Chapter 80.50

ENERGY FACILITIES—SITE LOCATIONS

Sections

80.50.020 Definitions.

80.50.020 Definitions. (1) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter;

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires;

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized;

(4) "Site" means any proposed or approved location of an energy facility;

(5) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility;

(6) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages in excess of 200,000 volts to connect a thermal power plant to the northwest power grid: PROVIDED, That common carrier railroads or motor vehicles shall not be included;

(7) "Transmission facility" means any of the following together with their associated facilities:

(a) Crude or refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: A pipeline larger than six inches minimum inside diameter between valves for the transmission of these products with a total length of at least fifteen miles;

(b) Natural gas, synthetic fuel gas, or liquified petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a distribution facility, except an interstate natural gas pipeline regulated by the United States federal power commission;

(8) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies;

(9) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel, including nuclear materials, for distribution of electricity by electric utilities;

(10) "Energy facility" means an energy plant or transmission facilities: PROVIDED, That the following are excluded from the provisions of this chapter:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes; and

(b) Facilities operated by and for the armed services for military purposes or by other federal authority for the national defense;

(11) "Council" means the energy facility site evaluation council created by RCW 80.50.030;

(12) "Counsel for the environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080;

(13) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars;

(14) "Energy plant" means the following facilities together with their associated facilities:

(a) Any stationary thermal power plant with generating capacity of two hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of fifty thousand kilowatts or more, including associated facilities;

(b) Facilities which will have the capacity to receive liquified natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;

(c) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquified petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

(d) Any underground reservoir for receipt and storage of natural gas as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

(e) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum into refined products;

(15) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapters 35.63, 35A.63, or 36.70 RCW;

(16) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapters 35.63, 35A.63, or 36.70 RCW or Article XI of the state Constitution. [1995 c 69 § 1; 1977 ex.s. c 371 § 2; 1975-'76 2nd ex.s. c 108 § 30; 1970 ex.s. c 45 § 2.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

Chapter 80.52

ENERGY FINANCING VOTER APPROVAL ACT

Sections

80.52.030 Definitions.

80.52.030 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Public agency" means a public utility district, joint operating agency, city, county, or any other state governmental agency, entity, or political subdivision.

(2) "Major public energy project" means a plant or installation capable, or intended to be capable, of generating electricity in an amount greater than two hundred fifty megawatts, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure. Where two or more such plants are located within the same geographic site, each plant shall be considered a major public energy project. An addition to an existing facility is not deemed to be a major energy project unless the addition itself is capable, or intended to be capable, of generating electricity in an amount greater than two hundred fifty megawatts. A project which is under construction on July 1, 1982, shall not be considered a major public energy project unless the official agency budget or estimate for total construction costs for the project as of July 1, 1982, is more than two hundred percent of the first official estimate of total construction costs as specified in the senate energy and utilities committee WPPSS inquiry report, volume one, January 12, 1981, and unless, as of July 1, 1982, the projected remaining cost of construction for that project exceeds two hundred million dollars.

(3) "Cost of construction" means the total cost of planning and building a major public energy project and placing it into operation, including, but not limited to, planning cost, direct construction cost, licensing cost, cost of fuel inventory for the first year's operation, interest, and all other costs incurred prior to the first day of full operation, whether or not incurred prior to July 1, 1982.

(4) "Cost of acquisition" means the total cost of acquiring a major public energy project from another party, including, but not limited to, principal and interest costs.

(5) "Bond" means a revenue bond, a general obligation bond, or any other indebtedness issued by a public agency or its assignee.

(6) "Applicant" means a public agency, or the assignee of a public agency, requesting the secretary of state to conduct an election pursuant to this chapter.

(7) "Cost-effective" means that a project or resource is forecast:

(a) To be reliable and available within the time it is needed; and

(b) To meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.

(8) "System cost" means an estimate of all direct costs of a project or resource over its effective life, including, if applicable, the costs of distribution to the consumer, and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as are directly attributable to the project or resource. [1995 c 69 § 2; 1981 2nd ex.s. c 6 § 3 (Initiative Measure No. 394, approved November 3, 1981).]

Title 81 TRANSPORTATION

Chapters

- 81.48** Railroads—Operating requirements and regulations.
- 81.62** Rail development commission.
- 81.80** Motor freight carriers.
- 81.84** Steamboat companies.
- 81.104** High capacity transportation systems.

Chapter 81.48

RAILROADS—OPERATING REQUIREMENTS AND REGULATIONS

Sections

- 81.48.010 Failure to ring bell—Penalty—Exception.
- 81.48.015 Limiting or prohibiting the sounding of locomotive horns—Supplemental safety measures—Notice.

81.48.010 Failure to ring bell—Penalty—Exception.

Every engineer driving a locomotive on any railway who shall fail to ring the bell or sound the whistle upon such locomotive, or cause the same to be rung or sounded at least eighty rods from any place where such railway crosses a traveled road or street on the same level (except in cities, or in counties that enact ordinances applying only to crossings equipped with supplemental safety measures as provided in RCW 81.48.015), or to continue the ringing of such bell or sounding of such whistle until such locomotive shall have crossed such road or street, shall be guilty of a misdemeanor.

This section shall not apply to an engineer operating a locomotive within yard limits or when on track, which is not main line track, where crossing speed is restricted by published special instruction or bulletin to ten miles per hour or less. [1995 c 315 § 1; 1961 c 14 § 81.48.010. Prior: 1909 c 249 § 276; RRS § 2528.]

81.48.015 Limiting or prohibiting the sounding of locomotive horns—Supplemental safety measures—Notice.

(1) The legislature hereby authorizes cities and counties to enact ordinances limiting or prohibiting the sounding of locomotive horns, provided the ordinance applies only at crossings equipped with supplemental safety measures. A supplemental safety measure is a safety device defined in P.L. 103-440, section 20153(a)(3), as that law existed on November 2, 1994. A supplemental safety measure that prevents careless movement over the crossing (e.g., as where adequate median barriers prevent movement around crossing gates extending over the full width of the lanes in a particular direction of travel), shall be deemed to conform to those standards required under P.L. 103-440 unless specifically rejected by emergency order issued by the United States secretary of the department of transportation.

(2) Prior to enacting the ordinance, the cities and counties shall provide written notification to the railroad companies affected by the proposed ordinance, and to the state utilities and transportation commission, for the purpose of providing an opportunity to comment on the proposed ordinance.

(3) Nothing in this section shall be construed as limiting the state's power, guaranteed by the tenth amendment to the Constitution of the United States, to enact laws necessary for the health, safety, or welfare of the people of the state of Washington. [1995 c 315 § 2.]

Chapter 81.62

RAIL DEVELOPMENT COMMISSION

Sections

81.62.010 through 81.62.060 Repealed.
81.62.900 Repealed.
81.62.901 Repealed.

81.62.010 through 81.62.060 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.62.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.62.901 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 81.80

MOTOR FREIGHT CARRIERS

Sections

81.80.145 Repealed. (*Effective January 1, 1996.*)
81.80.330 Enforcement of chapter. (*Effective January 1, 1996.*)
81.80.450 Recovered materials transportation—Evaluation of rate regulation exemption—Report to legislature—Required information—Rules.

81.80.145 Repealed. (*Effective January 1, 1996.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.80.330 Enforcement of chapter. (*Effective January 1, 1996.*) The commission is hereby empowered to administer and enforce all provisions of this chapter and to inspect the vehicles, books, and documents of all "motor carriers" and the books, documents, and records of those using the service of the carriers for the purpose of discovering all discriminations and rebates and other information pertaining to the enforcement of this chapter and shall prosecute violations thereof. The commission shall employ such auditors, inspectors, clerks, and assistants as it may deem necessary for the enforcement of this chapter. The Washington state patrol shall perform all motor carrier safety inspections required by this chapter, including terminal safety audits, except for (1) those carriers subject to the economic regulation of the commission, or (2) a vehicle owned or operated by a carrier affiliated with a solid waste company subject to economic regulation by the commission. The attorney general shall assign at least one assistant to the exclusive duty of assisting the commission in the enforcement of this chapter, and the prosecution of persons charged with the violation thereof. It shall be the duty of the Washington state patrol and the sheriffs of the counties to

make arrests and the county attorneys to prosecute violations of this chapter. [1995 c 272 § 5; 1980 c 132 § 3; 1961 c 14 § 81.80.330. Prior: 1935 c 184 § 29; RRS § 6382-29.]

Effective dates—1995 c 272: See note following RCW 46.32.090.

Effective date—1980 c 132: See note following RCW 81.29.020.

81.80.450 Recovered materials transportation—Evaluation of rate regulation exemption—Report to legislature—Required information—Rules. (1) The department of community, trade, and economic development, in conjunction with the utilities and transportation commission and the department of ecology, shall evaluate the effect of exempting motor vehicles transporting recovered materials from rate regulation as provided under RCW 81.80.440. The evaluation shall, at a minimum, describe the effect of such exemption on:

(a) The cost and timeliness of transporting recovered materials within the state;

(b) The volume of recovered materials transported within the state;

(c) The number of safety violations and traffic accidents related to transporting recovered materials within the state; and

(d) The availability of service related to transporting recovered materials from rural areas of the state.

(2) The department shall report the results of its evaluation to the appropriate standing committees of the legislature by October 1, 1993.

(3) The commission shall adopt rules requiring persons transporting recovered materials to submit information required under RCW 70.95.280. In adopting such rules, the commission shall include procedures to ensure the confidentiality of proprietary information. [1995 c 399 § 212; 1990 c 123 § 2.]

Chapter 81.84

STEAMBOAT COMPANIES

Sections

81.84.005 Definitions. (*Effective until January 1, 2001.*)
81.84.005 Repealed. (*Effective January 1, 2001.*)
81.84.007 Chapter not applicable. (*Effective until January 1, 2001.*)
81.84.007 Repealed. (*Effective January 1, 2001.*)
81.84.015 Vessels providing excursion service—Certificate required. (*Effective until January 1, 2001.*)
81.84.015 Repealed. (*Effective January 1, 2001.*)

81.84.005 Definitions. (*Effective until January 1, 2001.*) As used in this chapter:

(1) "Excursion service" means the carriage or conveyance of persons for compensation over the waters of this state from a point of origin and returning to the point of origin with an intermediate stop or stops at which passengers leave the vessel and reboard before the vessel returns to its point of origin.

(2) "Charter service" means the hiring of a vessel, with captain and crew, by a person or group for carriage or conveyance of persons or property. [1995 c 361 § 1.]

81.84.005 Repealed. (*Effective January 1, 2001.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.84.007 Chapter not applicable. (*Effective until January 1, 2001.*) This chapter does not apply to the following vessels or operations:

- (1) Charter services;
- (2) Vessels that depart and return to the point of origin without stopping at another location within the state where passengers leave the vessel;
- (3) Vessels operated by not-for-profit or governmental entities that are replicas of historic vessels or that are recognized by the United States department of the interior as national historical landmarks;
- (4) Excursion services that:
 - (a) Originate and primarily operate at least six months per year in San Juan county waters and use vessels less than sixty-five feet in length with a United States Coast Guard certificate that limits them to forty-nine passengers or less;
 - (b) Do not depart from the point of origin on a regular published schedule;
 - (c) Do not operate between the same point of origin and the same intermediate stop more than four times in any month or more than fifteen times during any twelve-month period;
 - (d) Use vessels that do not return to the point of origin on the day of departure; or
 - (e) Operate vessels upon the waters of the Pend Oreille River, Pend Oreille County, Washington. [1995 c 361 § 3.]

81.84.007 Repealed. (*Effective January 1, 2001.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.84.015 Vessels providing excursion service—Certificate required. (*Effective until January 1, 2001.*) (1) Unless expressly exempted in *RCW 81.84.007, no vessel may provide excursion service over the waters of this state without first having obtained a certificate of public convenience and necessity as provided in RCW 81.84.010.

(2) Vessels providing excursion service must comply with all provisions of this chapter and rules of the commission adopted under this chapter. [1995 c 361 § 2.]

*Reviser's note: RCW 81.84.007 was repealed by 1995 c 361 § 4, effective January 1, 2001.

81.84.015 Repealed. (*Effective January 1, 2001.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 81.104

HIGH CAPACITY TRANSPORTATION SYSTEMS

Sections

- 81.104.030 Policy development outside central Puget Sound—Voter approval.
81.104.090 Department of transportation responsibilities—Funding of planning projects.

81.104.030 Policy development outside central Puget Sound—Voter approval. (1) In any county that has a population of one hundred seventy-five thousand or more and has an interstate highway within its borders, except for any county having a population of more than one million or a county that has a population of more than four hundred thousand and is adjacent to a county with a population of more than one million, transit agencies may elect to establish high capacity transportation service. Such agencies shall form a regional policy committee with proportional representation based upon population distribution within the designated service area and a representative of the department of transportation, or such agencies may use the designated metropolitan planning organization as the regional policy committee.

Transit agencies participating in joint regional policy committees shall seek voter approval within their own service boundaries of a high capacity transportation system plan and financing plan. For transit agencies in counties adjoining state or international boundaries where the high capacity transportation system plan and financing plan propose a bi-state or international high capacity transportation system, such voter approval shall be required from only those voters residing within the service area in the state of Washington.

(2) Transit agencies in counties adjoining state or international boundaries are authorized to participate in the regional high capacity transportation programs of an adjoining state or Canadian province. [1995 2nd sp.s. c 14 § 541; 1993 c 428 § 1; 1992 c 101 § 20; 1991 c 318 § 3; 1991 c 309 § 2; (1991 c 363 § 155 repealed by 1991 c 309 § 6); 1990 c 43 § 24.]

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

81.104.090 Department of transportation responsibilities—Funding of planning projects. The department of transportation shall be responsible for distributing amounts appropriated from the high capacity transportation account, which shall be allocated by the department of transportation based on criteria in subsection (2) of this section. The department shall assemble and participate in a committee comprised of transit agencies eligible to receive funds from the high capacity transportation account for the purpose of reviewing fund applications.

(1) State high capacity transportation account funds may provide up to eighty percent matching assistance for high capacity transportation planning efforts.

(2) Authorizations for state funding for high capacity transportation planning projects shall be subject to the following criteria:

- (a) Conformance with the designated regional transportation planning organization's regional transportation plan;
- (b) Local matching funds;
- (c) Demonstration of projected improvement in regional mobility;
- (d) Conformance with planning requirements prescribed in RCW 81.104.100, and if five hundred thousand dollars or more in state funding is requested, conformance with the requirements of RCW 81.104.110; and

(e) Establishment, through interlocal agreements, of a joint regional policy committee as defined in RCW 81.104.030 or 81.104.040.

(3) The department of transportation shall provide general review and monitoring of the system and project planning process prescribed in RCW 81.104.100. [1995 c 269 § 2602; 1993 c 393 § 2; 1991 c 318 § 8; 1990 c 43 § 30.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Effective date—1993 c 393: See RCW 47.66.900.

Title 82 EXCISE TAXES

Chapters

82.01	Department of revenue.
82.02	General provisions.
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Chapter 82.01 DEPARTMENT OF REVENUE

Sections

82.01.060 Director—Powers and duties—Rule-making authority.

82.01.060 Director—Powers and duties—Rule-making authority. The director of revenue, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the director, through the department of revenue, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the department, shall:

(1) Assess and collect all taxes and administer all programs relating to taxes which are the responsibility of the

tax commission at the time chapter 26, Laws of 1967 ex. sess. takes effect or which the legislature may hereafter make the responsibility of the director or of the department;

(2) Make, adopt and publish such rules as he or she may deem necessary or desirable to carry out the powers and duties imposed upon him or her or the department by the legislature: PROVIDED, That the director may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule;

(3) Rules adopted by the tax commission before July 23, 1995, shall remain in force until such time as they may be revised or rescinded by the director;

(4) Provide by general regulations for an adequate system of departmental review of the actions of the department or of its officers and employees in the assessment or collection of taxes;

(5) Maintain a tax research section with sufficient technical, clerical and other employees to conduct constant observation and investigation of the effectiveness and adequacy of the revenue laws of this state and of the sister states in order to assist the governor, the legislature and the director in estimation of revenue, analysis of tax measures, and determination of the administrative feasibility of proposed tax legislation and allied problems;

(6) Recommend to the governor such amendments, changes in, and modifications of the revenue laws as seem proper and requisite to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of taxes in the most economical manner. [1995 c 403 § 106; 1977 c 75 § 92; 1967 ex.s. c 26 § 3.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

Chapter 82.02 GENERAL PROVISIONS

Sections

82.02.1001 Legislative fiscal committees—Report on impacts of manufacturers' tax exemption—Provision of data by agencies.

82.02.1001 Legislative fiscal committees—Report on impacts of manufacturers' tax exemption—Provision of data by agencies. The legislative fiscal committees shall report to the legislature by December 1, 1999, on the economic impacts of the manufacturers' tax exemption. This report shall analyze employment and other relevant economic data from before and after the enactment of the tax exemptions authorized under chapter 3, Laws of 1995 1st sp. sess. and shall measure the effect on the creation or retention of family wage jobs and diversification of the state's economy. Analytic techniques may include, but not be limited to, comparisons of Washington to other states that did not enact business tax changes, comparisons across Washington counties based on usage of the tax exemptions, and compari-

sons across similar firms based on their use of the tax exemptions. In performing the analysis, the legislative fiscal committees shall consult with business and labor interests. The department or [of] revenue, the employment security department, and other agencies shall provide to the legislative fiscal committees such data as the legislative fiscal committees may request in performing the analysis required under this section. [1995 1st sp.s. c 3 § 15.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Chapter 82.04

BUSINESS AND OCCUPATION TAX

Sections

- 82.04.030 "Person," "company."
- 82.04.050 "Sale at retail," "retail sale."
- 82.04.190 "Consumer."
- 82.04.2201 Temporary business and occupation surtaxes—July 1, 1993, through June 30, 1997.
- 82.04.260 Tax on buyers, wholesalers, manufacturers, and processors of various foods and by-products—Research and development organizations—Nuclear fuel assemblies—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals.
- 82.04.290 Tax on selected business services, financial businesses, or other business or service activities.
- 82.04.293 International investment management services—Definitions.
- 82.04.324 Exemptions—Blood, bone, or tissue bank—Exceptions.
- 82.04.3395 Exemptions—Child care resource and referral services by nonprofit organizations.
- 82.04.365 Exemptions—Bazaar or rummage sales by nonprofit organization.

82.04.030 "Person," "company." "Person" or "company", herein used interchangeably, means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof. [1995 c 318 § 1; 1963 ex.s. c 28 § 1; 1961 c 15 § 82.04.030. Prior: 1955 c 389 § 4; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Effective date—1995 c 318: "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 immediately [May 11, 1995]." [1995 c 318 § 12.]

Effective date—1963 ex.s. c 28: "This act shall take effect on July 1, 1963." [1963 ex.s. c 28 § 17.]

82.04.050 "Sale at retail," "retail sale." (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of

or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding sales of laundry service to members by nonprofit associations composed exclusively of nonprofit hospitals, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then

reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, and others;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events;

(g) Guided tours and guided charters; and

(h) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam

bath services, turkish bath services, escort services, and dating services.

(4) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(7) The term shall also not include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to persons who participate in the federal conservation reserve program or its successor administered by the United States department of agriculture, or to farmers for the purpose of producing for sale any agricultural product, nor shall it include sales of chemical sprays or washes to persons for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay.

(8) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. [1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1. Prior: 1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s. c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1; prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c 279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Intent—1995 1st sp.s. c 12: "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

Effective date—1995 1st sp.s. c 12: "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, 1995." [1995 1st sp.s. c 12 § 5.]

Effective date—1995 c 39: "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, 1995." [1995 c 39 § 3.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Application to preexisting contracts—1975 1st ex.s. c 291; 1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective dates—1975 1st ex.s. c 291: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately: PROVIDED, That sections 8 and 26 through 43 of this amendatory act shall be effective on and after January 1, 1976: PROVIDED FURTHER, That sections 2, 3, and 4, and subsections (1) and (2) of section 24 shall be effective on and after January 1, 1977: AND PROVIDED FURTHER, That subsections (3) through (15) of section 24 shall be effective on and after January 1, 1978." [1975 1st ex.s. c 291 § 46.] Sections not specified took effect July 2, 1975.

Severability—1975 1st ex.s. c 291: "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 291 § 45.]

Effective date—1975 1st ex.s. c 90: "This 1975 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, 1975." [1975 1st ex.s. c 90 § 5.]

Effective date—1973 1st ex.s. c 145: "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, 1973." [1973 1st ex.s. c 145 § 2.]

Effective dates—1971 ex.s. c 299: "This 1971 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 as follows:

(1) Sections 1 through 12, 15 through 34 and 53 shall take effect July 1, 1971;

(2) Sections 13, 14, and 77 and 78 shall take effect June 1, 1971; and

(3) Sections 35 through 52 and 54 through 76 shall take effect as provided in section 53." [1971 ex.s. c 299 § 79.]

Severability—1971 ex.s. c 299: "If any phrase, clause, subsection or section of this 1971 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1971 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1971 ex.s. c 299 § 78.]

Construction—Severability—1969 ex.s. c 255: See notes following RCW 35.58.272.

Effective date—1967 ex.s. c 149: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1967." [1967 ex.s. c 149 § 65.]

Effective date—1965 ex.s. c 173: "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, 1965." [1965 ex.s. c 173 § 33.]

82.04.190 "Consumer." "Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for

the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;

(2) Any person engaged in any business activity taxable under RCW 82.04.290 and any person who purchases, acquires, or uses any telephone service as defined in RCW 82.04.065, other than for resale in the regular course of business;

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

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

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

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or

for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person; and

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed and for labor and services rendered in respect to repairing the machinery and equipment.

Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer." [1995 1st sp.s. c 3 § 4; 1986 c 231 § 2; 1985 c 134 § 1; 1983 2nd ex.s. c 3 § 27; 1975 1st ex.s. c 90 § 2; 1971 ex.s. c 299 § 4; 1969 ex.s. c 255 § 4; 1967 ex.s. c 149 § 6; 1965 ex.s. c 173 § 4; 1961 c 15 § 82.04.190. Prior: 1959 ex.s. c 3 § 3; 1957 c 279 § 2; 1955 c 389 § 20; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Application to preexisting contracts—1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective date—1975 1st ex.s. c 90: See note following RCW 82.04.050.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Construction—Severability—1969 ex.s. c 255: See notes following RCW 35.58.272.

82.04.2201 Temporary business and occupation surtaxes—July 1, 1993, through June 30, 1997. There is levied and shall be collected for the period July 1, 1993, through June 30, 1997, from every person for the act or privilege of engaging in business activities, as a part of the tax imposed under RCW 82.04.220 through 82.04.280 and 82.04.290 (3) and (4), except RCW 82.04.250(1) and 82.04.260(15), an additional tax equal to 4.5 percent multiplied by the tax payable under those sections.

To facilitate collection of these additional taxes, the department of revenue is authorized to adjust the basic rates of persons to which this section applies in such manner as to reflect the amount to the nearest one-thousandth of one percent of the additional tax hereby imposed, adjusting ten-thousandths equal to or greater than five ten-thousandths to the greater thousandth. [1995 c 229 § 2; 1994 sp.s. c 10 § 1; 1993 sp.s. c 25 § 204.]

Effective date—1995 c 229: See note following RCW 82.04.293.

Effective date—1994 sp.s. c 10: "This act shall take effect January 1, 1995." [1994 sp.s. c 10 § 2.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

82.04.260 Tax on buyers, wholesalers, manufacturers, and processors of various foods and by-products—Research and development organizations—Nuclear fuel assemblies—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals. (1) Upon every person engaging within this state in the business of buying wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye and barley, but not including any manufactured or processed products thereof, and selling the same at wholesale; the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.011 percent.

(2) Upon every person engaging within this state in the business of manufacturing wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent.

(3) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of 0.275 percent.

(4) Upon every person engaging within this state in the business of manufacturing seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of manufacturing by canning, preserving, freezing or dehydrating fresh fruits and vegetables; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen or dehydrated multiplied by the rate of 0.33 percent.

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

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

(8) Upon every person engaging within this state in the business of making sales, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of 0.275 percent.

(9) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of 0.275 percent.

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

(11) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.363 percent.

(12) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.363 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

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

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance

with the methods of apportionment required under RCW 82.04.460.

(14) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.55 percent.

(15) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900. [1995 2nd sp.s. c 12 § 1; 1995 2nd sp.s. c 6 § 1; 1993 sp.s. c 25 § 104; 1993 c 492 § 304; 1991 c 272 § 15; 1990 c 21 § 2; 1987 c 139 § 1. Prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Reviser's note: This section was amended by 1995 2nd sp.s. c 6 § 1 and by 1995 2nd sp.s. c 12 § 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).

Effective date—1995 2nd sp.s. c 12: "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, 1995." [1995 2nd sp.s. c 12 § 2.]

Effective date—1995 2nd sp.s. c 6: "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, 1995." [1995 2nd sp.s. c 6 § 2.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1991 c 272: See RCW 81.108.901.

Severability—1985 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." [1985 c 471 § 17.]

Effective date—1985 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, 1985." [1985 c 471 § 18.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Severability—1982 2nd 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." [1982 2nd ex.s. c 13 § 2.]

Effective date—1982 2nd ex.s. c 13: "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 August 1, 1982." [1982 2nd ex.s. c 13 § 3.]

Severability—1982 c 10: See note following RCW 6.13.080.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Effective date—1971 ex.s. c 186: See note following RCW 82.04.110.

Low-level waste disposal rate regulation study: RCW 81.04.520.

82.04.290 Tax on selected business services, financial businesses, or other business or service activities. (1) Upon every person engaging within this state in the business of providing selected business services other than or in addition to those enumerated in RCW 82.04.250 or 82.04.270; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 2.5 percent.

(2) Upon every person engaging within this state in banking, loan, security, investment management, investment advisory, or other financial businesses, other than or in addition to those enumerated in subsection (3) of this section; as to such persons, the amount of the tax with respect to such business shall be equal to the gross income of the business, multiplied by the rate of 1.70 percent.

(3) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(4) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and 82.04.280, and subsections (1), (2), and (3) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 2.0 percent. This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section. [1995 c 229 § 3; 1993 sp.s. c 25 § 203; 1985 c 32 § 3; 1983 2nd ex.s. c 3 § 2; 1983 c 9 § 2; 1983 c 3 § 212; 1971 ex.s. c 281 § 8; 1970 ex.s. c 65 § 4; 1969 ex.s. c 262 § 39; 1967 ex.s. c 149 § 14; 1963 ex.s. c 28 § 2; 1961 c 15 § 82.04.290. Prior: 1959 ex.s. c 5 § 5; 1955 c 389 § 49; prior: 1953 c 195 § 2; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178

§ 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Effective date—1995 c 229: See note following RCW 82.04.293.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—Severability—Effective date—1983 c 9: See notes following RCW 82.04.255.

82.04.293 International investment management services—Definitions. For purposes of RCW 82.04.290(3):

(1) A person is engaged in the business of providing international investment management services, if:

(a) Such person is engaged primarily in the business of providing investment management services; and

(b) At least ten percent of the gross income of such person is derived from providing investment management services to any of the following: (i) Persons or collective investment funds residing outside the United States; or (ii) persons or collective investment funds with at least ten percent of their investments located outside the United States.

(2) "Investment management services" means investment research, investment consulting, portfolio management, fund administration, fund distribution, investment transactions, or related investment services.

(3) "Collective investment fund" includes:

(a) A mutual fund or other regulated investment company, as defined in section 851(a) of the internal revenue code of 1986, as amended;

(b) An "investment company," as that term is used in section 3(a) of the investment company act of 1940, as well as any entity that would be an investment company for this purpose but for the exemptions contained in section 3(c)(1) or (11);

(c) An "employee benefit plan," which includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501(c)(9) and (17) through (23) of the internal revenue code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law;

(d) A fund maintained by a tax-exempt organization, as defined in section 501(c)(3) of the internal revenue code of 1986, as amended, for operating, quasi-endowment, or endowment purposes;

(e) Funds that are established for the benefit of such tax-exempt organizations, such as charitable remainder trusts, charitable lead trusts, charitable annuity trusts, or other similar trusts; or

(f) Collective investment funds similar to those described in (a) through (e) of this subsection created under the laws of a foreign jurisdiction.

(4) Investments are located outside the United States if the underlying assets in which the investment constitutes a beneficial interest reside or are created, issued or held outside the United States. [1995 c 229 § 1.]

Effective date—1995 c 229: "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, 1995." [1995 c 229 § 4.]

82.04.324 Exemptions—Blood, bone, or tissue bank—Exceptions. (1) As used in this section:

(a) "Blood" includes human whole blood, plasma, blood derivatives, and related products.

(b) "Bone" includes human bone, bone marrow, and related products.

(c) "Tissue" includes human musculoskeletal tissue, musculoskeletal tissue derivatives, and related products.

(d) "Blood, bone, or tissue bank" means an organization exempt from federal income tax under section 501(c)(3) of the federal internal revenue code, organized solely for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(e) "Medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a blood, tissue, or bone bank for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(i) Provide preparatory treatment of blood, bone, or tissue;

(ii) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(iii) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(f) "Chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(g) "Materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(h) "Research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(2) This chapter does not apply to amounts received by blood, bone, or tissue banks, to the extent the amounts are exempt from federal income tax. [1995 2nd sp.s. c 9 § 3.]

Effective date—1995 2nd sp.s. c 9: See note following RCW 84.36.035.

82.04.3395 Exemptions—Child care resource and referral services by nonprofit organizations. This chapter does not apply to nonprofit organizations in respect to amounts derived from the provision of child care resource and referral services. [1995 2nd sp.s. c 11 § 3.]

Effective date—1995 2nd sp.s. c 11: See note following RCW 82.04.365.

82.04.365 Exemptions—Bazaar or rummage sales by nonprofit organization. (1) This chapter does not apply to the first twenty thousand dollars received in a calendar year by a nonprofit organization as a result of conducting or participating in a bazaar or rummage sale if:

(a) The organization does not conduct or participate in more than two bazaars or rummage sales per year; and

(b) Each bazaar or rummage sale does not extend over a period of more than two days.

(2) For purposes of this section, "nonprofit organization" means an organization that meets all of the following criteria:

(a) The members, stockholders, officers, directors, or trustees of the organization do not receive any part of the organization's gross income, except as payment for services rendered;

(b) The compensation received by any person for services rendered to the organization does not exceed an amount reasonable under the circumstances; and

(c) The activities of the organization do not include a substantial amount of political activity, including but not limited to influencing legislation and participation in any campaign on behalf of any candidate for political office. [1995 2nd sp.s. c 11 § 1; 1979 ex.s. c 196 § 7.]

Effective date—1995 2nd sp.s. c 11: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 11 § 4.]

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Chapter 82.08 RETAIL SALES TAX

Sections	
82.08.02535	Exemptions—Sales and distribution of magazines or periodicals by subscription for fund-raising.
82.08.02565	Exemptions—Sales of manufacturing machinery and equipment—Labor and services for installation—Exemption certificate—Rules.
82.08.02572	Exemptions—Bazaar or rummage sales by nonprofit organization.
82.08.0263	Exemptions—Sales of motor vehicles and trailers for use in transporting persons or property in interstate or foreign commerce.
82.08.02805	Exemptions—Sales to blood, bone, or tissue bank—Exceptions.
82.08.0287	Exemptions—Sales of passenger motor vehicles as ride-sharing vehicles.
82.08.02915	Exemptions—Sales used by health or social welfare organizations for alternative housing for youth in crisis—Expiration of section.
82.08.02917	Youth in crisis—Definition—Limited purpose.
82.08.0315	Exemptions—Rentals or sales related to motion picture or video productions—Exceptions.

82.08.02535 Exemptions—Sales and distribution of magazines or periodicals by subscription for fund-raising. The tax levied by RCW 82.08.020 shall not apply to the sales and distribution of magazines or periodicals by subscription for the purposes of fund-raising by (1) educational institutions as defined in RCW 82.04.170, or (2) nonprofit organizations engaged in activities primarily for the benefit of boys and girls nineteen years and younger. [1995 2nd sp.s. c 8 § 1.]

Effective date—1995 2nd 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, 1995." [1995 2nd sp.s. c 8 § 2.]

82.08.02565 Exemptions—Sales of manufacturing machinery and equipment—Labor and services for installation—Exemption certificate—Rules. (1) The tax levied by RCW 82.08.020 shall not apply to sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation, or to sales of or charges made for labor and services rendered in respect to installing the machinery and equipment, but only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department by rule, and the purchaser provides the department with a duplicate of the certificate or a summary of exempt sales as the department may require. The seller shall retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02565:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation.

(b) "Machinery and equipment" does not include:

- (i) Hand tools;
- (ii) Property with a useful life of less than one year;
- (iii) Repair parts required to restore machinery and equipment to normal working order;

(iv) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and equipment; or

(v) Building fixtures that are not integral to the manufacturing operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) Machinery and equipment is "used directly" in a manufacturing operation if the machinery and equipment:

(i) Acts upon or interacts with an item of tangible personal property;

(ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site;

(iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property;

(iv) Provides physical support for or access to tangible personal property;

(v) Produces power for, or lubricates machinery and equipment;

(vi) Produces another item of tangible personal property for use in the manufacturing operation; or

(vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported.

(d) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. The manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the finished product leaves

the manufacturing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include research and development, the production of electricity by a light and power business as defined in RCW 82.16.010, or the preparation of food products on the premises of a person selling food products at retail.

(e) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel. [1995 1st sp.s. c 3 § 2.]

Findings—1995 1st sp.s. c 3: "The legislature finds and declares that:

(1) The health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in our state's private sector;

(2) The state's private sector must be encouraged to commit to continuous improvement of process, products, and services and to deliver high-quality, high-value products through technological innovations and high-performance work organizations;

(3) The state's opportunities for increased economic dealings with other states and nations of the world are dependent on supporting and attracting a diverse, stable, and competitive economic base of private sector employers;

(4) The state's current policy of applying its sales and use taxes to machinery, equipment, and installation labor used in manufacturing, research and development, and other activities has placed our state's private sector at a competitive disadvantage with other states and serves as a significant disincentive to the continuous improvement of products, technology, and modernization necessary for the preservation, stabilization, and expansion of employment and to ensure a stable economy; and

(5) It is vital to the continued development of economic opportunity in this state, including the development of new businesses and the expansion or modernization of existing businesses, that the state of Washington provide tax incentives to entities making a commitment to sites and operations in this state." [1995 1st sp.s. c 3 § 1.]

Effective date—1995 1st sp.s. c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 3 § 16.]

82.08.02572 Exemptions—Bazaar or rummage sales by nonprofit organization. The tax levied by RCW 82.08.020 does not apply to sales made by a nonprofit organization if the gross income from the sales is exempt under RCW 82.04.365. [1995 2nd sp.s. c 11 § 2.]

Effective date—1995 2nd sp.s. c 11: See note following RCW 82.04.365.

82.08.0263 Exemptions—Sales of motor vehicles and trailers for use in transporting persons or property in interstate or foreign commerce. The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicles and trailers to be used for the purpose of transporting therein persons or property for hire in interstate or foreign commerce whether such use is by the owner or whether such motor vehicles and trailers are leased to the user with or without drivers: PROVIDED, That the purchaser or user must be the holder of a carrier permit issued by the Interstate Commerce Commission. [1995 c 63 § 1; 1980 c 37 § 30. Formerly RCW 82.08.030(12).]

Effective date—1995 c 63: "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, 1995." [1995 c 63 § 3.]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.02805 Exemptions—Sales to blood, bone, or tissue bank—Exceptions. The tax levied by RCW 82.08.020 does not apply to the sale of medical supplies, chemicals, or materials to a blood, bone, or tissue bank. The definitions in RCW 82.04.324 apply to this section. The exemption in this section does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles. [1995 2nd sp.s. c 9 § 4.]

Effective date—1995 2nd sp.s. c 9: See note following RCW 84.36.035.

82.08.0287 Exemptions—Sales of passenger motor vehicles as ride-sharing vehicles. The tax imposed by this chapter shall not apply to sales of passenger motor vehicles which are to be used as ride-sharing vehicles, as defined in RCW 46.74.010(3), by not less than five persons, including the driver, with a gross vehicle weight not to exceed 10,000 pounds where the primary usage is for commuter ride-sharing, as defined in RCW 46.74.010(1), or by not less than four persons including the driver when at least two of those persons are confined to wheelchairs when riding, or passenger motor vehicles where the primary usage is for ride-sharing for the elderly and the handicapped, as defined in RCW 46.74.010(2), if the ride-sharing vehicles are exempt under RCW 82.44.015 for thirty-six consecutive months beginning within thirty days of application for exemption under this section. If used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner of one of these vehicles shall notify the department of revenue upon termination of primary use of the vehicle as a ride-sharing vehicle and is liable for the tax imposed by this chapter.

To qualify for the tax exemption, those passenger motor vehicles with five or six passengers, including the driver, used for commuter ride-sharing, must be operated either within the state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70.94 RCW or in other counties, or cities and towns within those counties, that elect to adopt and implement a commute trip reduction plan. Additionally at least one of the following conditions must apply: (1) The vehicle must be operated by a public transportation agency for the general public; or (2) the vehicle must be used by a major employer, as defined in RCW 70.94.524 as an element of its commute trip reduction program for their employees; or (3) the vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commuter ride-sharing arrangement conforms to a carpool/vanpool element contained within their commute trip reduction program. [1995 c 274 § 2; 1993 c 488 § 2; 1980 c 166 § 1.]

Finding—1993 c 488: "The legislature finds that ride sharing and vanpools are the fastest growing transportation choice because of their flexibility and cost-effectiveness. Ride sharing and vanpools represent an effective means for local jurisdictions, transit agencies, and the private

sector to assist in addressing the requirements of the Commute Trip Reduction Act, the Growth Management Act, the Americans with Disabilities Act, and the Clean Air Act." [1993 c 488 § 1.]

Annual recertification rule—Report—1993 c 488: "The department shall adopt by rule a process requiring annual recertification upon renewal for vehicles registered under RCW 46.16.023 to discourage abuse of tax exemptions under RCW 82.08.0287, 82.12.0282, and 82.44.015. The department of licensing in consultation with the department of transportation shall submit a report to the legislative transportation committee and the house and senate standing committees on transportation by July 1, 1996, assessing the effectiveness of the department of licensing at limiting tax exemptions to bona fide ride-sharing vehicles." [1993 c 488 § 6.]

Severability—1980 c 166: "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 166 § 4.]

Ride-sharing vehicles—Special plates: RCW 46.16.023.

82.08.02915 Exemptions—Sales used by health or social welfare organizations for alternative housing for youth in crisis—Expiration of section. The tax levied by RCW 82.08.020 shall not apply to sales to health or social welfare organizations, as defined in RCW 82.04.431, of items necessary for new construction of alternative housing for youth in crisis, so long as the facility will be a licensed agency under chapter 74.15 RCW, upon completion. This section shall expire July 1, 1997. [1995 c 346 § 1.]

Effective date—1995 c 346: "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 immediately [May 13, 1995]." [1995 c 346 § 4.]

82.08.02917 Youth in crisis—Definition—Limited purpose. For the purposes of RCW 82.08.02915 and 82.12.02915, "youth in crisis" means any youth under eighteen years of age who is either: Homeless; a runaway from the home of a parent, guardian, or legal custodian; abused; neglected; abandoned by a parent, guardian, or legal custodian; or suffering from a substance abuse or mental disorder. [1995 c 346 § 3.]

Effective date—1995 c 346: See note following RCW 82.08.02915.

82.08.0315 Exemptions—Rentals or sales related to motion picture or video productions—Exceptions. (1) As used in this section:

(a) "Production equipment" means the following when used in motion picture or video production or post-production: Grip and lighting equipment, cameras, camera mounts including tripods, jib arms, steadicams, and other camera mounts, cranes, dollies, generators, helicopter mounts, helicopters rented for motion picture or video production, walkie talkies, vans and trucks specifically equipped for motion picture or video production, wardrobe and makeup trailers, special effects and stunt equipment, video assists, videotape recorders, cables and connectors, telepromoters, sound recording equipment, and editorial equipment.

(b) "Production services" means motion picture and video processing, printing, editing, duplicating, animation, graphics, special effects, negative cutting, conversions to other formats or media, stock footage, sound mixing, rerecording, sound sweetening, sound looping, sound effects, and automatic dialog replacement.

(c) "Motion picture or video production business" means a person engaged in the production of motion pictures and video tapes for exhibition, sale, or for broadcast by a person other than the person producing the motion picture or video tape.

(2) The tax levied by RCW 82.08.020 does not apply to the rental of production equipment, or the sale of production services, to a motion picture or video production business.

(3) The exemption provided for in this section shall not apply to rental of production equipment, or the sale of production services, to a motion picture or video production business that is engaged, to any degree, in the production of erotic material, as defined in RCW 9.68.050. [1995 2nd sp.s. c 5 § 1.]

Effective date—1995 2nd sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 5 § 3.]

Chapter 82.12 USE TAX

Sections

82.12.0254	Exemptions—Use of airplanes, locomotives, railroad cars, or watercraft used in interstate or foreign commerce or outside state's territorial waters—Components—Use of motor vehicle or trailer in the transportation of persons or property across state boundaries—Conditions—Use of motor vehicle or trailer under one-transit permit to point outside state.
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82.12.0254 Exemptions—Use of airplanes, locomotives, railroad cars, or watercraft used in interstate or foreign commerce or outside state's territorial waters—Components—Use of motor vehicle or trailer in the transportation of persons or property across state boundaries—Conditions—Use of motor vehicle or trailer under one-transit permit to point outside state. The provisions of this chapter shall not apply in respect to the use of any airplane, locomotive, railroad car, or watercraft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state, and in respect to use of tangible personal property which becomes a component part of any such airplane, locomotive, railroad car, or watercraft, and in respect to the use by a nonresident of this state of any motor vehicle or trailer used exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when

such motor vehicle or trailer is registered and licensed in a foreign state and in respect to the use by a nonresident of this state of any motor vehicle or trailer so registered and licensed and used within this state for a period not exceeding fifteen consecutive days under such rules as the department of revenue shall adopt: PROVIDED, That under circumstances determined to be justifiable by the department of revenue a second fifteen day period may be authorized consecutive with the first fifteen day period; and for the purposes of this exemption the term "nonresident" as used herein, shall include a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state; and in respect to the use by the holder of a carrier permit issued by the Interstate Commerce Commission of any motor vehicle or trailer whether owned by or leased with or without driver to the permit holder and used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of this state; and in respect to the use of any motor vehicle or trailer while being operated under the authority of a one-transit permit issued by the director of licensing pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery in this state to a point outside this state; and in respect to the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state whether such motor vehicle or trailer is owned by or leased with or without driver to the permit holder. [1995 c 63 § 2; 1980 c 37 § 54. Formerly RCW 82.12.030(4).]

Effective date—1995 c 63: See note following RCW 82.08.0263.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.02545 Exemption—Use of naval aircraft training equipment transferred due to base closure. The provisions of this chapter shall not apply in respect to the use of naval aircraft training equipment transferred to Washington state from another naval installation in another state as a result of the base closure act, P.L. 101-510, as amended by P.L. 102-311, 102-484, 103-160, 103-337, and 103-421. [1995 c 128 § 1.]

Effective date—1995 c 128: "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 immediately [April 20, 1995]." [1995 c 128 § 2.]

82.12.02565 Exemptions—Use of manufacturing machinery and equipment—Exemption certificate prescribed by department—Annual summary. The provisions of this chapter shall not apply in respect to the use by a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation, but only when the user provides the department with:

(1) An exemption certificate in a form and manner prescribed by the department within sixty days of the first use of the machinery and equipment in this state; or

(2) An annual summary listing the machinery and equipment by January 31 of the year following the calendar year in which the machinery and equipment is first used in this state. [1995 1st sp.s. c 3 § 3.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

82.12.02595 Exemption—Use of donated tangible personal property by nonprofit organization or governmental entity. This chapter shall not apply to the use by a nonprofit charitable organization or state or local governmental entity of any item of tangible personal property that has been donated to the nonprofit charitable organization or state or local governmental entity. [1995 c 201 § 1.]

Effective date—1995 c 201: "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 immediately [May 1, 1995]." [1995 c 201 § 2.]

82.12.02747 Exemptions—Use by blood, bone, or tissue bank—Exceptions. The provisions of this chapter do not apply in respect to the use of medical supplies, chemicals, or materials by a blood, bone, or tissue bank. The definitions in RCW 82.04.324 apply to this section. The exemption in this section does not apply to the use of construction materials, office equipment, building equipment, administrative supplies, or vehicles. [1995 2nd sp.s. c 9 § 5.]

Effective date—1995 2nd sp.s. c 9: See note following RCW 84.36.035.

82.12.02915 Exemptions—Use of items by health or social welfare organizations for alternative housing for youth in crisis—Expiration of section. The provisions of this chapter shall not apply in respect to the use of any item acquired by a health or social welfare organization, as defined in RCW 82.04.431, of items necessary for new construction of alternative housing for youth in crisis, so long as the facility will be a licensed agency under chapter 74.15 RCW, upon completion. This section shall expire July 1, 1997. [1995 c 346 § 2.]

Effective date—1995 c 346: See note following RCW 82.08.02915.
Youth in crisis—Definition—Limited purpose: RCW 82.08.02917.

82.12.0315 Exemptions—Rental or sales related to motion picture or video productions—Exceptions. (1) The provisions of this chapter shall not apply in respect to the use of:

(a) Production equipment rented to a motion picture or video production business;

(b) Production equipment acquired and used by a motion picture or video production business in another state, if the acquisition and use occurred more than ninety days before the time the motion picture or video production business entered this state.

(2) As used in this section, "production equipment" and "motion picture or video production business" have the meanings given in RCW 82.08.0315.

(3) The exemption provided for in this section shall not apply to the use of production equipment rented to, or production equipment acquired and used by, a motion picture

or video production business that is engaged, to any degree, in the production of erotic material, as defined in RCW 9.68.050. [1995 2nd sp.s. c 5 § 2.]

Effective date—1995 2nd sp.s. c 5: See note following RCW 82.08.0315.

Chapter 82.14

LOCAL RETAIL SALES AND USE TAXES

Sections

- 82.14.048 Sales and use taxes for public facilities districts.
- 82.14.300 Local government criminal justice assistance—Finding.
- 82.14.310 County criminal justice assistance account—Distributions based on crime rate and population.
- 82.14.320 Municipal criminal justice assistance account—Distributions criteria and formula.
- 82.14.330 Municipal criminal justice assistance account—Distributions based on crime rate, population, and innovation.
- 82.14.335 Grant criteria for distributions under RCW 82.14.330(2).
- 82.14.340 Additional sales and use tax for criminal justice purposes—Referendum—Expenditures.
- 82.14.350 Sales and use tax for juvenile detention facilities and jails—Colocation.
- 82.14.360 Special stadium sales and use tax.

82.14.048 Sales and use taxes for public facilities districts. The governing board of a public facilities district under chapter 36.100 RCW may submit an authorizing proposition to the voters of the district, and if the proposition is approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter.

The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax shall equal one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

Moneys received from any tax imposed under this section shall be used for the purpose of providing funds for the costs associated with the financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, and reequipping of its public facilities. [1995 c 396 § 6; 1991 c 207 § 1.]

Severability—1995 c 396: See note following RCW 36.100.010.

82.14.300 Local government criminal justice assistance—Finding. The legislature finds and declares that local government criminal justice systems are in need of assistance. Many counties and cities are unable to provide sufficient funding for additional police protection, mitigation of congested court systems, public safety education, and relief of overcrowded jails.

In order to ensure public safety, it is necessary to provide fiscal assistance to help local governments to respond immediately to these criminal justice problems, while initiating a review of the criminal justice needs of cities and counties and the resources available to address those needs.

To provide for a more efficient and effective response to these problems, the legislature encourages cities and

counties to coordinate strategies against crime and use multijurisdictional and innovative approaches in addressing criminal justice problems. [1995 c 312 § 83; 1990 2nd ex.s. c 1 § 1.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Severability—1990 2nd ex.s. c 1: "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 2nd ex.s. c 1 § 1104.]

82.14.310 County criminal justice assistance account—Distributions based on crime rate and population. (1) The county criminal justice assistance account is created in the state treasury.

(2) The moneys deposited in the county criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under RCW 82.44.110, shall be distributed at such times as distributions are made under RCW 82.44.150 and on the relative basis of each county's funding factor as determined under this subsection.

(a) A county's funding factor is the sum of:

(i) The population of the county, divided by one thousand, and multiplied by two-tenths;

(ii) The crime rate of the county, multiplied by three-tenths; and

(iii) The annual number of criminal cases filed in the county superior court, for each one thousand in population, multiplied by five-tenths.

(b) Under this section and RCW 82.14.320 and 82.14.330:

(i) The population of the county or city shall be as last determined by the office of financial management;

(ii) The crime rate of the county or city is the annual occurrence of specified criminal offenses, as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs, for each one thousand in population;

(iii) The annual number of criminal cases filed in the county superior court shall be determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts;

(iv) Distributions and eligibility for distributions in the 1989-91 biennium shall be based on 1988 figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection. Future distributions shall be based on the most recent figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection.

(3) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes.

Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures. [1995 c 398 § 11; 1993 sp.s. c 21 § 1; 1991 c 311 § 1; 1990 2nd ex.s. c 1 § 102.]

Effective dates—1993 sp.s. c 21: "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, 1993, except for section 4 of this act, which shall take effect immediately [May 28, 1993], and sections 1 through 3, 5, and 7 of this act, which shall take effect January 1, 1994." [1993 sp.s. c 21 § 10.]

Severability—1991 c 311: "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 311 § 8.]

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

82.14.320 Municipal criminal justice assistance account—Distributions criteria and formula. (1) The municipal criminal justice assistance account is created in the state treasury.

(2) No city may receive a distribution under this section from the municipal criminal justice assistance account unless:

(a) The city has a crime rate in excess of one hundred twenty-five percent of the state-wide average as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs;

(b) The city has levied the tax authorized in RCW 82.14.030(2) at the maximum rate or the tax authorized in RCW 82.46.010(3) at the maximum rate; and

(c) The city has a per capita yield from the tax imposed under RCW 82.14.030(1) at the maximum rate of less than one hundred fifty percent of the state-wide average per capita yield for all cities from such local sales and use tax.

(3) The moneys deposited in the municipal criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under RCW 82.44.110, shall be distributed at such times as distributions are made under RCW 82.44.150. The distributions shall be made as follows:

(a) Unless reduced by this subsection, thirty percent of the moneys shall be distributed ratably based on population as last determined by the office of financial management to those cities eligible under subsection (2) of this section that have a crime rate determined under subsection (2)(a) of this section which is greater than one hundred seventy-five percent of the state-wide average crime rate. No city may receive more than fifty percent of any moneys distributed under this subsection (a) but, if a city distribution is reduced as a result of exceeding the fifty percent limitation, the amount not distributed shall be distributed under (b) of this subsection.

(b) The remainder of the moneys, including any moneys not distributed in subsection (2)(a) of this section, shall be distributed to all cities eligible under subsection (2) of this

section ratably based on population as last determined by the office of financial management.

(4) No city may receive more than thirty percent of all moneys distributed under subsection (3) of this section.

(5) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), shall be made to the county in which the city is located.

(6) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and publications and public educational efforts designed to provide information and assistance to parents in dealing with runaway or at-risk youth. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures. [1995 c 398 § 12; 1995 c 312 § 84; 1993 sp.s. c 21 § 2; 1992 c 55 § 1. Prior: 1991 sp.s. c 26 § 1; 1991 sp.s. c 13 § 30; 1990 2nd ex.s. c 1 § 104.]

Reviser's note: This section was amended by 1995 c 312 § 84 and by 1995 c 398 § 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).

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective dates—1993 sp.s. c 21: See note following RCW 82.14.310.

Severability—1992 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." [1992 c 55 § 2.]

Retroactive application—1991 sp.s. c 26: "The changes contained in section 1, chapter 26, Laws of 1991 sp. sess. are remedial, curative, and clarify ambiguities in prior existing law. These changes shall apply retroactively to July 1, 1990." [1991 sp.s. c 26 § 3.]

Severability—1991 sp.s. c 26: "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 26 § 4.]

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

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

82.14.330 Municipal criminal justice assistance account—Distributions based on crime rate, population, and innovation. (1) The moneys deposited in the municipal criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under

RCW 82.44.110, shall be distributed to the cities of the state as follows:

(a) Twenty percent appropriated for distribution shall be distributed to cities with a three-year average violent crime rate for each one thousand in population in excess of one hundred fifty percent of the state-wide three-year average violent crime rate for each one thousand in population. The three-year average violent crime rate shall be calculated using the violent crime rates for each of the preceding three years from the annual reports on crime in Washington state as published by the Washington association of sheriffs and police chiefs. Moneys shall be distributed under this subsection (1)(a) ratably based on population as last determined by the office of financial management, but no city may receive more than one dollar per capita. Moneys remaining undistributed under this subsection at the end of each calendar year shall be distributed to the criminal justice training commission to reimburse participating city law enforcement agencies with ten or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training, as provided in RCW 43.101.200.

(b) Sixteen percent shall be distributed to cities ratably based on population as last determined by the office of financial management, but no city may receive less than one thousand dollars.

The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection shall be distributed at such times as distributions are made under RCW 82.44.150.

Moneys distributed under this subsection shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(2) In addition to the distributions under subsection (1) of this section:

(a) Fourteen percent shall be distributed to cities that have initiated innovative law enforcement strategies, including alternative sentencing and crime prevention programs. No city may receive more than one dollar per capita under this subsection (2)(a).

(b) Twenty percent shall be distributed to cities that have initiated programs to help at-risk children or child abuse victim response programs. No city may receive more than fifty cents per capita under this subsection (2)(b).

(c) Twenty percent shall be distributed to cities that have initiated programs designed to reduce the level of

domestic violence within their jurisdictions or to provide counseling for domestic violence victims. No city may receive more than fifty cents per capita under this subsection (2)(c).

(d) Ten percent shall be distributed to cities that contract with another governmental agency for a majority of the city's law enforcement services.

Moneys distributed under this subsection shall be distributed to those cities that submit funding requests under this subsection to the department of community, trade, and economic development based on criteria developed under RCW 82.14.335. Allocation of funds shall be in proportion to the population of qualified jurisdictions, but the distribution to a city shall not exceed the amount of funds requested. Cities shall submit requests for program funding to the department of community, trade, and economic development by November 1 of each year for funding the following year. The department shall certify to the state treasurer the cities eligible for funding under this subsection and the amount of each allocation.

The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection, less any moneys appropriated for purposes under RCW 82.44.110, shall be distributed at the times as distributions are made under RCW 82.44.150. Moneys remaining undistributed under this subsection at the end of each calendar year shall be distributed to the criminal justice training commission to reimburse participating city law enforcement agencies with ten or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training, as provided in RCW 43.101.200.

If a city is found by the state auditor to have expended funds received under this subsection in a manner that does not comply with the criteria under which the moneys were received, the city shall be ineligible to receive future distributions under this subsection until the use of the moneys are justified to the satisfaction of the director or are repaid to the state general fund. The director may allow noncomplying use of moneys received under this subsection upon a showing of hardship or other emergent need.

(3) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), shall be made to the county in which the city is located. [1995 c 398 § 13; 1994 c 273 § 22; 1993 sp.s. c 21 § 3; 1991 c 311 § 4; 1990 2nd ex.s. c 1 § 105.]

Effective date—1994 c 273 § 22: "Section 22 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 273 § 24.]

Effective dates—1993 sp.s. c 21: See note following RCW 82.14.310.

Retroactive application—1991 c 311: "The changes contained in sections 2, 3, 4, and 5 of this act are remedial, curative, and clarify ambiguities in prior existing law. These changes shall apply retroactively to July 1, 1990." [1991 c 311 § 6.]

Severability—1991 c 311: See note following RCW 82.14.310.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

82.14.335 Grant criteria for distributions under RCW 82.14.330(2). The department of community, trade, and economic development shall adopt criteria to be used in making grants to cities under RCW 82.14.330(2). In developing the criteria, the department shall create a temporary advisory committee consisting of the director of community, trade, and economic development, two representatives nominated by the association of Washington cities, and two representatives nominated by the Washington association of sheriffs and police chiefs. [1995 c 399 § 213; 1993 sp.s. c 21 § 4.]

Effective dates—1993 sp.s. c 21: See note following RCW 82.14.310.

82.14.340 Additional sales and use tax for criminal justice purposes—Referendum—Expenditures. The legislative authority of any county may fix and impose a sales and use tax in accordance with the terms of this chapter, provided that such sales and use tax is subject to repeal by referendum, using the procedures provided in RCW 82.14.036. The referendum procedure provided in RCW 82.14.036 is the exclusive method for subjecting any county sales and use tax ordinance or resolution to a referendum vote.

The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within such county. The rate of tax shall equal one-tenth of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax).

When distributing moneys collected under this section, the state treasurer shall distribute ten percent of the moneys to the county in which the tax was collected. The remainder of the moneys collected under this section shall be distributed to the county and the cities within the county ratably based on population as last determined by the office of financial management. In making the distribution based on population, the county shall receive that proportion that the unincorporated population of the county bears to the total population of the county and each city shall receive that proportion that the city incorporated population bears to the total county population.

Moneys received from any tax imposed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes

in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

In the expenditure of funds for criminal justice purposes as provided in this section, cities and counties, or any combination thereof, are expressly authorized to participate in agreements, pursuant to chapter 39.34 RCW, to jointly expend funds for criminal justice purposes of mutual benefit. Such criminal justice purposes of mutual benefit include, but are not limited to, the construction, improvement, and expansion of jails, court facilities, and juvenile justice facilities. [1995 c 309 § 1; 1993 sp.s. c 21 § 6. Prior: 1991 c 311 § 5; 1991 c 301 § 16; 1990 2nd ex.s. c 1 § 901.]

Effective dates—1993 sp.s. c 21: See note following RCW 82.14.310.

Severability—1991 c 311: See note following RCW 82.14.310.

Retroactive application—1991 c 311: See note following RCW 82.14.330.

Finding—1991 c 301: See note following RCW 10.99.020.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Sales and use tax for high capacity transportation service limited by imposition of tax under RCW 82.14.340: RCW 81.104.170.

82.14.350 Sales and use tax for juvenile detention facilities and jails—Colocation. (1) A county legislative authority in a county with a population of less than one million may submit an authorizing proposition to the county voters, and if the proposition is approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter for the purposes designated in subsection (3) of this section.

(2) The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall equal one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(3) Moneys received from any tax imposed under this section shall be used solely for the purpose of providing funds for costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of juvenile detention facilities and jails.

(4) Counties are authorized to develop joint ventures to colocate juvenile detention facilities and to colocate jails. [1995 2nd sp.s. c 10 § 1.]

82.14.360 Special stadium sales and use tax. (1) The legislative authority of a county with a population of one million or more operating under a county charter may impose a special stadium sales and use tax by resolution adopted on or before December 31, 1995, for collection following its approval by a majority of the voters in the county at a general or special election.

(2) The rate of the tax shall equal one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used in the case of a use tax. The tax

imposed under this section shall not be credited against any other tax imposed upon the same taxable event.

(3) The revenue from the tax imposed under this section shall be used for the purpose of principal and interest payments on bonds issued by a public facilities district, created within the county under chapter 36.100 RCW, to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a baseball stadium with a retractable roof or canopy and natural turf. If the revenue from the tax imposed under this section exceeds the amount needed for such principal and interest payments in any year, the excess shall be used solely for either or both: (a) Early retirement of the bonds issued for the baseball stadium; or (b) retirement of bonds issued for expanding, remodeling, repairing, or reequipping of a multipurpose stadium that has a seating capacity over forty-five thousand.

(4) The tax authorized under this section may be collected only after the county executive has certified to the department of revenue that a professional major league baseball team has made a binding and legally enforceable contractual commitment to:

(a) Play at least ninety percent of its home games in the stadium for a period of time not shorter than the term of the bonds issued to finance the initial construction of the stadium;

(b) Contribute principal of forty-five million dollars toward the bonded cost of construction of the stadium, which contribution shall be made during a term not to exceed the term of the bonds issued to finance the initial construction of the stadium. If all or part of the contribution is made after the date of issuance of the bonds, the team shall contribute an additional amount equal to the accruing interest on the deferred portion of the contribution, calculated at the interest rate on the bonds maturing in the year in which the deferred contribution is made; and

(c) Share a portion of the profits generated by the baseball team from the operation of the professional franchise for a period of time equal to the term of the bonds issued to finance the initial construction of the stadium, after offsetting any losses incurred by the baseball team after *the effective date of chapter 14, Laws of 1995 1st sp. sess. Such profits and the portion to be shared shall be defined by agreement between the public facilities district and the baseball team. The shared profits shall be used to retire the bonds issued to finance the initial construction of the stadium. If the bonds are retired before the expiration of their term, the shared profits shall be paid to the public facilities district.

(5) The tax imposed under this section shall expire when the bonds issued for the construction of the new public facilities are retired, but not later than twenty years after the tax is first collected. [1995 1st sp.s. c 14 § 7.]

***Reviser's note:** 1995 1st sp.s. c 14 had two effective dates. Sections 1 through 9 and 11 took effect July 1, 1995, and sections 10 and 12 took effect June 14, 1995.

Severability—Effective dates—1995 1st sp.s. c 14: See notes following RCW 36.100.010.

Chapter 82.23B
OIL SPILL RESPONSE TAX

Sections

82.23B.020 Oil spill response tax—Oil spill administration tax—
Study of tax credits.

82.23B.020 Oil spill response tax—Oil spill administration tax—Study of tax credits. (1) An oil spill response tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of two cents per barrel of crude oil or petroleum product received.

(2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of three cents per barrel of crude oil or petroleum product.

(3) The taxes imposed by this chapter shall be collected by the marine terminal operator from the taxpayer. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the imposition of the taxes, or having collected the taxes, fails to pay them to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she shall, nevertheless, be personally liable to the state for the amount of the taxes. Payment of the taxes by the owner to a marine terminal operator shall relieve the owner from further liability for the taxes.

(4) Taxes collected under this chapter shall be held in trust until paid to the department. Any person collecting the taxes who appropriates or converts the taxes collected shall be guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. The taxes required by this chapter to be collected shall be stated separately from other charges made by the marine terminal operator in any invoice or other statement of account provided to the taxpayer.

(5) If a taxpayer fails to pay the taxes imposed by this chapter to the person charged with collection of the taxes and the person charged with collection fails to pay the taxes to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the taxes.

(6) The taxes shall be due from the marine terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the taxable activity occurs.

(7) The amount of taxes, until paid by the taxpayer to the marine terminal operator or to the department, shall

constitute a debt from the taxpayer to the marine terminal operator. Any person required to collect the taxes under this chapter who, with intent to violate the provisions of this chapter, fails or refuses to do so as required and any taxpayer who refuses to pay any taxes due under this chapter, shall be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

(8) Upon prior approval of the department, the taxpayer may pay the taxes imposed by this chapter directly to the department. The department shall give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the administration of the taxes imposed under this chapter. The department shall provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator shall relieve the marine terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.

(9) All receipts from the tax imposed in subsection (1) of this section shall be deposited into the state oil spill response account. All receipts from the tax imposed in subsection (2) of this section shall be deposited into the oil spill administration account.

(10) Within forty-five days after the end of each calendar quarter, the office of financial management shall determine the balance of the oil spill response account as of the last day of that calendar quarter. Balance determinations by the office of financial management under this section are final and shall not be used to challenge the validity of any tax imposed under this chapter. The office of financial management shall promptly notify the departments of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:

(a) Tax was imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than twenty-five million dollars; or

(b) Tax was not imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than fifteen million dollars.

(11) The office of marine safety, the department of revenue, and the department of community, trade, and economic development shall study tax credits for taxpayers employing vessels with the best achievable technology and the best available protection to reduce the risk of oil spills to the navigable waters of the state and submit the study to the appropriate standing committees of the legislature by December 1, 1992. [1995 c 399 § 214; 1992 c 73 § 7; 1991 c 200 § 802.]

Severability—1992 c 73: See RCW 90.56.905.

Chapter 82.24
TAX ON CIGARETTES

Sections

82.24.010 Definitions.
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82.24.250	Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.
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82.24.270	Cigarettes given away—Stamp not required—Payment of tax—Interest—Payment of amount less than due—Penalties—Administration.
82.24.280	Liability from tax increase—Interest and penalties on unpaid tax or penalty—Administration.
82.24.290	Exceptions—Federal instrumentalities and purchasers from federal instrumentalities.

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

(1) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(2) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian wholesaler or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country. For purposes of this chapter "Indian country" is defined in the manner set forth in 18 U.S.C. Sec. 1151.

(3) "Precollection obligation" means the obligation of a seller otherwise exempt from the tax imposed by this chapter to collect the tax from that seller's buyer.

(4) "Retailer" means every person, other than a wholesaler, who purchases, sells, offers for sale or distributes any one or more of the articles taxed herein, irrespective of quantity or amount, or the number of sales, and all persons operating under a retailer's registration certificate.

(5) "Retail selling price" means the ordinary, customary or usual price paid by the consumer for each package of cigarettes, less the tax levied by this chapter and less any similar tax levied by this state.

(6) "Stamp" means the stamp or stamps by use of which the tax levy under this chapter is paid or identification is made of those cigarettes with respect to which no tax is imposed.

(7) "Wholesaler" means every person who purchases, sells, or distributes any one or more of the articles taxed herein to retailers for the purpose of resale only.

(8) The meaning attributed, in chapter 82.04 RCW, to the words "person," "sale," "business" and "successor" applies equally in this chapter. [1995 c 278 § 1; 1961 c 15 § 82.24.010. Prior: 1959 c 270 § 9; 1949 c 228 § 14; 1935 c 180 § 83; Rem. Supp. 1949 § 8370-83.]

Effective date—1995 c 278: "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, 1995." [1995 c 278 § 17.]

82.24.030 Stamps. (1) In order to enforce collection of the tax hereby levied, the department of revenue shall design and have printed stamps of such size and denominations as may be determined by the department. The stamps must be affixed on the smallest container or package that will be handled, sold, used, consumed, or distributed, to permit the department to readily ascertain by inspection, whether or not such tax has been paid or whether an exemption from the tax applies.

(2) Except as otherwise provided in this chapter, every person shall cause to be affixed on every package of cigarettes, stamps of an amount equaling the tax due thereon or stamps identifying the cigarettes as exempt before he or she sells, offers for sale, uses, consumes, handles, removes, or otherwise disturbs and distributes the same: PROVIDED, That where it is established to the satisfaction of the department that it is impractical to affix such stamps to the smallest container or package, the department may authorize the affixing of stamps of appropriate denomination to a large container or package. [1995 c 278 § 2; 1990 c 216 § 1; 1975 1st ex.s. c 278 § 61; 1961 c 15 § 82.24.030. Prior: 1959 c 270 § 3; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Effective date—1995 c 278: See note following RCW 82.24.010.

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

82.24.040 Duty of wholesaler. (1) No wholesaler in this state may possess within this state unstamped cigarettes except that:

(a) Every wholesaler in the state who is licensed under Washington state law may possess within this state unstamped cigarettes for such period of time after receipt as is reasonably necessary to affix the stamps as required; and

(b) Any wholesaler in the state who is licensed under Washington state law and who furnishes a surety bond in a sum satisfactory to the department, shall be permitted to set aside, without affixing the stamps required by this chapter, such part of the wholesaler's stock as may be necessary for the conduct of the wholesaler's business in making sales to persons in another state or foreign country or to instrumentalities of the federal government. Such unstamped stock shall be kept separate and apart from stamped stock.

(2) Every wholesaler licensed under Washington state law shall, at the time of shipping or delivering any of the articles taxed herein to a point outside of this state or to a federal instrumentality, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery, whether or not stamps were affixed thereto, and shall transmit such true duplicate invoice to the department, at Olympia, not later than the fifteenth day of the following calendar month. For failure to comply with the requirements of this section, the department may revoke the permission granted to the taxpayer to maintain a stock of goods to which the stamps required by this chapter have not been affixed.

(3) Every wholesaler who is licensed by Washington state law shall sell cigarettes to retailers located in Washington only if the retailer has a current cigarette retailer's license or is an Indian tribal organization authorized to

possess untaxed cigarettes under this chapter and the rules adopted by the department. [1995 c 278 § 3; 1990 c 216 § 2; 1969 ex.s. c 214 § 1; 1961 c 15 § 82.24.040. Prior: 1959 c 270 § 4; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.050 Retailer—Possession of unstamped cigarettes. No retailer in this state may possess unstamped cigarettes within this state except as provided in this chapter. [1995 c 278 § 4; 1990 c 216 § 3; 1969 ex.s. c 214 § 2; 1961 c 15 § 82.24.050. Prior: 1959 c 270 § 5; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.080 Legislative intent—Taxable event—Tax liability. (1) It is the intent and purpose of this chapter to levy a tax on all of the articles taxed under this chapter, sold, used, consumed, handled, possessed, or distributed within this state and to collect the tax from the person who first sells, uses, consumes, handles, possesses (either physically or constructively, in accordance with RCW 82.24.020) or distributes them in the state. It is further the intent and purpose of this chapter that whenever any of the articles taxed under this chapter is given away for advertising or any other purpose, it shall be taxed in the same manner as if it were sold, used, consumed, handled, possessed, or distributed in this state.

(2) It is also the intent and purpose of this chapter that the tax shall be imposed at the time and place of the first taxable event and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by subsection (1) of this section but who is exempt from the tax nevertheless has a precollection obligation for the tax that must be imposed on the first taxable event within this state. A precollection obligation may not be imposed upon a person exempt from the tax who sells, distributes, or transfers possession of cigarettes to another person who, by law, is exempt from the tax imposed by this chapter or upon whom the obligation for collection of the tax may not be imposed. Failure to pay the tax with respect to a taxable event shall not prevent tax liability from arising by reason of a subsequent taxable event.

(3) In the event of an increase in the rate of the tax imposed under this chapter, it is the intent of the legislature that the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed articles after the effective date of the rate increase shall be liable for the additional tax, or its precollection obligation as required by this chapter, represented by the rate increase. The failure to pay the additional tax with respect to the first taxable event after the effective date of a rate increase shall not prevent tax liability for the additional tax from arising from a subsequent taxable event. [1995 c 278 § 5; 1993 c 492 § 308; 1972 ex.s. c 157 § 4; 1961 c 15 § 82.24.080. Prior: 1959 c 270 § 8; prior: 1949 c 228 § 13, part; 1943 c 156 §

11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.090 Records—Preservation—Reports. (1) Every wholesaler or retailer subject to the provisions of this chapter shall keep and preserve for a period of five years an accurate set of records. These records must show all transactions relating to the purchase and sale of any of the articles taxed under this chapter and show all physical inventories performed on those articles, all invoices, and a record of all stamps purchased. All such records and all stock of taxable articles on hand shall be open to inspection at all reasonable times by the department of revenue or its duly authorized agent.

(2) All wholesalers shall within fifteen days after the first day of each month file with the department of revenue a report of all drop shipment sales made by them to retailers within this state during the preceding month. The report shall show the name and address of the retailer to whom the cigarettes were sold, the kind and quantity, and the date of delivery thereof. [1995 c 278 § 6; 1975 1st ex.s. c 278 § 62; 1961 c 15 § 82.24.090. Prior: 1941 c 178 § 14; 1939 c 225 § 24; 1935 c 180 § 84; Rem. Supp. 1941 § 8370-84.]

Effective date—1995 c 278: See note following RCW 82.24.010.

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

82.24.110 Other offenses—Penalties. (1) Each of the following acts is a gross misdemeanor and punishable as such:

(a) To sell, except as a licensed wholesaler engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(b) To sell in Washington as a wholesaler to a retailer who does not possess and is required to possess a current cigarette retailer's license;

(c) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

(d) For any person other than the department of revenue or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(e) To violate any of the provisions of this chapter;

(f) To violate any lawful rule made and published by the department of revenue;

(g) To use any stamps more than once;

(h) To refuse to allow the department of revenue or its duly authorized agent, on demand, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

(i) Except as provided in this chapter, for any retailer to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;

(j) For any person to make, use, or present or exhibit to the department of revenue or its duly authorized agent, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

(k) For any wholesaler or retailer or his or her agents or employees to fail to produce on demand of the department of revenue all invoices of all the articles herein taxed or stamps bought by him or her or received in his or her place of business within five years prior to such demand unless he or she can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond his or her control;

(l) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein;

(m) For any person to possess or transport in this state a quantity of sixty thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless: (i) Notice of the possession or transportation has been given as required by RCW 82.24.250; (ii) the person transporting the cigarettes has in actual possession invoices or delivery tickets which show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (iii) the cigarettes are consigned to or purchased by any person in this state who is authorized by this chapter to possess unstamped cigarettes in this state.

(2) It is unlawful for any person knowingly or intentionally to possess or to transport in this state a quantity in excess of sixty thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless: (a) Proper notice as required by RCW 82.24.250 has been given; (b) the person transporting the cigarettes actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (c) the cigarettes are consigned to or purchased by a person in this state who is authorized by this chapter to possess unstamped cigarettes in this state. Violation of this section shall be punished as a class C felony under Title 9A RCW.

(3) All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses described in this chapter shall be guilty and punishable as principals, to the same extent as any wholesaler or retailer or any other person violating this chapter. [1995 c 278 § 7; 1990 c 216 § 4; 1987 c 496 § 1; 1975 1st ex.s. c 278 § 63; 1961 c 15 § 82.24.110. Prior: 1941 c 178 § 15; 1935 c 180 § 86; Rem. Supp. 1941 § 8370-86.]

Effective date—1995 c 278: See note following RCW 82.24.010.

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

82.24.120 Violations—Penalties and interest. (1) If any person, subject to the provisions of this chapter or any rules adopted by the department of revenue under authority

hereof, is found to have failed to affix the stamps required, or to have them affixed as herein provided, or to pay any tax due hereunder, or to have violated any of the provisions of this chapter or rules adopted by the department of revenue in the administration hereof, there shall be assessed and collected from such person, in addition to any tax that may be found due, a remedial penalty equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, plus interest thereon at the rate as computed under RCW 82.32.050(2) from the date the tax became due, and upon notice mailed to the last known address of the person. The amount shall become due and payable in thirty days from the date of the notice. If the amount remains unpaid, the department or its duly authorized agent may make immediate demand upon such person for the payment of all such taxes, penalties, and interest.

(2) The department, for good reason shown, may remit all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate as computed under RCW 82.32.050(2) from the date the tax became due.

(3) The keeping of any unstamped articles coming within the provisions of this chapter shall be prima facie evidence of intent to violate the provisions of this chapter.

(4) This section does not apply to taxes or tax increases due under RCW 82.24.270 and 82.24.280. [1995 c 278 § 8; 1990 c 267 § 1; 1975 1st ex.s. c 278 § 64; 1961 c 15 § 82.24.120. Prior: 1949 c 228 § 15; 1939 c 225 § 25; 1935 c 180 § 87; Rem. Supp. 1949 § 8370-87.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Effective date—1990 c 267: "This act shall take effect January 1, 1991." [1990 c 267 § 3.]

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

82.24.230 Administration. All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter, except the following sections: RCW 82.32.050, 82.32.060, 82.32.070, 82.32.100, and 82.32.270, except as noted otherwise in RCW 82.24.270 and 82.24.280. [1995 c 278 § 9; 1961 c 15 § 82.24.230. Prior: 1935 c 180 § 95; RRS § 8370-95.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.235 Rules. The department may adopt such rules as are necessary to enforce and administer this chapter. [1995 c 278 § 15.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.250 Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect. (1) No person other than: (a) A licensed wholesaler in the wholesaler's own vehicle; or (b) a person who has given notice to the department in advance of the commencement of transportation shall transport or cause to be transported in this state cigarettes not having the stamps affixed to the packages or containers.

(2) When transporting unstamped cigarettes, such persons shall have in their actual possession or cause to have in the actual possession of those persons transporting such

cigarettes on their behalf invoices or delivery tickets for such cigarettes, which shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported.

(3) If the cigarettes are consigned to or purchased by any person in this state such purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state.

(4) In the absence of the notice of transportation required by this section or in the absence of such invoices or delivery tickets, or, if the name or address of the consignee or purchaser is falsified or if the purchaser or consignee is not a person authorized by chapter 82.24 RCW to possess unstamped cigarettes, the cigarettes so transported shall be deemed contraband subject to seizure and sale under the provisions of RCW 82.24.130.

(5) Transportation of cigarettes from a point outside this state to a point in some other state will not be considered a violation of this section provided that the person so transporting such cigarettes has in his possession adequate invoices or delivery tickets which give the true name and address of such out-of-state seller or consignor and such out-of-state purchaser or consignee.

(6) In any case where the department or its duly authorized agent, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this section, the department, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

(7) For purposes of this section, the term "person authorized by chapter 82.24 RCW to possess unstamped cigarettes" means:

(a) A wholesaler or retailer, licensed under Washington state law;

(b) The United States or an agency thereof; and

(c) Any person, including an Indian tribal organization, who, after notice has been given to the department as provided in this section, brings or causes to be brought into the state unstamped cigarettes, if within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department. [1995 c 278 § 10; 1990 c 216 § 6; 1972 ex.s. c 157 § 6.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.260 Selling or disposal of unstamped cigarettes—Person to pay and remit tax or affix stamps—Liability. (1) Other than:

(a) A person required to be licensed under this chapter;

(b) A federal instrumentality with respect to sales to authorized military personnel; or

(c) An Indian tribal organization with respect to sales to enrolled members of the tribe, a person who is in lawful possession of unstamped cigarettes and who intends to sell or otherwise dispose of the cigarettes

shall pay, or satisfy its precollection obligation that is imposed by this chapter, the tax required by this chapter by remitting the tax or causing stamps to be affixed in the manner provided in rules adopted by the department.

(2) When stamps are required to be affixed, the person may deduct from the tax collected the compensation allowable under this chapter. The remittance or the affixing of stamps shall, in the case of cigarettes obtained in the manner set forth in RCW 82.24.250(7)(c), be made at the same time and manner as required in RCW 82.24.250(7)(c).

(3) This section shall not relieve the buyer or possessor of unstamped cigarettes from personal liability for the tax imposed by this chapter.

(4) Nothing in this section shall relieve a wholesaler or a retailer in the requirements of affixing stamps pursuant to RCW 82.24.040 and 82.24.050. [1995 c 278 § 11; 1987 c 80 § 3; 1986 c 3 § 13. Prior: 1983 c 189 § 3; 1983 c 3 § 217; 1975 1st ex.s. c 22 § 1; 1972 ex.s. c 157 § 7.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Severability—1986 c 3: See RCW 70.146.900.

Effective dates—1986 c 3: See note following RCW 82.24.027.

Severability—1983 c 189: "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 189 § 10.]

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.270 Cigarettes given away—Stamp not required—Payment of tax—Interest—Payment of amount less than due—Penalties—Administration. (1) All cigarettes taxed under this chapter that are given away for advertising or other purposes are not required to have the state tax stamp affixed. Instead, the manufacturer of the cigarettes shall pay the tax on a monthly tax return to be supplied by the department.

(2) The tax is due on or before the twenty-fifth day of the month following the month in which the taxable activities, that is the providing of cigarette samples, occur. If not paid by the due date, interest applies to any unpaid tax or penalty. Interest shall be calculated at the rate as computed under RCW 82.32.050(2) from the date the tax became due.

(3) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer the additional amount found to be due. The department shall notify the taxpayer by mail of the additional amount due, including any applicable penalties and interest. The taxpayer shall pay the additional amount within thirty days from the date of the notice, or within such further time as the department may provide.

(4) All the cigarettes must evidence the payment of the tax by having printed on their packages wording to the following effect: "Complimentary, not for sale, all applicable state taxes paid by manufacturer."

(5) All of chapter 82.32 RCW applies to taxes due under this section except: RCW 82.32.050(1) and 82.32.270. [1995 c 278 § 12.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.280 Liability from tax increase—Interest and penalties on unpaid tax or penalty—Administration. (1) Any additional tax liability arising from a tax rate increase under this chapter shall be paid, along with reports and returns prescribed by the department, on or before the last day of the month in which the increase becomes effective.

(2) If not paid by the due date, interest shall apply to any unpaid tax or penalty. Interest shall be calculated at the rate as computed under RCW 82.32.050(2) from the date the tax became due.

(3) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due. The department shall notify the taxpayer by mail of the additional amount due, including any applicable penalties and interest. The taxpayer shall pay the additional amount within thirty days from the date of the notice, or within such further time as the department may provide.

(4) All of chapter 82.32 RCW applies to tax rate increases except: RCW 82.32.050(1) and 82.32.270. [1995 c 278 § 13.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.290 Exceptions—Federal instrumentalities and purchasers from federal instrumentalities. The taxes imposed by this chapter do not apply to the sale of cigarettes to:

(1) United States army, navy, air force, marine corps, or coast guard exchanges and commissaries and navy or coast guard ships' stores;

(2) The United States veterans' administration; or

(3) Any authorized purchaser from the federal instrumentalities named in subsection (1) or (2) of this section. [1995 c 278 § 14.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Chapter 82.26

TAX ON TOBACCO PRODUCTS

Sections

82.26.010 Definitions.

82.26.010 Definitions. As used in this chapter:

(1) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes as defined in RCW 82.24.010;

(2) "Manufacturer" means a person who manufactures and sells tobacco products;

(3) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes,

manufactures, or fabricates tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers;

(4) "Subjobber" means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers;

(5) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers;

(6) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this chapter, or for any other purposes whatsoever;

(7) "Wholesale sales price" means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any discount or other reduction;

(8) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state;

(9) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine;

(10) "Retail outlet" means each place of business from which tobacco products are sold to consumers;

(11) "Department" means the state department of revenue. [1995 c 278 § 16; 1975 1st ex.s. c 278 § 70; 1961 c 15 § 82.26.010. Prior: 1959 ex.s. c 5 § 11.]

Effective date—1995 c 278: See note following RCW 82.24.010.

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

Chapter 82.27

TAX ON ENHANCED FOOD FISH

Sections

82.27.010 Definitions.

82.27.030 Exemptions.

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

(1) "Enhanced food fish" includes all species of food fish, except all species of tuna, mackerel, and jack; shellfish; and anadromous game fish, including byproducts and parts thereof, originating within the territorial and adjacent waters of Washington and salmon originating from within the territorial and adjacent waters of Oregon, Washington, and British Columbia, and all troll-caught Chinook salmon originating from within the territorial and adjacent waters of southeast Alaska. As used in this subsection, "adjacent" waters of Oregon, Washington, and Alaska are those comprising the United States fish conservation zone; "adjacent" waters of British Columbia are those comprising the Canadian two hundred mile exclusive economic zone; and "south-

east Alaska" means that portion of Alaska south and east of Cape Suckling to the Canadian border. For purposes of this chapter, point of origination is established by a document which identifies the product and state or province in which it originates, including, but not limited to fish tickets, bills of lading, invoices, or other documentation required to be kept by governmental agencies.

(2) "Commercial" means related to or connected with buying, selling, bartering, or processing.

(3) "Possession" means the control of enhanced food fish by the owner and includes both actual and constructive possession. Constructive possession occurs when the person has legal ownership but not actual possession of the enhanced food fish.

(4) "Anadromous game fish" means steelhead trout and anadromous cutthroat trout and Dolly Varden char and includes byproducts and also parts of anadromous game fish, whether fresh, frozen, canned, or otherwise.

(5) "Landed" means the act of physically placing enhanced food fish (a) on a tender in the territorial waters of Washington; or (b) on any land within or without the state of Washington including wharves, piers, or any such extensions therefrom. [1995 c 372 § 4; 1985 c 413 § 1. Prior: 1983 1st ex.s. c 46 § 180; 1983 c 284 § 5; 1980 c 98 § 1.]

Intent—Savings—Effective date—1983 1st ex.s. c 46: See RCW 75.98.005 through 75.98.007.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

82.27.030 Exemptions. The tax imposed by RCW 82.27.020 shall not apply to: (1) Enhanced food fish originating outside the state which enters the state as (a) frozen enhanced food fish or (b) enhanced food fish packaged for retail sales; (2) the growing, processing, or dealing with food fish or shellfish which are raised from eggs, fry, or larvae and which are under the physical control of the grower at all times until being sold or harvested; and (3) food fish, shellfish, anadromous game fish, and byproducts or parts of food fish shipped from outside the state which enter the state, except as provided in RCW 82.27.010, provided the taxpayer must have documentation showing shipping origination of fish exempt under this subsection to qualify for exemption. Such documentation includes, but is not limited to fish tickets, bills of lading, invoices, or other documentation required to be kept by governmental agencies. [1995 2nd sp.s. c 7 § 1; 1985 c 413 § 3; 1980 c 98 § 3.]

Effective date—1995 2nd sp.s. c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 7 § 2.]

Chapter 82.29A

LEASEHOLD EXCISE TAX

Sections

82.29A.130 Exemptions.

82.29A.130 Exemptions. The following leasehold interests shall be exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility which is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions: **PROVIDED**, That this exemption shall not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States: **PROVIDED**, That this exemption shall apply only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(b).

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor shall be deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: **PROVIDED**, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee shall be deemed a single leasehold interest: **PROVIDED FURTHER**, That no leasehold interest shall be deemed to give use or possession for a period of less than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for disabled persons of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 shall be imposed and shall be apportioned accordingly. [1995 c 138 § 1; 1992 c 123 § 2; 1975-'76 2nd ex.s. c 61 § 13.]

Effective date—1995 c 138: "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 immediately [April 27, 1995]." [1995 c 138 § 2.]

Chapter 82.32

GENERAL ADMINISTRATIVE PROVISIONS

Sections

82.32.145	Termination, dissolution, or abandonment of corporate or limited liability business—Personal liability of person in control of collected sales tax funds.
82.32.320	Revenue to state treasurer—Allocation for return or payment for less than the full amount due.
82.32.330	Disclosure of return or tax information.

82.32.145 Termination, dissolution, or abandonment of corporate or limited liability business—Personal liability of person in control of collected sales tax funds.

(1) Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, manager, or other person having control or supervision of retail sales tax funds collected and held in trust under RCW 82.08.050, or who is charged with the responsibility for the filing of returns or the payment of retail sales tax funds collected and held in trust under RCW 82.08.050, shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person wilfully fails to pay or to cause to be paid any taxes due from the corporation pursuant to chapter 82.08 RCW. For the purposes of this section, any retail sales taxes that have been paid but not collected shall be deductible from the retail sales taxes collected but not paid.

For purposes of this subsection "wilfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(2) The officer, member or manager, or other person shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection (1) of this section, plus interest and penalties on those taxes.

(3) Persons liable under subsection (1) of this section are exempt from liability in situations where nonpayment of the retail sales tax funds held in trust is due to reasons beyond their control as determined by the department by rule.

(4) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

(5) This section applies only in situations where the department has determined that there is no reasonable means of collecting the retail sales tax funds held in trust directly from the corporation.

(6) This section does not relieve the corporation or limited liability company of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

(7) Collection authority and procedures prescribed in this chapter apply to collections under this section. [1995 c 318 § 2; 1987 c 245 § 1.]

Effective date—1995 c 318: See note following RCW 82.04.030.

82.32.320 Revenue to state treasurer—Allocation for return or payment for less than the full amount due.

The department of revenue, on the next business day following the receipt of any payments hereunder, shall transmit them to the state treasurer, taking his or her receipt therefor. If a return or payment is submitted with less than the full amount of all taxes, interest, and penalties due, the department may allocate payments among applicable funds so as to minimize administrative costs to the extent practicable. [1995 c 318 § 7; 1975 1st ex.s. c 278 § 92; 1961 c 15 § 82.32.320. Prior: 1935 c 180 § 209; RRS § 8370-209.]

Effective date—1995 c 318: See note following RCW 82.04.030.

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

82.32.330 Disclosure of return or tax information.

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, over-assessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible

existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: PROVIDED, That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information shall be confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) The foregoing, however, shall not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding;

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director shall prescribe by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person: PROVIDED, That tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department shall not be required to disclose any information under this subsection if a taxpayer: (i) Has been

issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(i) Disclosing any such return or tax information to the Department of Justice, the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury, the Department of Defense, the United States customs service, the coast guard of the United States, and the United States department of transportation, or any authorized representative thereof, for official purposes;

(j) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(k) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection shall not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose; or

(l) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.17 RCW or is a document maintained by a court of record not otherwise prohibited from disclosure.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may

disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department shall, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence shall clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court shall limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department shall reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3)(f), (g), (h), or (i) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, shall upon conviction be punished by a fine not exceeding one thousand dollars and, if the person guilty of such violation is an officer or employee of the state, such person shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter. [1995 c 197 § 1; 1991 c 330 § 1; 1990 c 67 § 1; 1985 c 414 § 9; 1984 c 138 § 12; 1969 ex.s. c 104 § 1; 1963 ex.s. c 28 § 10; 1961 c 15 § 82.32.330. Prior: 1943

c 156 § 12; 1935 c 180 § 210; Rem. Supp. 1943 § 8370-210.]

Effective date—1995 c 197: "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, 1995." [1995 c 197 § 2.]

Chapter 82.36

MOTOR VEHICLE FUEL TAX

Sections

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|------------|--|
| 82.36.010 | Definitions. |
| 82.36.2251 | Repealed. (<i>Effective unless section 1, chapter 225, Laws of 1994 is not upheld by order of the court of appeals or the supreme court of this state.</i>) |
| 82.36.2251 | Refund—Alcohol for use as fuel—Gallage threshold—Tax credit, blended fuel—Expiration of section. (<i>Effective if section 1, chapter 225, Laws of 1994 is not upheld by order of the court of appeals or the supreme court of this state.</i>) |
| 82.36.310 | Claim of refund. |
| 82.36.380 | Violations—Penalties. |
| 82.36.450 | Agreement with tribe for imposition, collection, use. |

82.36.010 Definitions. For the purposes of this chapter:

(1) "Motor vehicle" means every vehicle that is in itself a self-propelled unit, equipped with solid rubber, hollow-cushion rubber, or pneumatic rubber tires and capable of being moved or operated upon a public highway, except motor vehicles used as motive power for or in conjunction with farm implements and machines or implements of husbandry;

(2) "Motor vehicle fuel" means gasoline or any other inflammable gas or liquid, by whatsoever name such gasoline, gas, or liquid may be known or sold, the chief use of which is as fuel for the propulsion of motor vehicles or motorboats;

(3) "Distributor" means every person who refines, manufactures, produces, or compounds motor vehicle fuel and sells, distributes, or in any manner uses it in this state; also every person engaged in business as a bona fide wholesale merchant dealing in motor vehicle fuel who either acquires it within the state from any person refining it within or importing it into the state, on which the tax has not been paid, or imports it into this state and sells, distributes, or in any manner uses it in this state; also every person who acquires motor vehicle fuel, on which the tax has not been paid, and exports it by commercial motor vehicle to a location outside the state. For the purposes of liability for a county fuel tax, "distributor" has that meaning defined in the county ordinance imposing the tax. For the purposes of this subsection, "commercial motor vehicle" means any motor vehicle used, designed, or maintained for transportation of persons or property and: (a) Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds; or (b) having three or more axles regardless of weight; or (c) is used in combination, when the weight of such combination exceeds twenty-six thousand pounds gross vehicle weight. "Commercial motor vehicle" does not include recreational vehicles;

(4) "Service station" means a place operated for the purpose of delivering motor vehicle fuel into the fuel tanks of motor vehicles;

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

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

(7) "Dealer" means any person engaged in the retail sale of liquid motor vehicle fuels;

(8) "Person" means every natural person, firm, partnership, association, or private or public corporation;

(9) "Highway" means every way or place open to the use of the public, as a matter of right, for purposes of vehicular travel;

(10) "Broker" means every person, other than a distributor, engaged in business as a broker, jobber, or wholesale merchant dealing in motor vehicle fuel or other petroleum products used or usable in propelling motor vehicles, or in other petroleum products which may be used in blending, compounding, or manufacturing of motor vehicle fuel;

(11) "Producer" means every person, other than a distributor, engaged in the business of producing motor vehicle fuel or other petroleum products used in, or which may be used in, the blending, compounding, or manufacturing of motor vehicle fuel;

(12) "Distribution" means all withdrawals of motor vehicle fuel for delivery to others, to retail service stations, or to unlicensed bulk storage plants;

(13) "Bulk storage plant" means, pursuant to the licensing provisions of RCW 82.36.070, any plant, under the control of the distributor, used for the storage of motor vehicle fuel to which no retail outlets are directly connected by pipe lines;

(14) "Marine fuel dealer" means any person engaged in the retail sale of liquid motor vehicle fuel whose place of business and or sale outlet is located upon a navigable waterway;

(15) "Alcohol" means alcohol that is produced from renewable resources;

(16) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account;

(17) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement, misrepresentation of fact, or other act of deception; or

(b) An intentional: Omission, failure to file a return or report, or other act of deception. [1995 c 287 § 1; 1995 c 274 § 20; 1993 c 54 § 1; 1991 c 339 § 13; 1990 c 250 § 79; 1987 c 174 § 1; 1983 1st ex.s. c 49 § 25; 1981 c 342 § 1; 1979 c 158 § 223; 1977 ex.s. c 317 § 1; 1971 ex.s. c 156 § 1; 1967 c 153 § 1; 1965 ex.s. c 79 § 1; 1961 c 15 § 82.36.010. Prior: 1939 c 177 § 1; 1933 c 58 § 1; RRS § 8327-1; prior: 1921 c 173 § 1.]

Reviser's note: This section was amended by 1995 c 274 § 20 and by 1995 c 287 § 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).

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1987 c 174: "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." [1987 c 174 § 8.]

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective date—1981 c 342: "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. This act shall only take effect upon the passage of Senate Bills No. 3669 and 3699, and if Senate Bills No. 3669 and 3699 are not both enacted by the 1981 regular session of the legislature this amendatory act shall be null and void in its entirety." [1981 c 342 § 12.] Senate Bills No. 3669 and 3699 became 1981 c 315 and 1981 c 316, respectively.

Severability—1981 c 342: "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 342 § 13.]

Effective dates—1977 ex.s. c 317: "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, except for section 9, which shall take effect on September 1, 1977." [1977 ex.s. c 317 § 24.] Section 9 was the amendment to RCW 46.68.100 by 1977 ex.s. c 317.

Severability—1977 ex.s. c 317: "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 317 § 23.]

82.36.2251 Repealed. (*Effective unless section 1, chapter 225, Laws of 1994 is not upheld by order of the court of appeals or the supreme court of this state.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.36.2251 Refund—Alcohol for use as fuel—Gallonage threshold—Tax credit, blended fuel—Expiration of section. (*Effective if section 1, chapter 225, Laws of 1994 is not upheld by order of the court of appeals or the supreme court of this state.*) (1) In lieu of the former tax exemption and credit, a distributor is eligible for a refund of the motor fuel tax paid under this chapter on alcohol of any proof that is sold in this state for use as fuel in motor vehicles, farm implements and machines, or implements of husbandry if such alcohol was manufactured by a company that has been verified by the department as having sold less than eight million gallons of alcohol for use as motor fuel in the prior calendar year.

(2) In addition, a tax refund of sixty percent of the tax rate imposed by RCW 82.36.025 shall be given for every gallon of alcohol receiving a refund under subsection (1) of this section and used in an alcohol-gasoline blend which contains at least nine and one-half percent or more by volume of alcohol: PROVIDED, That in no case may the tax refund claimed be greater than the tax due on the gasoline portion of the blended fuel: AND PROVIDED FURTHER, That no refunds may be issued to distributors who fail to remit taxes owed under this chapter.

(3) Any tax refunds provided under this section must be made from the gasohol exemption holding account, created under RCW 46.68.090(1)(1). The tax exemption refund will be based upon the difference between the amount of tax collected on the original taxable sale invoice and the rebilled taxable sale invoice that reflects the alcohol that is exempt from the motor fuel tax.

(4) This section shall expire on December 31, 1999. [1995 c 364 § 3; 1993 c 268 § 2.]

Intent for 1994 c 225—Contingent—1995 c 364: "The gasohol exemption and credit was created in 1980 to help in-state producers of alcohol. The legislature finds that, for the following reasons, the gasohol exemption and credit granted to motor fuel distributors is not in the best interest of the citizens of the state of Washington:

(1) The federal Clean Air Act requires the use of gasohol or other oxygenated fuels in King, Pierce, Snohomish, Clark, and Spokane counties during fall and winter months, thereby diminishing the need to provide incentives to alcohol producers;

(2) The federal government also provides a fuel tax exemption of up to 5.4 cents per gallon of gasohol;

(3) If continued, the state exemption will cost the state about thirty million dollars per year, the equivalent of a one-cent gasoline tax;

(4) Only three of the seventeen alcohol producers certified to benefit from the exemption in 1993 are located in Washington;

(5) Over ninety percent of the alcohol qualifying for the exemption is provided by out-of-state firms, including several from outside the country;

(6) Gas tax revenue lost because of the exemption is badly needed for state, city, and county transportation projects." [1995 c 364 § 1.]

Legislature's position—Intent—1995 c 364: "For the reasons enumerated in section 1, chapter 364, Laws of 1995, the legislature repealed the tax exemption and credit benefiting gasohol producers by passing ESHB 2326 in 1994. The legislature's position is that section 1 of ESHB 2326, which is the portion of the bill that repealed the tax exemption enjoyed by foreign and domestic companies producing gasohol, is not subject to the requirements of section 13, chapter 2, Laws of 1994 (commonly known as section 13 of I-601) because, among other reasons, existing law *RCW 43.135.020(2) excludes highway trust fund revenue from its provisions.

The legislature hereby provides a refund system to be used in lieu of the gasohol tax exemption and credit. Refunds will be disbursed only if an appellate or supreme court of this state invalidates section 1 of ESHB 2326 and the people reject the measure at the November general election." [1995 c 364 § 2.]

***Reviser's note:** RCW 43.135.020(2) is a definition of state personal income.

Refunds—Contingency—Deposit of funds—Authorization: "No refunds authorized under this act shall be provided until 1994 c 225 is rejected by the people at the next November general election. Any funds received as taxes paid subject to refunds authorized in section 3, chapter 364, Laws of 1995 shall be deposited in the gasohol exemption holding account. The department of licensing is authorized to issue refunds after 1994 c 225 has been rejected by the people at the next November general election." [1995 c 364 § 5.]

Contingency—1995 c 364: "If section 1, chapter 225, Laws of 1994 is upheld by order of the court of appeals or the supreme court of this state, this act is null and void." [1995 c 364 § 6.]

Severability—1995 c 364: "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." [1995 c 364 § 7.]

Effective dates—1995 c 364: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 1995], except for section 3 of this act, which takes effect July 1, 1995." [1995 c 364 § 8.]

82.36.310 Claim of refund. Any person claiming a refund for motor vehicle fuel used or exported as in this chapter provided shall not be entitled to receive such refund until he presents to the director a claim upon forms to be provided by the director with such information as the director shall require, which claim to be valid shall in all cases be accompanied by the original invoice or invoices issued to the claimant at the time of the purchases of the motor vehicle fuel, approved as to invoice form by the director: PROVIDED, That in the event of the loss or destruction of the original invoice or invoices, the person claiming a refund may submit in lieu thereof a duplicate

copy of such invoice certified by the vendor, but no payment of refund based upon such duplicate invoice shall be made until after expiration of such statutory period specified in RCW 82.36.330 for filing of refund applications.

Any person claiming refund by reason of exportation of motor vehicle fuel shall in addition to the invoices required furnish to the director the export certificate therefor, and the signature on the exportation certificate shall be certified by a notary public. In all cases the claim shall be signed by the person claiming the refund, if it is a corporation, by some proper officer of the corporation, or if it is a limited liability company, by some proper manager or member of the limited liability company. [1995 c 318 § 3; 1965 ex.s. c 79 § 13; 1961 c 15 § 82.36.310. Prior: 1957 c 218 § 7; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

Effective date—1995 c 318: See note following RCW 82.04.030.

82.36.380 Violations—Penalties. (1) It is unlawful for a person or corporation to evade a tax or fee imposed under this chapter.

(2) Evasion of taxes or fees under this chapter is a class C felony under chapter 9A.20 RCW. In addition to other penalties and remedies provided by law, the court shall order a person or corporation found guilty of violating subsection (1) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded, to the transportation fund of the state. [1995 c 287 § 2; 1961 c 15 § 82.36.380. Prior: 1949 c 234 § 2, part; 1933 c 58 § 19, part; Rem. Supp. 1949 § 8327-19, part; prior: 1921 c 173 § 12, part.]

82.36.450 Agreement with tribe for imposition, collection, use. The department of licensing may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding the imposition, collection, and use of this state's motor vehicle fuel tax, or the budgeting or use of moneys in lieu thereof, upon terms substantially the same as those in the consent decree entered by the federal district court (Eastern District of Washington) in *Confederated Tribes of the Colville Reservation v. DOL, et al.*, District Court No. CY-92-248-JLO. [1995 c 320 § 2.]

Legislative recognition, belief—1995 c 320: "The legislature recognizes that certain Indian tribes located on reservations within this state dispute the authority of the state to impose a tax upon the tribe, or upon tribal members, based upon the distribution, sale, or other transfer of motor vehicle and other fuels to the tribe or its members when that distribution, sale, or other transfer takes place upon that tribe's reservation. While the legislature believes it has the authority to impose state motor vehicle and other fuel taxes under such circumstances, it also recognizes that all of the state citizens may benefit from resolution of these disputes between the respective governments." [1995 c 320 § 1.]

Severability—1995 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." [1995 c 320 § 4.]

Effective date—1995 c 320: "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 immediately [May 11, 1995]." [1995 c 320 § 5.]

Chapter 82.37

MOTOR VEHICLE FUEL IMPORTER TAX ACT

Sections

82.37.010 through 82.37.190 Repealed.
82.37.900 through 82.37.920 Repealed.

82.37.010 through 82.37.190 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.37.900 through 82.37.920 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 82.38

SPECIAL FUEL TAX ACT

Sections

82.38.020 Definitions.
82.38.090 Special fuel dealers', users' licenses—Collection of tax.
82.38.120 Issuance of license—Refusal—Posting—Display—Duration—Transferability.
82.38.140 Special fuel records.
82.38.150 Periodic tax reports.
82.38.170 Civil and statutory penalties—Deficiency assessments—Interest—Mitigation of assessments—Cancellation of vehicle registrations.
82.38.260 Administration and enforcement.
82.38.270 Violations—Penalties.
82.38.310 Agreement with tribe for imposition, collection, use.

82.38.020 Definitions. As used in this chapter:

(1) "Person" means every natural person, fiduciary, association, or corporation. The term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.

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

(3) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.

(4) "Motor vehicle" means every self-propelled vehicle designed for operation upon land utilizing special fuel as the means of propulsion.

(5) "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined in chapter 82.36 RCW.

(6) "Bulk storage" means the placing of special fuel by a special fuel dealer into a receptacle other than the fuel supply tank of a motor vehicle.

(7) "Special fuel dealer" means any person engaged in the business of delivering special fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him, or into bulk storage facilities for subsequent use in a motor vehicle. For this purpose the term "fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

(8) "Special fuel user" means any person purchasing special fuel into bulk storage without payment of the special fuel tax for subsequent use in a motor vehicle, or any person engaged in interstate commercial operation of motor vehicles any part of which is within this state.

(9) "Service station" means any location at which fueling of motor vehicles is offered to the general public.

(10) "Unbonded service station" means any service station at which an unbonded special fuel dealer regularly makes sales of special fuel by means of delivery thereof into the fuel supply tanks of motor vehicles.

(11) "Bond" means: (a) A bond duly executed by such special fuel dealer or special fuel user as principal with a corporate surety qualified under the provisions of chapter 48.28 RCW which bond shall be payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties, and other obligations of such dealer, arising out of this chapter; or (b) a deposit with the state treasurer by the special fuel dealer or special fuel user, under such terms and conditions as the department may prescribe, a like amount of lawful money of the United States or bonds or other obligations of the United States, the state of Washington, or any county of said state, of an actual market value not less than the amount so fixed by the department; or (c) such other instruments as the department may determine and prescribe by rule to protect the interests of the state and to insure compliance of the requirements of this chapter.

(12) "Lessor" means any person (a) whose principal business is the bona fide leasing or renting of motor vehicles without drivers for compensation to the general public, and (b) who maintains established places of business and whose lease or rental contracts require such motor vehicles to be returned to the established places of business.

(13) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form.

(14) "Standard pressure and temperature" means fourteen and seventy-three hundredths pounds of pressure per square inch at sixty degrees Fahrenheit.

(15) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement, misrepresentation of fact, or other act of deception; or

(b) An intentional: Omission, failure to file a return or report, or other act of deception. [1995 c 287 § 3; 1994 c 262 § 22; 1988 c 122 § 1; 1979 c 40 § 2; 1971 ex.s. c 175 § 3.]

82.38.090 Special fuel dealers', users' licenses—Collection of tax. It shall be unlawful for any person to act as a special fuel dealer or a special fuel user in this state unless such person is the holder of an uncanceled special fuel dealer's or a special fuel user's license issued to him or her by the department.

A special fuel dealer's license authorizes a person to deliver previously untaxed special fuel into the fuel supply tanks of motor vehicles, collect the special fuel tax on behalf of the state at the time of delivery, and remit the taxes collected to the state as provided herein. A licensed special

fuel dealer may also deliver untaxed special fuel into bulk storage facilities of a licensed special fuel user or dealer without collecting the special fuel tax. Special fuel dealers, when making deliveries of special fuel into bulk storage to any person not holding a valid special fuel license, must collect the special fuel tax at time of delivery, unless the person to whom the delivery is made is specifically exempted from the tax as provided herein.

A special fuel user's license authorizes a person to purchase special fuel into bulk storage for use in motor vehicles either on or off the public highways of this state without payment of the special fuel tax at time of purchase. Holders of special fuel licenses are all subject to the bonding, reporting, tax payment, and record-keeping provisions of this chapter. All purchases of special fuel by a licensed special fuel user directly into the fuel supply tank of a motor vehicle are subject to the special fuel tax at time of purchase. Special authorization may be given to farmers, logging companies, and construction companies to purchase special fuel directly into the supply tanks of nonhighway equipment or into portable slip tanks for nonhighway use without payment of the special fuel tax.

Special fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight not exceeding twenty-six thousand pounds are not required to be licensed. Special fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, or having three or more axles regardless of weight, or a combination of vehicles, when the combination exceeds twenty-six thousand pounds gross vehicle weight, must comply with the licensing and reporting requirements of this chapter. A copy of the license must be carried in each motor vehicle entering this state from another state or province. [1995 c 20 § 13; 1994 c 262 § 23; 1993 c 54 § 6; 1991 c 339 § 6; 1990 c 250 § 84; 1986 c 29 § 2; 1979 c 40 § 5; 1971 ex.s. c 175 § 10.]

Severability—1995 c 20: See RCW 70.149.901.

Severability—1990 c 250: See note following RCW 46.16.301.

82.38.120 Issuance of license—Refusal—Posting—Display—Duration—Transferability. Upon receipt and approval of an application and bond, if required, the department shall issue to the applicant a license to act as a special fuel dealer or a special fuel user. However, the department may refuse to issue a special fuel dealer's license or a special fuel user's license to any person: (1) Who formerly held either type of license which, prior to the time of filing for application, has been revoked for cause; (2) who is a subterfuge for the real party in interest whose license prior to the time of filing for application, has been revoked for cause; (3) who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a special fuel license revoked for cause; (4) who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.38, or 46.87 RCW; or (5) upon other sufficient cause being shown. Before such refusal, the department shall grant the applicant a hearing and shall grant the applicant at least five days written notice of the time and place thereof.

The department shall determine from the information shown in the application or other investigation the kind and class of license to be issued.

All licenses shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner thereof. License holders shall reproduce the license by photostat or other method and keep a copy on display for ready inspection at each additional place of business or other place of storage from which special fuel is sold, delivered or used and in each motor vehicle used by the license holder to transport special fuel purchased by him or her for resale, delivery or use. Every licensed special fuel user operating a motor vehicle registered in a jurisdiction other than this state shall reproduce the license and carry a photocopy thereof with each motor vehicle being operated upon the highways of this state.

A special fuel dealer may use special fuel in motor vehicles owned or operated by the dealer without securing a license as a special fuel user but the dealer is subject to all other conditions, requirements, and liabilities imposed herein upon a special fuel user.

Each special fuel dealer's license and special fuel user's license shall be valid until the expiration date if shown on the license, or until suspended or revoked for cause or otherwise canceled.

No special fuel dealer's license or special fuel user's license shall be transferable. [1995 c 274 § 21; 1990 c 250 § 85; 1979 c 40 § 8; 1973 1st ex.s. c 156 § 5; 1971 ex.s. c 175 § 13.]

Severability—1990 c 250: See note following RCW 46.16.301.

82.38.140 Special fuel records. (1) Every special fuel dealer, special fuel user, and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep for a period of not less than three years open to inspection at all times during the business hours of the day to the department or its authorized representatives, a complete record of all special fuel purchased or received and all of such products sold, delivered, or used by them. Such records shall show:

- (a) The date of each receipt;
- (b) The name and address of the person from whom purchased or received;
- (c) The number of gallons received at each place of business or place of storage in the state of Washington;
- (d) The date of each sale or delivery;
- (e) The number of gallons sold, delivered, or used for taxable purposes;
- (f) The number of gallons sold, delivered, or used for any purpose not subject to the tax imposed herein;
- (g) The name, address, and special fuel license number of the purchaser if the special fuel tax is not collected on the sale or delivery;
- (h) The inventories of special fuel on hand at each place of business at the end of each month.

(2)(a) All special fuel users using special fuel in vehicles licensed for highway operation shall maintain detailed mileage records on an individual vehicle basis.

(b) Such operating records shall show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle.

(3) Persons using special fuel for heating purposes only are not required to maintain records of fuel usage.

(4) Invoices shall be prepared for sales and deliveries of special fuel in the manner and containing such information as may be prescribed by the department.

Every special fuel dealer or special fuel user making such sales or deliveries of special fuel and every person so receiving and purchasing special fuel must each retain one copy of each such invoice as part of the dealer's permanent records for the time and purposes above provided.

(5) Every special fuel user shall keep, in addition to the dealer's records of deliveries into motor vehicles, a complete record as prescribed by the department of the total gallons of special fuel used for other purposes during each month and the purposes for which said special fuel was used.

(6) Subsections (1)(f), (2)(b), and (5) of this section do not apply to special fuel users when the special fuel is used off-highway in farming, construction, or logging operations. Upon filing a special fuel user tax report, every such special fuel user shall certify and bear the burden of proof as to the number of gallons of special fuel used off-highway. [1995 c 274 § 22; 1988 c 51 § 1; 1979 c 40 § 10; 1971 ex.s. c 175 § 15.]

82.38.150 Periodic tax reports. For the purpose of determining the amount of liability for the tax herein imposed each special fuel dealer and each special fuel user shall file tax reports with the department, on forms prescribed by the department. Special fuel dealers shall file the reports at the intervals as shown in the following schedule:

Estimated Yearly Tax Liability \$ 0 - \$100 \$101 - 250 \$251 - 499 \$500 and over	Reporting Frequency Yearly Semi-yearly Quarterly Monthly
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Special fuel users whose estimated yearly tax liability is two hundred fifty dollars or less, shall file a report yearly, and special fuel users whose estimated yearly tax liability is more than two hundred fifty dollars, shall file reports quarterly.

The department shall establish the reporting frequency for each applicant at the time the special fuel license is issued. If it becomes apparent that any special fuel licensee is not reporting in accordance with the above schedule, the department shall change the licensee's reporting frequency by giving thirty days' notice to the licensee by mail to the licensee's address of record. A report shall be filed with the department even though no special fuel was used, or tax is due, for the reporting period. Each tax report shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the report and is in lieu of such verification. The report shall show such information as the department may reasonably require for the proper administration and enforcement of this chapter. For counties within which an additional excise tax on special fuel has been levied by that jurisdiction under RCW 82.80.010, the report must show the quantities of special fuel

sold, distributed, or withdrawn from bulk storage by the reporting dealer or user within the county's boundaries and the tax liability from its levy. The special fuel dealer or special fuel user shall file the report on or before the twenty-fifth day of the next succeeding calendar month following the period to which it relates.

Subject to the written approval of the department, tax reports may cover a period ending on a day other than the last day of the calendar month. Taxpayers granted approval to file reports in this manner will file such reports on or before the twenty-fifth day following the end of the reporting period. No change to this reporting period will be made without the written authorization of the department.

If the final filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date shown by the post office cancellation mark stamped upon an envelope containing such report properly addressed to the department, or on the date it was mailed if proof satisfactory to the department is available to establish the date it was mailed.

The department, if it deems it necessary in order to insure payment of the tax imposed by this chapter, or to facilitate the administration of this chapter, has the authority to require the filing of reports and tax remittances at shorter intervals than one month if, in its opinion, an existing bond has become insufficient.

The department may permit any special fuel user whose sole use of special fuel is in motor vehicles or equipment exempt from tax as provided in RCW 82.38.075 and 82.38.080 (1), (2), (3), (8), and (9), in lieu of the reports required in this section, to submit reports annually or as requested by the department, in such form as the department may require.

A special fuel user whose sole use of special fuel is for purposes other than the propulsion of motor vehicles upon the public highways of this state shall not be required to submit the reports required in this section. [1995 c 274 § 23; 1991 c 339 § 15; 1990 c 42 § 203; 1988 c 23 § 1; 1983 c 242 § 3; 1979 c 40 § 11; 1973 1st ex.s. c 156 § 6; 1971 ex.s. c 175 § 16.]

~~Purpose—Headings—Severability—Effective dates—Application—Implementation—~~1990 c 42: See notes following RCW 82.36.025.

~~Effective date—~~1988 c 23: "This act shall take effect January 1, 1989." [1988 c 23 § 2.]

82.38.170 Civil and statutory penalties—Deficiency assessments—Interest—Mitigation of assessments—Cancellation of vehicle registrations. (1) If any special fuel dealer or special fuel user fails to pay any taxes collected or due the state of Washington by said dealer or user within the time prescribed by RCW 82.38.150 and 82.38.160, said dealer or user shall pay in addition to such tax a penalty of ten percent of the amount thereof.

(2) If it be determined by the department that the tax reported by any special fuel dealer or special fuel user is deficient it may proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency a penalty of ten percent of the amount of the deficiency.

(3) If any special fuel dealer or special fuel user, whether or not he or she is licensed as such, fails, neglects,

or refuses to file a special fuel tax report, the department may, on the basis of information available to it, determine the tax liability of the special fuel dealer or the special fuel user for the period during which no report was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in subsection (2) of this section. An assessment made by the department pursuant to this subsection or to subsection (2) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(4) If any special fuel dealer or special fuel user shall establish by a fair preponderance of evidence that his or her failure to file a report or pay the proper amount of tax within the time prescribed was due to reasonable cause and was not intentional or willful, the department may waive the penalty prescribed in subsections (1), (2), and (3) of this section.

(5) If any special fuel dealer or special fuel user shall file a false or fraudulent report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five percent of the deficiency, in addition to the penalty provided in subsection (2) of this section and all other penalties prescribed by law.

(6) Any fuel tax, penalties, and interest payable under this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion thereof should have been paid until the date of payment: PROVIDED, That the department may waive the interest when it determines that the cost of processing the collection of the interest exceeds the amount of interest due.

(7) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter.

(8) Except in the case of a fraudulent report or of neglect or refusal to make a report, every deficiency shall be assessed under subsection (2) of this section within three years from the twenty-fifth day of the next succeeding calendar month following the reporting period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.

(9) Any special fuel dealer or special fuel user against whom an assessment is made under the provisions of subsections (2) or (3) of this section may petition for a reassessment thereof within thirty days after service upon the special fuel dealer or special fuel user of notice thereof. If such petition is not filed within such thirty day period, the amount of the assessment becomes final at the expiration thereof.

If a petition for reassessment is filed within the thirty day period, the department shall reconsider the assessment

and, if the special fuel dealer or special fuel user has so requested in his or her petition, shall grant such special fuel dealer or special fuel user an oral hearing and give the special fuel dealer or special fuel user ten days' notice of the time and place thereof. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment shall become final thirty days after service upon the special fuel dealer or special fuel user of notice thereof.

Every assessment made by the department shall become due and payable at the time it becomes final and if not paid to the department when due and payable, there shall be added thereto a penalty of ten percent of the amount of the tax.

(10) Any notice of assessment required by this section shall be served personally or by mail; if by mail, service shall be made by depositing such notice in the United States mail, postage prepaid addressed to the special fuel dealer or special fuel user at his or her address as the same appears in the records of the department.

(11) Any licensee who has had either their special fuel user license or special fuel dealer license, or both, revoked shall pay a one hundred dollar penalty prior to the issuance of a new license.

(12) Any person who, upon audit or investigation by the department, is found to have not paid special fuel taxes as required by this chapter shall be subject to cancellation of all vehicle registrations for vehicles utilizing special fuel as a means of propulsion. Any unexpired Washington tonnage on the vehicles in question may be transferred to a purchaser of the vehicles upon application to the department who shall hold such tonnage in its custody until a sale of the vehicle is made or the tonnage has expired. [1995 c 274 § 24; 1994 c 262 § 25; 1991 c 339 § 7; 1987 c 174 § 6; 1983 c 242 § 4; 1979 c 40 § 13; 1977 c 26 § 3; 1973 1st ex.s. c 156 § 7; 1972 ex.s. c 138 § 3; 1971 ex.s. c 175 § 18.]

Effective date—1987 c 174: See note following RCW 82.36.010.

Effective date—1972 ex.s. c 138: See note following RCW 82.36.280.

82.38.260 Administration and enforcement. The department shall enforce the provisions of this chapter, and may prescribe, adopt, and enforce reasonable rules and regulations relating to the administration and enforcement thereof. The Washington state patrol and its officers shall aid the department in the enforcement of this chapter, and, for this purpose, are declared to be peace officers, and given police power and authority throughout the state to arrest on sight any person known to have committed a violation of the provisions of this chapter.

The department or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any special fuel dealer, special fuel user, or any person dealing in, transporting, or storing special fuel as defined in this chapter and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all taxes due hereunder are being properly reported and paid. The fact that such books, papers, records and equipment are not maintained in this state at the time of demand shall not cause

the department to lose any right of such examination under this chapter when and where such records become available.

The department or its authorized representative is further empowered to investigate the disposition of special fuel by any person where the department has reason to believe that untaxed special fuel has been diverted to a use subject to the taxes imposed by this chapter without said taxes being paid in accordance with the requirements of this chapter.

For the purpose of enforcing the provisions of this chapter it shall be presumed that all special fuel delivered to service stations as well as all special fuel otherwise received by a special fuel dealer or a special fuel user into storage and dispensing equipment designed to fuel motor vehicles is delivered by the special fuel dealer or special fuel user into the fuel supply tanks of motor vehicles and consumed in the propulsion of motor vehicles on the highways of this state, unless the contrary is established by satisfactory evidence.

The department shall, upon request from the officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces or the Dominion of Canada, forward to such officials any information which he or she may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel dealer or special fuel user, provided such other state or states furnish like information to this state.

Returns required by this chapter, exclusive of schedules, itemized statements and other supporting evidence annexed thereto, shall at all reasonable times be open to the public. [1995 c 274 § 25; 1979 c 40 § 18; 1971 ex.s. c 175 § 27.]

82.38.270 Violations—Penalties. (1) It is unlawful for a person or corporation to evade a tax or fee imposed under this chapter.

(2) Evasion of taxes or fees under this chapter is a class C felony under chapter 9A.20 RCW. In addition to other penalties and remedies provided by law, the court shall order a person or corporation found guilty of violating subsection (1) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded, to the transportation fund of the state. [1995 c 287 § 4; 1979 c 40 § 19; 1977 c 26 § 4; 1971 ex.s. c 175 § 28.]

82.38.310 Agreement with tribe for imposition, collection, use. The department of licensing may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding the imposition, collection, and use of this state's special fuel tax, or the budgeting or use of moneys in lieu thereof, upon terms substantially the same as those in the consent decree entered by the federal district court (Eastern District of Washington) in *Confederated Tribes of the Colville Reservation v. DOL, et al.*, District Court No. CY-92-248-JLO. [1995 c 320 § 3.]

Legislative recognition, belief—Severability—Effective date—1995 c 320: See notes following RCW 82.36.450.

Chapter 82.41

MULTISTATE MOTOR FUEL TAX AGREEMENT

Sections

82.41.040 Amount of tax collected for this state.

82.41.040 Amount of tax collected for this state. The amount of the tax imposed and collected on behalf of this state under an agreement entered into under this chapter shall be determined as provided in chapter 82.38 RCW. [1995 c 274 § 26; 1982 c 161 § 4.]

Chapter 82.42

AIRCRAFT FUEL TAX

Sections

82.42.090 Tax proceeds—Disposition—Aeronautics account.

82.42.090 Tax proceeds—Disposition—Aeronautics account. All moneys collected by the director from the aircraft fuel excise tax as provided in RCW 82.42.020 shall be transmitted to the state treasurer and shall be credited to the aeronautics account hereby created in the transportation fund of the state treasury. Moneys collected from the consumer or user of aircraft fuel from either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020 shall be transmitted to the state treasurer and credited to the state general fund. [1995 c 170 § 1; 1991 sp.s. c 13 § 37; 1985 c 57 § 86; 1982 1st ex.s. c 25 § 8; 1967 ex.s. c 10 § 9.]

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.

Severability—Effective date—1982 1st ex.s. c 25: See notes following RCW 82.42.010.

Chapter 82.44

MOTOR VEHICLE EXCISE TAX

Sections

82.44.110 Disposition of revenue. (*Effective January 1, 1996.*)

82.44.150 Apportionment and distribution of motor vehicle excise taxes generally.

82.44.160 Distribution to municipal research council.

82.44.180 Transportation fund—Deposits and distributions.

82.44.110 Disposition of revenue. (*Effective January 1, 1996.*) The county auditor shall regularly, when remitting license fee receipts, pay over and account to the director of licensing for the excise taxes collected under the provisions of this chapter. The director shall forthwith transmit the excise taxes to the state treasurer.

(1) The state treasurer shall deposit the excise taxes collected under RCW 82.44.020(1) as follows:

(a) 1.60 percent into the motor vehicle fund to defray administrative and other expenses incurred by the department in the collection of the excise tax.

(b) 8.15 percent into the Puget Sound capital construction account in the motor vehicle fund.

(c) 4.07 percent into the Puget Sound ferry operations account in the motor vehicle fund.

(d) 5.88 percent into the general fund to be distributed under RCW 82.44.155.

(e) 4.75 percent into the municipal sales and use tax equalization account in the general fund created in RCW 82.14.210.

(f) 1.60 percent into the county sales and use tax equalization account in the general fund created in RCW 82.14.200.

(g) 62.6440 percent into the general fund through June 30, 1995, and 57.6440 percent into the general fund beginning July 1, 1995.

(h) 5 percent into the transportation fund created in RCW 82.44.180 beginning July 1, 1995.

(i) 5.9686 percent into the county criminal justice assistance account created in RCW 82.14.310.

(j) 1.1937 percent into the municipal criminal justice assistance account for distribution under RCW 82.14.320.

(k) 1.1937 percent into the municipal criminal justice assistance account for distribution under RCW 82.14.330.

(l) 2.95 percent into the county public health account created in RCW 70.05.125.

Notwithstanding (i) through (k) of this subsection, no more than sixty million dollars shall be deposited into the accounts specified in (i) through (k) of this subsection for the period January 1, 1994, through June 30, 1995. Not more than five percent of the funds deposited to these accounts shall be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Motor vehicle excise tax funds appropriated for such enhancements shall not supplant existing funds from the state general fund. For the fiscal year ending June 30, 1998, and for each fiscal year thereafter, the amounts deposited into the accounts specified in (i) through (k) of this subsection shall not increase by more than the amounts deposited into those accounts in the previous fiscal year increased by the implicit price deflator for the previous fiscal year. Any revenues in excess of this amount shall be deposited into the general fund.

(2) The state treasurer shall deposit the excise taxes collected under RCW 82.44.020(2) into the transportation fund.

(3) The state treasurer shall deposit the excise tax imposed by RCW 82.44.020(3) into the air pollution control account created by RCW 70.94.015. [1995 1st sp.s. c 15 § 2; 1995 c 398 § 14. Prior: 1993 sp.s. c 21 § 7; 1993 c 492 § 253; 1993 c 491 § 1; 1991 c 199 § 221; 1990 2nd ex.s. c 1 § 801; 1990 c 42 § 306; 1987 1st ex.s. c 9 § 7; 1982 1st ex.s. c 35 § 12; 1979 c 158 § 235; 1977 ex.s. c 332 § 2; 1974 ex.s. c 54 § 3; 1967 c 121 § 1; 1961 c 15 § 82.44.110; prior: 1957 c 128 § 1; 1955 c 259 § 6; 1943 c 144 § 10; Rem. Supp. 1943 § 6312-124; prior: 1937 c 228 § 9.]

Reviser's note: This section was amended by 1995 c 398 § 14 and by 1995 1st sp.s. c 15 § 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—1995 1st sp.s. c 15: See note following RCW 82.44.110.

Effective dates—1993 sp.s. c 21: See note following RCW 82.14.310.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective date—1993 c 491: "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 30, 1993." [1993 c 491 § 3.]

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.

Effective dates—1990 2nd ex.s. c 1: See note following RCW 84.52.010.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—Severability—1977 ex.s. c 332: See notes following RCW 82.44.020.

Effective dates—1974 ex.s. c 54: "Section 6 of this 1974 amendatory act shall not take effect until June 30, 1981, and the remainder of this 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1974 ex.s. c 54 § 13.]

Severability—1974 ex.s. c 54: "If any provision of this 1974 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 54 § 14.]

82.44.150 Apportionment and distribution of motor vehicle excise taxes generally. (1) The director of licensing shall, on the twenty-fifth day of February, May, August, and November of each year, advise the state treasurer of the total amount of motor vehicle excise taxes imposed by RCW 82.44.020 (1) and (2) remitted to the department during the preceding calendar quarter ending on the last day of March, June, September, and December, respectively, except for those payable under RCW 82.44.030, from motor vehicle owners residing within each municipality which has levied a tax under RCW 35.58.273, which amount of excise taxes shall be determined by the director as follows:

The total amount of motor vehicle excise taxes remitted to the department, except those payable under RCW 82.44.020(3) and 82.44.030, from each county shall be multiplied by a fraction, the numerator of which is the population of the municipality residing in such county, and the denominator of which is the total population of the county in which such municipality or portion thereof is located. The product of this computation shall be the amount of excise taxes from motor vehicle owners residing within such municipality or portion thereof. Where the municipality levying a tax under RCW 35.58.273 is located in more than one county, the above computation shall be made by county, and the combined products shall provide the total amount of motor vehicle excise taxes from motor vehicle owners residing in the municipality as a whole. Population figures required for these computations shall be supplied to the director by the office of financial management, who shall adjust the fraction annually.

(2) On the first day of the months of January, April, July, and October of each year, the state treasurer based

upon information provided by the department shall, from motor vehicle excise taxes deposited in the general fund, under RCW 82.44.110(1)(g), make the following deposits:

(a) To the high capacity transportation account created in RCW 47.78.010, a sum equal to four and five-tenths percent of the special excise tax levied under RCW 35.58.273 by those municipalities authorized to levy a special excise tax within each county that has a population of one hundred seventy-five thousand or more and has an interstate highway within its borders; except that in a case of a municipality located in a county that has a population of one hundred seventy-five thousand or more that does not have an interstate highway located within its borders, that sum shall be deposited in the passenger ferry account;

(b) To the central Puget Sound public transportation account created in RCW 82.44.180, for revenues distributed after December 31, 1992, within a county with a population of one million or more and a county with a population of from two hundred thousand to less than one million bordering a county with a population of one million or more, a sum equal to the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent and been able to match with locally generated tax revenues, other than the excise tax imposed under RCW 35.58.273, budgeted for any public transportation purpose. Before this deposit, the sum shall be reduced by an amount equal to the amount distributed under (a) of this subsection for each of the municipalities within the counties to which this subsection (2)(b) applies; however, any transfer under this subsection (2)(b) must be greater than zero;

(c) To the public transportation systems account created in RCW 82.44.180, for revenues distributed after December 31, 1992, within counties not described in (b) of this subsection, a sum equal to the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent and been able to match with locally generated tax revenues, other than the excise tax imposed under RCW 35.58.273, budgeted for any public transportation purpose. Before this deposit, the sum shall be reduced by an amount equal to the amount distributed under (a) of this subsection for each of the municipalities within the counties to which this subsection (2)(c) applies; however, any transfer under this subsection (2)(c) must be greater than zero; and

(d) To the general fund, for revenues distributed after June 30, 1993, and to the transportation fund, for revenues distributed after June 30, 1995, a sum equal to the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent

notwithstanding the requirements set forth in subsections (3) through (6) of this section, reduced by an amount equal to distributions made under (a), (b), and (c) of this subsection and RCW 82.14.046.

(3) On the first day of the months of January, April, July, and October of each year, the state treasurer, based upon information provided by the department, shall remit motor vehicle excise tax revenues imposed and collected under RCW 35.58.273 as follows:

(a) The amount required to be remitted by the state treasurer to the treasurer of any municipality levying the tax shall not exceed in any calendar year the amount of locally-generated tax revenues, excluding (i) the excise tax imposed under RCW 35.58.273 for the purposes of this section, which shall have been budgeted by the municipality to be collected in such calendar year for any public transportation purposes including but not limited to operating costs, capital costs, and debt service on general obligation or revenue bonds issued for these purposes; and (ii) the sales and use tax equalization distributions provided under RCW 82.14.046; and

(b) In no event may the amount remitted in a single calendar quarter exceed the amount collected on behalf of the municipality under RCW 35.58.273 during the calendar quarter next preceding the immediately preceding quarter, excluding the sales and use tax equalization distributions provided under RCW 82.14.046.

(4) At the close of each calendar year accounting period, but not later than April 1, each municipality that has received motor vehicle excise taxes under subsection (3) of this section shall transmit to the director of licensing and the state auditor a written report showing by source the previous year's budgeted tax revenues for public transportation purposes as compared to actual collections. Any municipality that has not submitted the report by April 1 shall cease to be eligible to receive motor vehicle excise taxes under subsection (3) of this section until the report is received by the director of licensing. If a municipality has received more or less money under subsection (3) of this section for the period covered by the report than it is entitled to receive by reason of its locally-generated collected tax revenues, the director of licensing shall, during the next ensuing quarter that the municipality is eligible to receive motor vehicle excise tax funds, increase or decrease the amount to be remitted in an amount equal to the difference between the locally-generated budgeted tax revenues and the locally-generated collected tax revenues. In no event may the amount remitted for a calendar year exceed the amount collected on behalf of the municipality under RCW 35.58.273 during that same calendar year excluding the sales and use tax equalization distributions provided under RCW 82.14.046. At the time of the next fiscal audit of each municipality, the state auditor shall verify the accuracy of the report submitted and notify the director of licensing of any discrepancies.

(5) The motor vehicle excise taxes imposed under RCW 35.58.273 and required to be remitted under this section and RCW 82.14.046 shall be remitted without legislative appropriation.

(6) Any municipality levying and collecting a tax under RCW 35.58.273 which does not have an operating, public transit system or a contract for public transportation services

in effect within one year from the initial effective date of the tax shall return to the state treasurer all motor vehicle excise taxes received under subsection (3) of this section. [1995 2nd sp.s. c 14 § 538; 1994 c 241 § 1; 1993 c 491 § 2. Prior: 1991 c 309 § 5; 1991 c 199 § 222; (1991 c 363 § 159 repealed by 1991 c 309 § 6); 1990 c 42 § 308; 1988 c 18 § 1; prior: 1987 1st ex.s. c 9 § 8; 1987 c 428 § 3; prior: 1982 1st ex.s. c 49 § 20; 1982 1st ex.s. c 35 § 13; 1979 ex.s. c 175 § 4; 1979 c 158 § 238; 1974 ex.s. c 54 § 5; 1972 ex.s. c 87 § 1; prior: 1971 ex.s. c 199 § 2; 1971 ex.s. c 80 § 1; 1969 ex.s. c 255 § 15; 1961 c 15 § 82.44.150; prior: 1957 c 175 § 12; 1945 c 152 § 5; 1943 c 144 § 14; Rem. Supp. 1945 § 6312-128.]

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Effective date—1993 c 491: See note following RCW 82.44.110.

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.

Transitional distributions—1990 c 42: "Distributions under RCW 82.44.150 for excise taxes collected under RCW 35.58.273, before September 1, 1990, shall be under the provisions of RCW 82.44.150 as it existed before September 1, 1990." [1990 c 42 § 327.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Effective date—1987 c 428: See note following RCW 47.78.010.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—1979 ex.s. c 175: "Section 4 of this act shall take effect on January 1, 1980." [1979 ex.s. c 175 § 6.]

Severability—Effective dates—1974 ex.s. c 54: See notes following RCW 82.44.110.

82.44.160 Distribution to municipal research council. Before distributing moneys to the cities and towns from the general fund, as provided in RCW 82.44.155, and from the municipal sales and use tax equalization account, as provided in RCW 82.14.210, the state treasurer shall, on the first day of July of each year, make an annual deduction therefrom of a sum equal to one-half of the biennial appropriation made pursuant to this section, which amount shall be at least seven cents per capita of the population of all cities or towns as legally certified on that date, determined as provided in RCW 82.44.150, which sum shall be apportioned and transmitted to the municipal research council, herein created. Sixty-five percent of the annual deduction shall be from the distribution to cities and towns under RCW 82.44.155, and thirty-five percent of the annual deduction shall be from the distribution to the municipal sales and use tax equalization account under RCW 82.14.210. The municipal research council may contract with and allocate moneys to any state agency, educational institution, or private consulting firm, which in its judgment is qualified to carry on a municipal research and service program. Moneys may be utilized to match federal funds available for technical research and service programs to cities and towns. Moneys allocated shall be used for studies and research in municipal

government, publications, educational, conferences, and attendance thereat, and in furnishing technical, consultative, and field services to cities and towns in problems relating to planning, public health, municipal sanitation, fire protection, law enforcement, postwar improvements, and public works, and in all matters relating to city and town government. The programs shall be carried on and all expenditures shall be made in cooperation with the cities and towns of the state acting through the Association of Washington Cities by its board of directors which is hereby recognized as their official agency or instrumentality.

Funds appropriated to the municipal research council shall be kept in the treasury in the general fund, and shall be disbursed by warrant or check to contracting parties on invoices or vouchers certified by the chair of the municipal research council or his or her designee. Payments to public agencies may be made in advance of actual work contracted for, in the discretion of the council.

Sixty-five percent of any moneys remaining unexpended or uncontracted for by the municipal research council at the end of any fiscal biennium shall be returned to the general fund and be paid to cities and towns under RCW 82.44.155. The remaining thirty-five percent shall be deposited into the municipal sales and use tax equalization account. [1995 c 28 § 1. Prior: 1990 c 104 § 3; 1990 c 42 § 310; 1974 ex.s. c 54 § 7; 1969 c 108 § 1; 1961 c 115 § 1; 1961 c 15 § 82.44.160; prior: 1945 c 54 § 1; Rem. Supp. 1945 § 6312-128a.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—Effective dates—1974 ex.s. c 54: See notes following RCW 82.44.110.

Severability—1969 c 108: "If any amendment or provision of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the amendment or provision to other persons or circumstances is not affected." [1969 c 108 § 3.]

Effective date—1969 c 108: "The effective date of this 1969 amendatory act is July 1, 1969." [1969 c 108 § 4.]

Municipal research council: Chapter 43.110 RCW.

82.44.180 Transportation fund—Deposits and distributions. (1) The transportation fund is created in the state treasury. Revenues under RCW 82.44.020 (1) and (2), 82.44.110, 82.44.150, and the surcharge under RCW 82.50.510 shall be deposited into the fund as provided in those sections.

Moneys in the fund may be spent only after appropriation. Expenditures from the fund may be used only for transportation purposes and activities and operations of the Washington state patrol not directly related to the policing of public highways and that are not authorized under Article II, section 40 of the state Constitution.

(2) There is hereby created the central Puget Sound public transportation account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2)(b) shall be appropriated to the transportation improvement board and allocated by the transportation improvement board to public transportation projects within the region from which the funds are derived, solely for:

- (a) Planning;
- (b) Development of capital projects;

(c) Development of high capacity transportation systems as defined in RCW 81.104.015;

(d) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020; and

(e) Public transportation system contributions required to fund projects under federal programs and those approved by the transportation improvement board from other fund sources.

(3) There is hereby created the public transportation systems account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2)(c) shall be appropriated to the transportation improvement board and allocated by the transportation improvement board to public transportation projects submitted by the public transportation systems from which the funds are derived, solely for:

(a) Planning;

(b) Development of capital projects;

(c) Development of high capacity transportation systems as defined in RCW 81.104.015;

(d) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020;

(e) Other public transportation system-related roadway projects on state highways, county roads, or city streets; and

(f) Public transportation system contributions required to fund projects under federal programs and those approved by the transportation improvement board from other fund sources. [1995 c 269 § 2601. Prior: 1993 sp.s. c 23 § 64; 1993 c 393 § 1; 1991 c 199 § 224; 1990 c 42 § 312.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Effective dates—1993 sp.s. c 23: See note following RCW 43.89.010.

Effective date—1993 c 393: See RCW 47.66.900.

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.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Chapter 82.48

AIRCRAFT EXCISE TAX

Sections

82.48.010 Definitions.

82.48.080 Payment and distribution of taxes.

82.48.010 Definitions. For the purposes of this chapter, unless otherwise required by the context:

(1) "Aircraft" means any weight-carrying device or structure for navigation of the air which is designed to be supported by the air;

(2) "Secretary" means the secretary of transportation;

(3) "Person" includes a firm, partnership, limited liability company, or corporation;

(4) "Small multi-engine fixed wing" means any piston-driven multi-engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of less than seventy-five hundred pounds; and

(5) "Large multi-engine fixed wing" means any piston-driven multi-engine fixed wing aircraft with a maximum

gross weight as listed by the manufacturer of seventy-five hundred pounds or more. [1995 c 318 § 4; 1987 c 220 § 5; 1983 2nd ex.s. c 3 § 21; 1979 c 158 § 239; 1967 ex.s. c 9 § 1; 1961 c 15 § 82.48.010. Prior: 1949 c 49 § 1; Rem. Supp. 1949 § 11219-33.]

Effective date—1995 c 318: See note following RCW 82.04.030.

Severability—1987 c 220: See note following RCW 47.68.230.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

82.48.080 Payment and distribution of taxes. The secretary shall regularly pay to the state treasurer the excise taxes collected under this chapter, which shall be credited by the state treasurer as follows: Ninety percent to the general fund and ten percent to the aeronautics account in the transportation fund for administrative expenses. [1995 c 170 § 2; 1987 c 220 § 8; 1974 ex.s. c 54 § 8; 1967 ex.s. c 9 § 5; 1961 c 15 § 82.48.080. Prior: 1949 c 49 § 8; Rem. Supp. 1949 § 11219-40.]

Severability—1987 c 220: See note following RCW 47.68.230.

Severability—Effective dates—1974 ex.s. c 54: See notes following RCW 82.44.110.

Chapter 82.60

TAX DEFERRALS FOR INVESTMENT PROJECTS IN DISTRESSED AREAS

Sections

82.60.020 Definitions.

82.60.040 Issuance of tax deferral certificate. (*Expires July 1, 2004.*)

82.60.045 Eligible projects—Additional requirements.

82.60.065 Tax deferral on construction labor and investment projects—Repayment forgiven.

82.60.070 Reports by recipients—Assessment of taxes, interest.

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

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

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

(3) "Eligible area" means: (a) A county in which the average level of unemployment for the three years before the year in which an application is filed under this chapter exceeds the average state unemployment for those years by twenty percent; (b) a metropolitan statistical area, as defined by the office of federal statistical policy and standards, United States department of commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under this chapter exceeds the average state unemployment for such calendar year by twenty percent; (c) a designated community empowerment zone approved under RCW 43.63A.700 or a county containing such a community empowerment zone; (d) a town with a population of less than twelve hundred persons in those counties that are not covered under (a) of this subsection that are timber impact areas as defined in RCW 43.31.601; (e) a county designated by the governor as an eligible area under RCW 82.60.047; or (f) a county that is contiguous to a county that qualifies as an eligible area under (a) or (e) of this subsection.

(4)(a) "Eligible investment project" means:

(i) An investment project in an eligible area as defined in subsection (3)(a), (b), (d), or (e) of this section; or

(ii) That portion of an investment project in an eligible area as defined in subsection (3)(c) or (f) of this section which is directly utilized to create at least one new full-time qualified employment position for each three hundred thousand dollars of investment on which a deferral is requested in an application approved before July 1, 1994, and for each seven hundred fifty thousand dollars of investment on which a deferral is requested in an application approved after June 30, 1994.

(b) The lessor/owner of a qualified building is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(c) For purposes of (a)(ii) of this subsection:

(i) The department shall consider the entire investment project, including any investment in machinery and equipment that otherwise qualifies for exemption under RCW 82.08.02565 or 82.12.02565, for purposes of determining the portion of the investment project that qualifies for deferral as an eligible investment project; and

(ii) The number of new full-time qualified employment positions created by an investment project shall be deemed to be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project.

(d) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010(5), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part, or investment projects which have already received deferrals under this chapter.

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

(6) "Manufacturing" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different, or useful substance or article of tangible personal property is produced for sale or commercial or industrial use and shall include the production or fabrication of specially made or custom made articles. "Manufacturing" also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(7) "Person" has the meaning given in RCW 82.04.030.

(8) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of

a factory, mill, plant, or laboratory used for manufacturing or research and development. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(9) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year.

(10) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

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

(12) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars. [1995 1st sp.s. c 3 § 5. Prior: 1994 sp.s. c 7 § 704; 1994 sp.s. c 1 § 1; 1993 sp.s. c 25 § 403; 1988 c 42 § 16; 1986 c 116 § 12; 1985 c 232 § 2.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Severability—1988 c 42: See note following RCW 4.24.480.

Severability—1986 c 116: See RCW 82.62.900.

82.60.040 Issuance of tax deferral certificate.

(Expires July 1, 2004.) (1) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project that:

(a) Is located in an eligible area as defined in RCW 82.60.020(3) (a), (b), (d), or (e);

(b) Is located in an eligible area as defined in RCW 82.60.020(3)(f) if seventy-five percent of the new qualified employment positions are to be filled by residents of a contiguous county that is an eligible area as defined in RCW 82.60.020(3) (a) or (e); or

(c) Is located in an eligible area as defined in RCW 82.60.020(3)(c) if seventy-five percent of the new qualified employment positions are to be filled by residents of a designated community empowerment zone approved under RCW 43.63A.700 located within the county in which the eligible investment project is located.

(2) The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium. [1995 1st sp.s. c 3 § 6; 1994 sp.s. c 1 § 3; 1986 c 116 § 13; 1985 c 232 § 4.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Expiration of RCW 82.60.030 and 82.60.040: See RCW 82.60.050.

Severability—1986 c 116: See RCW 82.62.900.

82.60.045 Eligible projects—Additional requirements. In addition to the other requirements of this chapter, a recipient of a tax deferral under RCW 82.60.040(1) (b) or (c) shall meet the following requirements:

(1) The recipient shall fill at least seventy-five percent of the new qualified employment positions with residents of the contiguous county or community empowerment zone by December 31 of the calendar year during which the department certifies that the investment project is operationally completed, and shall maintain the required percentage during each of the seven succeeding calendar years.

(2) If the deferral is for expansion or diversification of an existing facility, the recipient shall ensure that the percentage of qualified employment positions filled by residents of the contiguous county or community empowerment zone for periods prior to the application be maintained for seven calendar years after the year during which the department certifies that the investment project is operationally completed. [1995 1st sp.s. c 3 § 7; 1994 sp.s. c 1 § 4.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

82.60.065 Tax deferral on construction labor and investment projects—Repayment forgiven. Except as provided in RCW 82.60.070:

(1) Taxes deferred under this chapter on the sale or use of labor that is directly used in the construction of an investment project for which a deferral has been granted under this chapter after June 11, 1986, and prior to July 1, 1994, need not be repaid.

(2) Taxes deferred under this chapter on an investment project for which a deferral has been granted under this chapter after June 30, 1994, need not be repaid.

(3) Taxes deferred under this chapter need not be repaid on machinery and equipment for lumber and wood products industries, and sales of or charges made for labor and services, of the type which qualifies for exemption under RCW 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid before July 1, 1995. [1995 1st sp.s. c 3 § 8; 1994 sp.s. c 1 § 6; 1986 c 116 § 14.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Severability—1986 c 116: See RCW 82.62.900.

82.60.070 Reports by recipients—Assessment of taxes, interest. (1) Each recipient of a deferral granted under this chapter prior to July 1, 1994, shall submit a report to the department on December 31st of each year during the repayment period until the tax deferral is repaid. Each recipient of a deferral granted under this chapter after June 30, 1994, shall submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report shall contain information, as required by the department, from which the depart-

ment may determine whether the recipient is meeting the requirements of this chapter. If the recipient fails to submit a report or submits an inadequate report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable.

(2) If, on the basis of a report under this section or other information, the department finds that an investment project is not eligible for tax deferral under this chapter for reasons other than failure to create the required number of qualified employment positions, the amount of deferred taxes outstanding for the project shall be immediately due.

(3) If, on the basis of a report under this section or other information, the department finds that an investment project for which a deferral has been granted under this chapter prior to July 1, 1994, has been operationally complete for three years and has failed to create the required number of qualified employment positions, the department shall assess interest, but not penalties, on the deferred taxes for the project. The interest shall be assessed at the rate provided for delinquent excise taxes, shall be assessed retroactively to the date of deferral, and shall accrue until the deferred taxes are repaid.

(4) If, on the basis of a report under this section or other information, the department finds that an investment project for which a deferral has been granted under this chapter after June 30, 1994, has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes not eligible for deferral shall be immediately due. The department shall assess interest at the rate provided for delinquent excise taxes, but not penalties, retroactively to the date of deferral.

(5) If, on the basis of a report under this section or other information, the department finds that an investment project qualifying for deferral under RCW 82.60.040(1) (b) or (c) has failed to comply with any requirement of RCW 82.60.045 for any calendar year for which reports are required under subsection (1) of this section, twelve and one-half percent of the amount of deferred taxes shall be immediately due. The department shall assess interest at the rate provided for delinquent excise taxes, but not penalties, retroactively to the date of deferral.

(6) Notwithstanding any other subsection of this section, deferred taxes need not be repaid on machinery and equipment for lumber and wood products industries, and sales of or charges made for labor and services, of the type which qualifies for exemption under RCW 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid before July 1, 1995.

(7) Notwithstanding any other subsection of this section, deferred taxes on the following need not be repaid:

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

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [1995 1st sp.s. c 3 § 9; 1994 sp.s. c 1 § 5; 1985 c 232 § 6.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Chapter 82.61

TAX DEFERRALS FOR MANUFACTURING,
RESEARCH, AND DEVELOPMENT PROJECTS

Sections

82.61.010	Definitions.
82.61.020	Repealed.
82.61.040	Repealed.
82.61.070	Reports.

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

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

(2) "Person" has the meaning given in RCW 82.04.030.

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

(4) "Eligible investment project" means:

(a) Construction of new buildings and the acquisition of new related machinery and equipment when the buildings, machinery, and equipment are to be used for either manufacturing or research and development activities, which construction is commenced prior to December 31, 1995; or

(b) Acquisition prior to December 31, 1995, of new machinery and equipment to be used for either manufacturing or research and development if the machinery and equipment is housed in a new leased structure. The lessor/owner of the structure is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(c) Acquisition of all new or used machinery, equipment, or other personal property for use in the production or casting of aluminum at an aluminum smelter or at facilities related to an aluminum smelter, if the plant was in operation prior to 1975 and has ceased operations or is in imminent danger of ceasing operations for economic reasons, as determined by the department, and if the person applying for a deferral (i) has consulted with any collective bargaining unit that represented employees of the plant pursuant to a collective bargaining agreement that was in effect either immediately prior to the time the plant ceased operations or during the period when the plant was in imminent danger of ceasing operations, on the proposed operation of the plant and on the terms and conditions of employment for wage and salaried employees and (ii) has obtained a written concurrence from the bargaining unit on the decision to apply for a deferral under this chapter; or

(d) Modernization projects involving construction, acquisition, or upgrading of equipment or machinery, including services and labor, which are commenced after May 19, 1987, and are intended to increase the operating efficiency of existing plants which are either aluminum smelters or aluminum rolling mills or of facilities related to such plants, if the plant was in operation prior to 1975, and if the person applying for a deferral (i) has consulted with any collective bargaining unit that represents employees of the plant on the proposed operation of the plant and the terms and conditions of employment for wage and salaried employees and (ii) has obtained a written concurrence from the bargaining unit on the decision to apply for a deferral under this chapter.

(5) "Manufacturing" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different, or useful substance or article of tangible personal property is produced for sale or commercial or industrial use and includes the production or fabrication of specially made or custom-made articles.

(6) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun.

(7) "Buildings" means only those new structures used for either manufacturing or research and development activities, including plant offices and warehouses or other facilities for the storage of raw materials or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development purposes. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(8) "Machinery and equipment" means all industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery. For purposes of this chapter, new machinery and equipment means either new to the taxing jurisdiction of the state or new to the certificate holder. Used machinery and equipment may be treated as new equipment and machinery if the certificate holder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.

(9) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year.

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

(11) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(12) "Operationally complete" means constructed or improved to the point of being functionally useable for the intended purpose.

(13) "Initiation of construction" means that date upon which on-site construction commences. [1995 1st sp.s. c 3 § 10; 1994 c 125 § 1; 1988 c 41 § 1; 1987 c 497 § 1; 1986 c 116 § 9; 1985 ex.s. c 2 § 1.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Severability—1986 c 116: See RCW 82.62.900.

82.61.020 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.61.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.61.070 Reports. The department and the department of community, trade, and economic development shall jointly report to the legislature about the effects of this chapter on new manufacturing and research and development activities in this state. The report shall contain information concerning the number of deferral certificates granted, the amount of sales tax deferred, the number of jobs created and other information useful in measuring such effects. Reports shall be submitted by January 1, 1986, and by January 1 of each year through 1999. [1995 c 399 § 215; 1993 sp.s. c 25 § 409; 1988 c 41 § 3; 1986 c 116 § 11; 1985 ex.s. c 2 § 6.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Severability—1986 c 116: See RCW 82.62.900.

Chapter 82.63

TAX DEFERRALS FOR HIGH TECHNOLOGY BUSINESSES

Sections

82.63.010	Definitions.
82.63.040	Repealed.
82.63.045	Repayment not required—Repayment schedule for unqualified investment project—Exceptions.
82.63.050	Repealed.

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

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

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

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

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

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

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

(7) "Eligible investment project" means an investment project which either initiates a new operation, or expands or diversifies a current operation by expanding, renovating, or equipping an existing facility. The lessor or owner of the

qualified building is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

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

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

(10) "Person" has the meaning given in RCW 82.04.030.

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

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

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

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

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

(16) "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the federal food and drug administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design. [1995 1st sp.s. c 3 § 12; 1994 sp.s. c 5 § 3.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

82.63.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.63.045 Repayment not required—Repayment schedule for unqualified investment project—Exceptions.

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

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

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

The department shall assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral.

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

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

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [1995 1st sp.s. c 3 § 13.]

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

82.63.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 82.66

TAX DEFERRALS FOR NEW THOROUGHBRED RACE TRACKS

Sections

- 82.66.010 Definitions.
- 82.66.020 Application for deferral—Contents—Ruling.
- 82.66.030 Issuance of tax deferral certificate—Rules for use—
Expiration of section.
- 82.66.040 Repayment schedule—Interest, penalties.
- 82.66.050 Applications not confidential.
- 82.66.060 Administration.
- 82.66.900 Severability—1995 c 352.
- 82.66.901 Effective date—1995 c 352.

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

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

(2) "Person" has the meaning given in RCW 82.04.030.

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

(4) "Investment project" means construction of buildings, site preparation, and the acquisition of related machinery and equipment when the buildings, machinery, and equipment are to be used in the operation of a new thoroughbred race track.

(5) "New thoroughbred race track" means a site for thoroughbred horse racing located west of the Cascade mountains on which construction is commenced prior to July 1, 1998.

(6) "Buildings" means only those new structures such as ticket offices, concession areas, grandstands, stables, and other structures that are an essential or an integral part of a thoroughbred race track. If a building is used partly for use as an essential or integral part of a thoroughbred race track and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(7) "Machinery and equipment" means all fixtures, equipment, and support facilities that are an integral and necessary part of a thoroughbred race track.

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

(9) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(10) "Operationally complete" means constructed or improved to the point of being functionally useable for thoroughbred horse racing.

(11) "Initiation of construction" means that date upon which on-site construction commences. [1995 c 352 § 1.]

82.66.020 Application for deferral—Contents—Ruling. Application for deferral of taxes under this chapter shall be made to the department in a form and manner prescribed by the department. The application shall contain

information regarding the location of the investment project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall rule on the application within sixty days. [1995 c 352 § 2.]

82.66.030 Issuance of tax deferral certificate—Rules for use—Expiration of section. (1) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each investment project. The use of the certificate shall be governed by rules established by the department.

(2) This section shall expire July 1, 1998. [1995 c 352 § 3.]

82.66.040 Repayment schedule—Interest, penalties. (1) The recipient shall begin paying the deferred taxes in the fifth year after the date certified by the department as the date on which the investment project is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years with amounts of payment scheduled as follows:

Repayment Year	% of Deferred Tax Repaid
1	10%
2	10%
3	10%
4	10%
5	10%
6	10%
7	10%
8	10%
9	10%
10	10%

(2) The department may authorize an accelerated repayment schedule upon request of the recipient.

(3) Interest shall not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this chapter. The debt for deferred taxes is not extinguished by insolvency or other failure of the recipient. [1995 c 352 § 4.]

82.66.050 Applications not confidential. Applications and any other information received by the department under this chapter is not confidential and is subject to disclosure. [1995 c 352 § 6.]

82.66.060 Administration. Chapter 82.32 RCW applies to the administration of this chapter. [1995 c 352 § 5.]

82.66.900 Severability—1995 c 352. 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. [1995 c 352 § 7.]

82.66.901 Effective date—1995 c 352. 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 immediately [May 16, 1995]. [1995 c 352 § 9.]

Title 84 PROPERTY TAXES

Chapters

- 84.14** New and rehabilitated multiple-unit dwellings in urban centers.
- 84.33** Timber and forest lands.
- 84.34** Open space, agricultural, and timber lands—Current use assessment—Conservation futures.
- 84.36** Exemptions.
- 84.38** Deferral of special assessments and/or property taxes.
- 84.40** Listing of property.
- 84.48** Equalization of assessments.
- 84.52** Levy of taxes.
- 84.55** Limitations upon regular property taxes.
- 84.56** Collection of taxes.

Chapter 84.14

NEW AND REHABILITATED MULTIPLE-UNIT DWELLINGS IN URBAN CENTERS

Sections

- 84.14.005 Findings.
- 84.14.007 Purpose.
- 84.14.010 Definitions.
- 84.14.020 Exemption—Duration—Valuation—Exceptions.
- 84.14.030 Application—Requirements.
- 84.14.040 Designation of residential targeted area—Criteria—Local designation—Hearing—Standards, guidelines.
- 84.14.050 Application—Procedures.
- 84.14.060 Approval—Required findings.
- 84.14.070 Processing—Approval—Denial—Appeal.
- 84.14.080 Fees.
- 84.14.090 Filing requirements upon completion—Owner, city—Determination by city—Notice of intention of city not to file—Extension of deadline—Appeal.
- 84.14.100 Report—Filing.
- 84.14.110 Cancellation of exemption—Notice by owner of change in use—Additional tax—Penalty—Interest—Lien—Notice of cancellation—Appeal—Correction of tax rolls.
- 84.14.900 Severability—1995 c 375.

84.14.005 Findings. The legislature finds:

(1) That in many of Washington's urban centers there is insufficient availability of desirable and convenient residential units to meet the needs of a growing number of the public who would live in these urban centers if these desirable, convenient, attractive, and livable places to live were available;

(2) That the development of additional and desirable residential units in these urban centers that will attract and maintain a significant increase in the number of permanent residents in these areas will help to alleviate the detrimental conditions and social liability that tend to exist in the

absence of a viable residential population and will help to achieve the planning goals mandated by the growth management act under RCW 36.70A.020; and

(3) That planning solutions to solve the problems of urban sprawl often lack incentive and implementation techniques needed to encourage residential redevelopment in those urban centers lacking sufficient residential opportunities, and it is in the public interest and will benefit, provide, and promote the public health, safety, and welfare to stimulate new or enhanced residential opportunities within urban centers through a tax incentive as provided by this chapter. [1995 c 375 § 1.]

84.14.007 Purpose. It is the purpose of this chapter to encourage increased residential opportunities in cities that are required to plan or choose to plan under the growth management act within urban centers where the legislative body of the affected city has found there is insufficient housing opportunities. It is further the purpose of this chapter to stimulate the construction of new multifamily housing and the rehabilitation of existing vacant and underutilized buildings for multifamily housing in urban centers having insufficient housing opportunities that will increase and improve residential opportunities within these urban centers. To achieve these purposes, this chapter provides for special valuations for eligible improvements associated with multiunit housing in residentially deficient urban centers. [1995 c 375 § 2.]

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

(1) "City" means a city or town with a population of at least one hundred fifty thousand located in a county planning under the growth management act.

(2) "Governing authority" means the local legislative authority of a city having jurisdiction over the property for which an exemption may be applied for under this chapter.

(3) "Growth management act" means chapter 36.70A RCW.

(4) "Multiple-unit housing" means a building having four or more dwelling units not designed or used as transient accommodations and not including hotels and motels. Multifamily units may result from new construction or rehabilitated or conversion of vacant, underutilized, or substandard buildings to multifamily housing.

(5) "Owner" means the property owner of record.

(6) "Permanent residential occupancy" means multiunit housing that provides either rental or owner occupancy on a nontransient basis. This includes owner-occupied or rental accommodation that is leased for a period of at least one month. This excludes hotels and motels that predominately offer rental accommodation on a daily or weekly basis.

(7) "Rehabilitation improvements" means modifications to existing structures, that are vacant for twelve months or longer, that are made to achieve a condition of substantial compliance with existing building codes or modification to existing occupied structures which increase the number of multifamily housing units.

(8) "Residential targeted area" means an area within an urban center that has been designated by the governing

authority as a residential targeted area in accordance with this chapter.

(9) "Substantial compliance" means compliance with local building or housing code requirements that are typically required for rehabilitation as opposed to new construction.

(10) "Urban center" means a compact identifiable district where urban residents may obtain a variety of products and services. An urban center must contain:

(a) Several existing or previous, or both, business establishments that may include but are not limited to shops, offices, banks, restaurants, governmental agencies;

(b) Adequate public facilities including streets, sidewalks, lighting, transit, domestic water, and sanitary sewer systems; and

(c) A mixture of uses and activities that may include housing, recreation, and cultural activities in association with either commercial or office, or both, use. [1995 c 375 § 3.]

84.14.020 Exemption—Duration—Valuation—Exceptions. (1) The value of new housing construction, conversion, and rehabilitation improvements qualifying under this chapter is exempt from ad valorem property taxation, for ten successive years beginning January 1 of the year immediately following the calendar year after issuance of the certificate of tax exemption eligibility. However, the exemption does not include the value of land or nonhousing-related improvements not qualifying under this chapter.

(2) In the case of rehabilitation of existing buildings, the exemption does not include the value of improvements constructed prior to the submission of the application required under this chapter. The incentive provided by this chapter is in addition to any other incentives, tax credits, grants, or other incentives provided by law.

(3) This chapter does not apply to increases in assessed valuation made by the assessor on nonqualifying portions of building and value of land nor to increases made by lawful order of a county board of equalization, the department of revenue, or a county, to a class of property throughout the county or specific area of the county to achieve the uniformity of assessment or appraisal required by law. [1995 c 375 § 5.]

84.14.030 Application—Requirements. An owner of property making application under this chapter must meet the following requirements:

(1) The new or rehabilitated multiple-unit housing must be located in a residential targeted area as designated by the city;

(2) The multiple-unit housing must meet the guidelines as adopted by the governing authority that may include height, density, public benefit features, number and size of proposed development, parking, and other adopted requirements indicated necessary by the city. The required amenities should be relative to the size of the project and tax benefit to be obtained;

(3) The new, converted, or rehabilitated multiple-unit housing must provide for a minimum of fifty percent of the space for permanent residential occupancy. In the case of existing occupied multifamily development, the multifamily housing must also provide for a minimum of four additional multifamily units. Existing multifamily vacant housing that

has been vacant for twelve months or more does not have to provide additional multifamily units;

(4) New construction multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application;

(5) Property proposed to be rehabilitated must be vacant at least twelve months before submitting an application and fail to comply with one or more standards of the applicable state or local building or housing codes on or after July 23, 1995; and

(6) The applicant must enter into a contract with the city approved by the governing body under which the applicant has agreed to the implementation of the development on terms and conditions satisfactory to the governing authority. [1995 c 375 § 6.]

84.14.040 Designation of residential targeted area—Criteria—Local designation—Hearing—Standards, guidelines. (1) The following criteria must be met before an area may be designated as a residential targeted area:

(a) The area must be within an urban center, as determined by the governing authority;

(b) The area must lack, as determined by the governing authority, sufficient available, desirable, and convenient residential housing to meet the needs of the public who would be likely to live in the urban center, if the desirable, attractive, and livable places to live were available; and

(c) The providing of additional housing opportunity in the area, as determined by the governing authority, will assist in achieving one or more of the stated purposes of this chapter.

(2) For the purpose of designating a residential targeted area or areas, the governing authority may adopt a resolution of intention to so designate an area as generally described in the resolution. The resolution must state the time and place of a hearing to be held by the governing authority to consider the designation of the area and may include such other information pertaining to the designation of the area as the governing authority determines to be appropriate to apprise the public of the action intended.

(3) The governing authority shall give notice of a hearing held under this chapter by publication of the notice once each week for two consecutive weeks, not less than seven days, nor more than thirty days before the date of the hearing in a paper having a general circulation in the city where the proposed residential targeted area is located. The notice must state the time, date, place, and purpose of the hearing and generally identify the area proposed to be designated as a residential targeted area.

(4) Following the hearing, or a continuance of the hearing, the governing authority may designate all or a portion of the area described in the resolution of intent as a residential targeted area if it finds, in its sole discretion, that the criteria in subsections (1) through (3) of this section have been met.

(5) After designation of a residential targeted area, the governing authority shall adopt standards and guidelines to be utilized in considering applications and making the determinations required under RCW 84.14.060. The standards and guidelines must establish basic requirements for both new construction and rehabilitation including

application process and procedures. These guidelines may include the following:

(a) Requirements that address demolition of existing structures and site utilization; and

(b) Building requirements that may include elements addressing parking, height, density, environmental impact, and compatibility with the existing surrounding property and such other amenities as will attract and keep permanent residents and that will properly enhance the livability of the residential targeted area in which they are to be located. [1995 c 375 § 7.]

84.14.050 Application—Procedures. An owner of property seeking tax incentives under this chapter must complete the following procedures:

(1) In the case of rehabilitation or where demolition or new construction is required, the owner shall secure from the governing authority or duly authorized agent, before commencement of rehabilitation improvements or new construction, verification of property noncompliance with applicable building and housing codes;

(2) In the case of new and rehabilitated multifamily housing, the owner shall apply to the city on forms adopted by the governing authority. The application must contain the following:

(a) Information setting forth the grounds supporting the requested exemption including information indicated on the application form or in the guidelines;

(b) A description of the project and site plan, including the floor plan of units and other information requested;

(c) A statement that the applicant is aware of the potential tax liability involved when the property ceases to be eligible for the incentive provided under this chapter;

(3) The applicant must verify the application by oath or affirmation; and

(4) The application must be made on or before April 1 of each year, and must be accompanied by the application fee, if any, required under *RCW 84.14.070. The governing authority may permit the applicant to revise an application before final action by the governing authority. [1995 c 375 § 8.]

**Reviser's note:* "section 10 of this act" (1995 c 375), which became RCW 84.14.070, relates to application processing. Section 11, which became RCW 84.14.080, was apparently intended.

84.14.060 Approval—Required findings. The duly authorized administrative official or committee of the city may approve the application if it finds that:

(1) A minimum of four new units are being constructed or in the case of occupied rehabilitation or conversion a minimum of four additional multifamily units are being developed;

(2) The proposed project is or will be, at the time of completion, in conformance with all local plans and regulations that apply at the time the application is approved;

(3) The owner has complied with all standards and guidelines adopted by the city under this chapter; and

(4) The site is located in a residential targeted area of an urban center that has been designated by the governing authority in accordance with procedures and guidelines indicated in RCW 84.14.040. [1995 c 375 § 9.]

84.14.070 Processing—Approval—Denial—Appeal.

(1) The governing authority or an administrative official or commission authorized by the governing authority shall approve or deny an application filed under this chapter within ninety days after receipt of the application.

(2) If the application is approved, the city shall issue the owner of the property a conditional certificate of acceptance of tax exemption. The certificate must contain a statement by a duly authorized administrative official of the governing authority that the property has complied with the required findings indicated in RCW 84.14.050.

(3) If the application is denied by the authorized administrative official or commission authorized by the governing authority, the deciding administrative official or commission shall state in writing the reasons for denial and send the notice to the applicant at the applicant's last known address within ten days of the denial.

(4) Upon denial by a duly authorized administrative official or commission, an applicant may appeal the denial to the governing authority within thirty days after receipt of the denial. The appeal before the governing authority will be based upon the record made before the administrative official with the burden of proof on the applicant to show that there was no substantial evidence to support the administrative official's decision. The decision of the governing body in denying or approving the application is final. [1995 c 375 § 10.]

84.14.080 Fees. The governing authority may establish an application fee. This fee may not exceed an amount determined to be required to cover the cost to be incurred by the governing authority and the assessor in administering this chapter. The application fee must be paid at the time the application for limited exemption is filed. If the application is approved, the governing authority shall pay the application fee to the county assessor for deposit in the county current expense fund, after first deducting that portion of the fee attributable to its own administrative costs in processing the application. If the application is denied, the governing authority may retain that portion of the application fee attributable to its own administrative costs and refund the balance to the applicant. [1995 c 375 § 11.]

84.14.090 Filing requirements upon completion—Owner, city—Determination by city—Notice of intention of city not to file—Extension of deadline—Appeal. (1) Upon completion of rehabilitation or new construction for which an application for limited exemption under this chapter has been approved and after issuance of the certificate of occupancy, the owner shall file with the city the following:

(a) A statement of the amount of rehabilitation or construction expenditures made with respect to each housing unit and the composite expenditures made in the rehabilitation or construction of the entire property;

(b) A description of the work that has been completed and a statement that the rehabilitation improvements or new construction on the owner's property qualify the property for limited exemption under this chapter; and

(c) A statement that the work has been completed within three years of the issuance of the conditional certificate of tax exemption.

(2) Within thirty days after receipt of the statements required under subsection (1) of this section, the authorized representative of the city shall determine whether the work completed is consistent with the application and the contract approved by the governing authority and is qualified for limited exemption under this chapter. The city shall also determine which specific improvements completed meet the requirements and required findings.

(3) If the rehabilitation, conversion, or construction is completed within three years of the date the application for limited exemption is filed under this chapter, or within an authorized extension of this time limit, and the authorized representative of the city determines that improvements were constructed consistent with the application and other applicable requirements and the owner's property is qualified for limited exemption under this chapter, the city shall file the certificate of tax exemption with the county assessor within ten days of the expiration of the thirty-day period provided under subsection (2) of this section.

(4) The authorized representative of the city shall notify the applicant that a certificate of tax exemption is not going to be filed if the representative determines that:

(a) The rehabilitation or new construction was not completed within three years of the application date, or within any authorized extension of the time limit;

(b) The improvements were not constructed consistent with the application or other applicable requirements; or

(c) The owner's property is otherwise not qualified for limited exemption under this chapter.

(5) If the authorized representative of the city finds that construction or rehabilitation of multiple-unit housing was not completed within the required time period due to circumstances beyond the control of the owner and that the owner has been acting and could reasonably be expected to act in good faith and with due diligence, the governing authority or the city official authorized by the governing authority may extend the deadline for completion of construction or rehabilitation for a period not to exceed twenty-four consecutive months.

(6) The governing authority may provide by ordinance for an appeal of a decision by the deciding officer or authority that an owner is not entitled to a certificate of tax exemption to the governing authority, a hearing examiner, or other city officer authorized by the governing authority to hear the appeal in accordance with such reasonable procedures and time periods as provided by ordinance of the governing authority. The owner may appeal a decision by the deciding officer or authority that is not subject to local appeal or a decision by the local appeal authority that the owner is not entitled to a certificate of tax exemption in superior court under RCW 34.05.510 through 34.05.598, if the appeal is filed within thirty days of notification by the city to the owner of the decision being challenged. [1995 c 375 § 12.]

84.14.100 Report—Filing. Thirty days after the anniversary of the date of the certificate of tax exemption and each year for a period of ten years, the owner of the

rehabilitated or newly constructed property shall file with a designated agent of the city an annual report indicating the following:

(1) A statement of occupancy and vacancy of the rehabilitated or newly constructed property during the twelve months ending with the anniversary date;

(2) A certification by the owner that the property has not changed use since the date of the certificate approved by the city; and

(3) A description of changes or improvements constructed after issuance of the certificate of tax exemption. [1995 c 375 § 13.]

84.14.110 Cancellation of exemption—Notice by owner of change in use—Additional tax—Penalty—Interest—Lien—Notice of cancellation—Appeal—Correction of tax rolls. (1) If improvements have been exempted under this chapter, the improvements continue to be exempted and not be converted to another use for at least ten years from date of issuance of the certificate of tax exemption. If the owner intends to convert the multifamily development to another use, the owner shall notify the assessor within sixty days of the change in use. If, after a certificate of tax exemption has been filed with the county assessor the city or assessor or agent discovers that a portion of the property is changed or will be changed to a use that is other than residential or that housing or amenities no longer meet the requirements as previously approved or agreed upon by contract between the governing authority and the owner and that the multifamily housing, or a portion of the housing, no longer qualifies for the exemption, the tax exemption must be canceled and the following must occur:

(a) Additional real property tax must be imposed upon the value of the nonqualifying improvements in the amount that would normally be imposed, plus a penalty must be imposed amounting to twenty percent. This additional tax is calculated based upon the difference between the property tax paid and the property tax that would have been paid if it had included the value of the nonqualifying improvements dated back to the date that the improvements were converted to a nonmultifamily use;

(b) The tax must include interest upon the amounts of the additional tax at the same statutory rate charged on delinquent property taxes from the dates on which the additional tax could have been paid without penalty if the improvements had been assessed at a value without regard to this chapter; and

(c) The additional tax owed together with interest and penalty must become a lien on the land and attach at the time the property or portion of the property is removed from multifamily use or the amenities no longer meet applicable requirements, and has priority to and must be fully paid and satisfied before a recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes. An additional tax unpaid on its due date is delinquent. From the date of delinquency until paid, interest must be charged at the same rate applied by law to delinquent ad valorem property taxes.

(2) Upon a determination that a tax exemption is to be canceled for a reason stated in this section, the governing authority shall notify the record owner of the property as shown by the tax rolls by mail, return receipt requested, of the determination to cancel the exemption. The owner may appeal the determination to the governing authority within thirty days by filing a notice of appeal with the clerk of the governing authority, which notice must specify the factual and legal basis on which the determination of cancellation is alleged to be erroneous. The governing authority or a hearing examiner or other official authorized by the governing authority may hear the appeal. At the hearing, all affected parties may be heard and all competent evidence received. After the hearing, the deciding body or officer shall either affirm, modify, or repeal the decision of cancellation of exemption based on the evidence received. An aggrieved party may appeal the decision of the deciding body or officer to the superior court under RCW 34.05.510 through 34.05.598.

(3) Upon determination by the governing authority or authorized representative to terminate an exemption, the county officials having possession of the assessment and tax rolls shall correct the rolls in the manner provided for omitted property under RCW 84.40.080. The county assessor shall make such a valuation of the property and improvements as is necessary to permit the correction of the rolls. The owner may appeal the valuation to the county board of equalization under chapter 84.48 RCW. If there has been a failure to comply with this chapter, the property must be listed as an omitted assessment for assessment years beginning January 1 of the calendar year in which the noncompliance first occurred, but the listing as an omitted assessment may not be for a period more than three calendar years preceding the year in which the failure to comply was discovered. [1995 c 375 § 14.]

84.14.900 Severability—1995 c 375. 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. [1995 c 375 § 15.]

Chapter 84.33

TIMBER AND FOREST LANDS

Sections

- 84.33.035 Definitions.
- 84.33.073 Definitions.
- 84.33.120 Forest land valuation—Assessor to list forest land at grade and class values—Computation of assessed value—Adjustment of values—Certification—Use—Notice of continuance—Appeals—Removal of classification—Compensating tax.
- 84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax.
- 84.33.170 Application of chapter to Christmas trees.

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

(1) "Agricultural methods" means the cultivation of trees that are grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising trees such as Christmas trees and short-rotation hardwoods.

(2) "Composite property tax rate" for a county means the total amount of property taxes levied upon forest lands by all taxing districts in the county other than the state, divided by the total assessed value of all forest land in the county.

(3) "Forest land" means forest land which is classified or designated forest land under this chapter.

(4) "Harvested" means the time when in the ordinary course of business the quantity of timber by species is first definitely determined. The amount harvested shall be determined by the Scribner Decimal C Scale or other prevalent measuring practice adjusted to arrive at substantially equivalent measurements, as approved by the department of revenue.

(5) "Harvester" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use: PROVIDED, That whenever the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, the harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in such timber. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester.

(6) "Short-rotation hardwoods" means hardwood trees, such as but not limited to hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than ten years.

(7) "Stumpage value of timber" means the appropriate stumpage value shown on tables prepared by the department of revenue under RCW 84.33.091, provided that for timber harvested from public land and sold under a competitive bidding process, stumpage value shall mean that actual amount paid to the seller in cash or other consideration. Whenever payment for the stumpage includes considerations other than cash, the value shall be the fair market value of the other consideration, provided that if the other consideration is permanent roads, the value of the roads shall be the appraised value as appraised by the seller.

(8) "Timber" means forest trees, standing or down, on privately or publicly owned land, and except as provided in RCW 84.33.170 includes Christmas trees and short-rotation hardwoods.

(9) "Timber assessed value" for a county means a value, calculated by the department of revenue before October 1 of each year, equal to the total stumpage value of timber harvested from privately owned land in the county during the most recent four calendar quarters for which the information

is available multiplied by a ratio. The numerator of the ratio is the rate of tax imposed by the county under RCW 84.33.051 for the year of the calculation. The denominator of the ratio is the composite property tax rate for the county for taxes due in the year of the calculation, expressed as a percentage of assessed value.

(10) "Timber assessed value" for a taxing district means the timber assessed value for the county multiplied by a ratio. The numerator of the ratio is the total assessed value of forest land in the taxing district. The denominator is the total assessed value of forest land in the county. As used in this section, "assessed value of forest land" means the assessed value of forest land for taxes due in the year the timber assessed value for the county is calculated. [1995 c 165 § 1; 1986 c 315 § 1; 1984 c 204 § 1.]

Application—1995 c 165: "This act applies to taxes levied in 1995 for collection in 1996 and thereafter." [1995 c 165 § 3.]

Savings—1984 c 204: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1984 c 204 § 48.]

Effective date—1984 c 204: "This act shall take effect July 1, 1984." [1984 c 204 § 49.]

84.33.073 Definitions. As used in RCW 84.33.073 and 84.33.074, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Small harvester" means every person who from his own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount not exceeding two million board feet in a calendar year: PROVIDED, That whenever the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in such timber. "Small harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester, and it does not include harvesters of Christmas trees.

(2) "Timber" means forest trees, standing or down, on privately or publicly owned land.

(3) "Harvesting and marketing costs" means only those costs directly associated with harvesting the timber from the land and delivering it to the buyer and may include the costs of disposing of logging residues but it does not include any other costs which are not directly and exclusively related to harvesting and marketing of the timber such as costs of permanent roads or costs of reforesting the land following harvest. [1995 c 325 § 1; 1987 c 166 § 2; 1986 c 315 § 2; 1982 2nd ex.s. c 4 § 3; 1981 c 146 § 1.]

Effective date—1995 c 325: "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, 1995." [1995 c 325 § 2.]

Effective date—Applicability—1982 2nd ex.s. c 4: "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 August 1, 1982. This 1982 amendatory act shall not be construed to affect timber contracts in effect on the effective date of this 1982 amendatory act." [1982 2nd ex.s. c 4 § 4.]

Effective date—1981 c 146: "This act shall take effect January 1, 1982." [1981 c 146 § 3.]

Severability—1981 c 146: "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 146 § 4.]

84.33.120 Forest land valuation—Assessor to list forest land at grade and class values—Computation of assessed value—Adjustment of values—Certification—Use—Notice of continuance—Appeals—Removal of classification—Compensating tax. (1) In preparing the assessment rolls as of January 1, 1982, for taxes payable in 1983 and each January 1st thereafter, the assessor shall list each parcel of forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (2) of this section and shall compute the assessed value of the land by using the same assessment ratio he or she applies generally in computing the assessed value of other property in his or her county. Values for the several grades of bare forest land shall be as follows.

LAND GRADE	OPERABILITY CLASS	VALUES PER ACRE
1	1	\$141
	2	136
	3	131
	4	95
2	1	118
	2	114
	3	110
	4	80
3	1	93
	2	90
	3	87
	4	66
4	1	70
	2	68
	3	66
	4	52
5	1	51
	2	48
	3	46
	4	31
6	1	26
	2	25
	3	25
	4	23

	1	12
7	2	12
	3	11
	4	11
<hr/>		
8		1
<hr/>		

(2) On or before December 31, 1981, the department shall adjust, by rule under chapter 34.05 RCW, the forest land values contained in subsection (1) of this section in accordance with this subsection, and shall certify these adjusted values to the county assessor for his or her use in preparing the assessment rolls as of January 1, 1982. For the adjustment to be made on or before December 31, 1981, for use in the 1982 assessment year, the department shall:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1976, and June 30, 1981, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 82.04.291 and 84.33.071; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1975, and June 30, 1980, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 82.04.291 and 84.33.071; and

(c) Adjust the forest land values contained in subsection (1) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

For the adjustments to be made on or before December 31, 1982, and each succeeding year thereafter, the same procedure shall be followed as described in this subsection utilizing harvester excise tax returns filed under RCW 82.04.291 and this chapter except that this adjustment shall be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values shall be successively one year more recent.

(3) In preparing the assessment roll for 1972 and each year thereafter, the assessor shall enter as the true and fair value of each parcel of forest land the appropriate grade value certified to him or her by the department of revenue, and he or she shall compute the assessed value of such land by using the same assessment ratio he or she applies generally in computing the assessed value of other property in his or her county. In preparing the assessment roll for 1975 and each year thereafter, the assessor shall assess and value as classified forest land all forest land that is not then designated pursuant to RCW 84.33.120(4) or 84.33.130 and shall make a notation of such classification upon the assessment and tax rolls. On or before January 15 of the first year in which such notation is made, the assessor shall mail notice by certified mail to the owner that such land has been classified as forest land and is subject to the compensating tax imposed by this section. If the owner desires not to have such land assessed and valued as classified forest land, he or she shall give the assessor written notice thereof on or before March 31 of such year and the assessor shall remove from the assessment and tax rolls the classification notation entered pursuant to this subsection, and shall thereafter

assess and value such land in the manner provided by law other than this chapter 84.33 RCW.

(4) In any year commencing with 1972, an owner of land which is assessed and valued by the assessor other than pursuant to the procedures set forth in RCW 84.33.110 and this section, and which has, in the immediately preceding year, been assessed and valued by the assessor as forest land, may appeal to the county board of equalization by filing an application with the board in the manner prescribed in subsection (2) of RCW 84.33.130. The county board shall afford the applicant an opportunity to be heard if the application so requests and shall act upon the application in the manner prescribed in subsection (3) of RCW 84.33.130.

(5) Land that has been assessed and valued as classified forest land as of any year commencing with 1975 assessment year or earlier shall continue to be so assessed and valued until removal of classification by the assessor only upon the occurrence of one of the following events:

(a) Receipt of notice from the owner to remove such land from classification as forest land;

(b) Sale or transfer to an ownership making such land exempt from ad valorem taxation;

(c) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that, because of actions taken by the owner, such land is no longer primarily devoted to and used for growing and harvesting timber. However, land shall not be removed from classification if a governmental agency, organization, or other recipient identified in subsection (9) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in classified forest land by means of a transaction that qualifies for an exemption under subsection (9) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the classified land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(d) Determination that a higher and better use exists for such land than growing and harvesting timber after giving the owner written notice and an opportunity to be heard;

(e) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of forest land classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by itself, result in removal of classification. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated pursuant to subsection (7) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of classified forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid. The seller, transferor, or new owner may appeal the new assessed valuation calculated

under subsection (7) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals.

The assessor shall remove classification pursuant to (c) or (d) of this subsection prior to September 30 of the year prior to the assessment year for which termination of classification is to be effective. Removal of classification as forest land upon occurrence of (a), (b), (d), or (e) of this subsection shall apply only to the land affected, and upon occurrence of (c) of this subsection shall apply only to the actual area of land no longer primarily devoted to and used for growing and harvesting timber: PROVIDED, That any remaining classified forest land meets necessary definitions of forest land pursuant to RCW 84.33.100 as now or hereafter amended.

(6) Within thirty days after such removal of classification as forest land, the assessor shall notify the owner in writing setting forth the reasons for such removal. The owner of such land shall thereupon have the right to apply for designation of such land as forest land pursuant to subsection (4) of this section or RCW 84.33.130. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(7) Unless the owner successfully applies for designation of such land or unless the removal is reversed on appeal, notation of removal from classification shall immediately be made upon the assessment and tax rolls, and commencing on January 1 of the year following the year in which the assessor made such notation, such land shall be assessed on the same basis as real property is assessed generally in that county. Except as provided in subsections (5)(e) and (9) of this section and unless the assessor shall not have mailed notice of classification pursuant to subsection (3) of this section, a compensating tax shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the compensating tax. As soon as possible, the assessor shall compute the amount of such compensating tax and mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such compensating tax shall be equal to the difference, if any, between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land multiplied by the dollar rate of the last levy extended against such land, multiplied by a number, in no event greater than ten, equal to the number of years, commencing with assessment year 1975, for which such land was assessed and valued as forest land.

(8) Compensating tax, together with applicable interest thereon, shall become a lien on such land which shall attach at the time such land is removed from classification as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of

delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(9) The compensating tax specified in subsection (7) of this section shall not be imposed if the removal of classification as forest land pursuant to subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW: PROVIDED, That at such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (7) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes.

(10) With respect to any land that has been designated prior to May 6, 1974, pursuant to RCW 84.33.120(4) or 84.33.130, the assessor may, prior to January 1, 1975, on his or her own motion or pursuant to petition by the owner, change, without imposition of the compensating tax provided under RCW 84.33.140, the status of such designated land to classified forest land. [1995 c 330 § 1; 1992 c 69 § 1; 1986 c 238 § 1; 1984 c 204 § 23; 1981 c 148 § 7; 1980 c 134 § 2; 1974 ex.s. c 187 § 5; 1972 ex.s. c 148 § 5; 1971 ex.s. c 294 § 12.]

Effective date—1995 c 330: "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 immediately [May 11, 1995]." [1995 c 330 § 3.]

Effective date—1992 c 69: See RCW 84.34.923.

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.110.

Severability—1974 ex.s. c 187: See note following RCW 84.33.110.

84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax. (1) When land has been designated as forest land pursuant to RCW 84.33.120(4) or 84.33.130, a notation of such designation shall be made each year upon the assessment and tax rolls, a copy of the notice of approval together with the legal description or assessor's tax lot numbers for such land shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded, and such land shall be graded and valued pursuant to RCW 84.33.110 and 84.33.120 until removal of such designation by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove such designation;

(b) Sale or transfer to an ownership making such land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of forest land designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by itself, result in removal of classification. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated pursuant to subsection (3) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (3) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) Such land is no longer primarily devoted to and used for growing and harvesting timber. However, land shall not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (5) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in designated forest land by means of a transaction that qualifies for an exemption under subsection (5) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control and forest debris provisions of Title 76 RCW or any applicable regulations thereunder; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

Removal of designation upon occurrence of any of (a) through (c) of this subsection shall apply only to the land affected, and upon occurrence of (d) of this subsection shall apply only to the actual area of land no longer primarily devoted to and used for growing and harvesting timber, without regard to other land that may have been included in the same application and approval for designation: PROVIDED, That any remaining designated forest land meets necessary definitions of forest land pursuant to RCW 84.33.100 as now or hereafter amended.

(2) Within thirty days after such removal of designation of forest land, the assessor shall notify the owner in writing,

setting forth the reasons for such removal. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(3) Unless the removal is reversed on appeal a copy of the notice of removal with notation of the action, if any, upon appeal, together with the legal description or assessor's tax lot numbers for the land removed from designation shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded, and commencing on January 1 of the year following the year in which the assessor mailed such notice, such land shall be assessed on the same basis as real property is assessed generally in that county. Except as provided in subsection (5) of this section, a compensating tax shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the compensating tax. As soon as possible, the assessor shall compute the amount of such compensating tax and mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such compensating tax shall be equal to the difference between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land multiplied by the dollar rate of the last levy extended against such land, multiplied by a number, in no event greater than ten, equal to the number of years for which such land was designated as forest land.

(4) Compensating tax, together with applicable interest thereon, shall become a lien on such land which shall attach at the time such land is removed from designation as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(5) The compensating tax specified in subsection (3) of this section shall not be imposed if the removal of designation pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW: PROVIDED, That at such time as the land is not used for the purposes enumerated, the

compensating tax specified in subsection (3) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes. [1995 c 330 § 2; 1992 c 69 § 2; 1986 c 238 § 2; 1981 c 148 § 9; 1980 c 134 § 3; 1974 ex.s. c 187 § 7; 1973 1st ex.s. c 195 § 93; 1972 ex.s. c 148 § 6; 1971 ex.s. c 294 § 14.]

Effective date—1995 c 330: See note following RCW 84.33.120.

Effective date—1992 c 69: See RCW 84.34.923.

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.110.

Severability—1974 ex.s. c 187: See note following RCW 84.33.110.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

84.33.170 Application of chapter to Christmas trees.

Notwithstanding any provision of this chapter to the contrary, this chapter shall not exempt from the ad valorem tax nor subject to the excise tax imposed by this chapter, Christmas trees and short-rotation hardwoods, which are cultivated by agricultural methods, and such land on which such Christmas trees and short-rotation hardwoods stand shall not be taxed as provided in RCW 84.33.100 through 84.33.140. However, short-rotation hardwoods, which are cultivated by agricultural methods, on land classified as timber land under chapter 84.34 RCW, shall be subject to the excise tax imposed under this chapter. [1995 c 165 § 2; 1984 c 204 § 24; 1983 c 3 § 226; 1971 ex.s. c 294 § 17.]

Application—1995 c 165: See note following RCW 84.33.035.

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Chapter 84.34

OPEN SPACE, AGRICULTURAL, AND TIMBER LANDS—CURRENT USE ASSESSMENT—CONSERVATION FUTURES

Sections

84.34.230 Acquisition of open space, etc., land or rights to future development by counties, cities, metropolitan municipal corporations or nonprofit nature conservancy corporation or association—Additional property tax levy authorized.

84.34.230 Acquisition of open space, etc., land or rights to future development by counties, cities, metropolitan municipal corporations or nonprofit nature conservancy corporation or association—Additional property tax levy authorized. For the purpose of acquiring conservation futures as well as other rights and interests in real property pursuant to RCW 84.34.210 and 84.34.220, a county may levy an amount not to exceed six and one-quarter cents per thousand dollars of assessed valuation against the assessed valuation of all taxable property within the county. The limitations in RCW 84.52.043 shall not apply to the tax levy authorized in this section. [1995 c 318 § 8; 1994 c 301 § 33; 1973 1st ex.s. c 195 § 94; 1973 1st ex.s. c 195 § 145; 1971 ex.s. c 243 § 4.]

Effective date—1995 c 318: See note following RCW 82.04.030.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Chapter 84.36
EXEMPTIONS

Sections

- 84.36.035 Nonprofit organization engaged in procuring, processing, etc., blood, plasma or blood products.
- 84.36.060 Art, scientific and historical collections and property used to maintain, etc., such collections—Property of associations engaged in production and performance of musical, dance, artistic, etc., works—Property to be used for exempt purpose in future—Fire engines, implements, and buildings of cities, towns, or fire companies—Humane societies.
- 84.36.381 Residences—Property tax exemptions—Qualifications.
- 84.36.383 Residences—Definitions.
- 84.36.805 Conditions for obtaining exemptions by nonprofit organizations, associations or corporations.

84.36.035 Nonprofit organization engaged in procuring, processing, etc., blood, plasma or blood products. The following property shall be exempt from taxation:

All property, whether real or personal, belonging to or leased by any nonprofit corporation or association and used exclusively in the business of a blood, bone, or tissue bank as defined in RCW 82.04.324, or in the administration of such business. If the real or personal property is leased, the benefit of the exemption shall inure to the nonprofit corporation or association. [1995 2nd sp.s. c 9 § 1; 1971 ex.s. c 206 § 1.]

Applicability—1995 2nd sp.s. c 9 §§ 1 and 2: "Sections 1 and 2 of this act are effective for taxes levied for collection in 1996 and thereafter." [1995 2nd sp.s. c 9 § 6.]

Effective date—1995 2nd sp.s. c 9: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 9 § 7.]

84.36.060 Art, scientific and historical collections and property used to maintain, etc., such collections—Property of associations engaged in production and performance of musical, dance, artistic, etc., works—Property to be used for exempt purpose in future—Fire engines, implements, and buildings of cities, towns, or fire companies—Humane societies. The following property shall be exempt from taxation:

(1) All art, scientific, or historical collections of associations maintaining and exhibiting such collections for the benefit of the general public and not for profit, together with all real and personal property of such associations used exclusively for the safekeeping, maintaining and exhibiting of such collections; and all the real and personal property owned by or leased to associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit, which real and personal property is used exclusively for this production or performance.

(a) To receive this exemption an organization must be organized and operated exclusively for artistic, scientific, historical, literary, musical, dance, dramatic, or educational purposes and receive a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its purpose or function) from the United

States or any state or any political subdivision thereof or from direct or indirect contributions from the general public.

(b) If the property is not currently being used for an exempt purpose but will be used for an exempt purpose within a reasonable period of time, the nonprofit organization, association, or corporation claiming the exemption must submit proof that a reasonably specific and active program is being carried out to construct, remodel, or otherwise enable the property to be used for an exempt purpose. The property does not qualify for an exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise. Proof of a specific and active program to build or remodel the property so it may be used for an exempt purpose may include, but is not limited to:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation toward an active program of construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling; or

(iv) Building permits.

(c) Notwithstanding (b) of this subsection, a for-profit limited partnership created to provide facilities for the use of nonprofit art, scientific, or historical organizations qualifies for the exemption under (b) of this subsection through 1997 if the for-profit limited partnership otherwise qualifies under (b) of this subsection.

(2) All fire engines and other implements used for the extinguishment of fire, with the buildings used exclusively for the safekeeping thereof, and for meetings of fire companies, provided such properties belong to any city or town or to a fire company therein.

(3) Property owned by humane societies in this state in actual use by such societies. [1995 c 306 § 1; 1981 c 141 § 1; 1973 2nd ex.s. c 40 § 5; 1961 c 15 § 84.36.060. Prior: 1955 c 196 § 8; prior: 1939 c 206 § 8, part; 1933 ex.s. c 19 § 1, part; 1933 c 115 § 1, part; 1929 c 126 § 1, part; 1925 ex.s. c 130 § 7, part; 1915 c 131 § 1, part; 1903 c 178 § 1, part; 1901 c 176 § 1, part; 1899 c 141 § 2, part; 1897 c 71 §§ 1, 5, part; 1895 c 176 § 2, part; 1893 c 124 §§ 1, 5, part; 1891 c 140 §§ 1, 5, part; 1890 p 532 §§ 1, 5, part; 1886 p 47 § 1, part; Code 1881 § 2829, part; 1871 p 37 § 4, part; 1869 p 176 § 4, part; 1867 p 61 § 2, part; 1854 p 331 § 2, part; RRS § 11111, part. Formerly RCW 84.40.010.]

Applicability—1995 c 306: "The [This] act is effective for taxes levied for collection in 1995 and thereafter." [1995 c 306 § 2.]

Effective date—1995 c 306: "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 immediately [May 9, 1995]." [1995 c 306 § 3.]

Applicability, construction—1981 c 141: "This act shall apply to taxes payable in 1982 and in subsequent years and shall be strictly construed." [1981 c 141 § 6.]

84.36.381 Residences—Property tax exemptions—Qualifications. A person shall be exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year

following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of the time of filing: **PROVIDED**, That any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant shall receive an exemption on more than one residence in any year: **PROVIDED FURTHER**, That confinement of the person to a hospital or nursing home shall not disqualify the claim of exemption if:

- (a) The residence is temporarily unoccupied;
- (b) The residence is occupied by a spouse and/or a person financially dependent on the claimant for support; or
- (c) The residence is rented for the purpose of paying nursing home or hospital costs;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant, and any lease for life shall be deemed a life estate;

(3) The person claiming the exemption must be sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability: **PROVIDED**, That any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the assessment year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person claiming exemption is reduced for two or more months of the assessment year by reason of the death of the person's spouse, or when other substantial changes occur in disposable income that are likely to continue for an indefinite period of time, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person after such occurrences by twelve. If it is necessary to estimate income to comply with this subsection, the assessor may require confirming documentation of such income prior to May 31 of the year following application;

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of twenty-eight thousand dollars or less shall be exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of eighteen thousand dollars or less but greater than fifteen thousand dollars shall be exempt from all regular property taxes on the greater of thirty thousand dollars or thirty percent of the valuation of his or her residence, but not to exceed fifty thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of fifteen thousand dollars or less shall be exempt from all regular property taxes on the greater of thirty-four thousand dollars or fifty percent of the valuation of his or her residence; and

(6) For a person who otherwise qualifies under this section and has a combined disposable income of twenty-eight thousand dollars or less, the valuation of the residence shall be the true and fair value of the residence on the later of January 1, 1995, or January 1st of the year the person first qualifies under this section. If the person subsequently fails to qualify under this section only for one year because of high income, this same valuation shall be used upon requalification. If the person fails to qualify for more than one year in succession because of high income or fails to qualify for any other reason, the valuation upon requalification shall be the true and fair value on January 1st of the year in which the person requalifies. If the person transfers the exemption under this section to a different residence, the valuation of the different residence shall be the true and fair value of the different residence on January 1st of the year in which the person transfers the exemption.

In no event may the valuation under this subsection be greater than the true and fair value of the residence on January 1st of the assessment year.

This subsection does not apply to subsequent improvements to the property in the year in which the improvements are made. Subsequent improvements to the property shall be added to the value otherwise determined under this subsection at their true and fair value in the year in which they are made. [1995 1st sp.s. c 8 § 1; 1994 sp.s. c 8 § 1; 1993 c 178 § 1; 1992 c 187 § 1. Prior: 1991 c 213 § 3; 1991 c 203 § 1; 1987 c 301 § 1; 1983 1st ex.s. c 11 § 5; 1983 1st ex.s. c 11 § 2; 1980 c 185 § 4; 1979 ex.s. c 214 § 1; 1977 ex.s. c 268 § 1; 1975 1st ex.s. c 291 § 14; 1974 ex.s. c 182 § 1.]

Effective date of 1994 sp.s. c 8—Applicability—1995 1st sp.s. c 8: "Chapter 8, Laws of 1994 sp. sess. shall take effect July 1, 1995, and shall be effective for taxes levied in 1995 for collection in 1996 and thereafter." [1995 1st sp.s. c 8 § 6.]

Application—1995 1st sp.s. c 8: "This act shall apply to taxes levied in 1995 for collection in 1996 and thereafter." [1995 1st sp.s. c 8 § 7.]

Severability—1995 1st sp.s. c 8: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 1st sp.s. c 8 § 8.]

Effective date—1995 1st 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, 1995." [1995 1st sp.s. c 8 § 9.]

Applicability—1993 c 178: "This act shall be effective for taxes levied for collection in 1993 and thereafter." [1993 c 178 § 2.]

Effective date—1993 c 178: "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 immediately [April 30, 1993]." [1993 c 178 § 3.]

Applicability—1992 c 187: "Section 1 of this act shall be effective for taxes levied for collection in 1992 and thereafter." [1992 c 187 § 2.]

Applicability—1991 c 213: See note following RCW 84.38.020.

Applicability—1991 c 203: "Section 1 of this act shall be effective for taxes levied for collection in 1992 and thereafter." [1991 c 203 § 5.]

Applicability—1987 c 301: "This act shall be effective for taxes levied for collection in 1989 and thereafter." [1987 c 301 § 2.]

Intent—1983 1st ex.s. c 11: "The legislature finds that inflation has significant detrimental effects on the senior citizen property tax relief program. Inflation increases incomes without increasing real buying power. Inflation also raises the values of homes, and thus the taxes on those homes. This act addresses the problem of inflation in two ways. First, the assessed value exemption is tied to home value so it will increase as values rise. Secondly, though the income of most senior citizens does not keep pace with inflation, it is the legislature's intent that inflationary increases in incomes will not result in program disqualification. Therefore, the income levels are adjusted to reflect the forecasted increase in inflation. The legislature also recommends that similar adjustments be examined by future legislatures." [1983 1st ex.s. c 11 § 1.]

Applicability—1983 1st ex.s. c 11: "This act applies to taxes first due in 1984 and thereafter." [1983 1st ex.s. c 11 § 7.]

Effective dates—1983 1st ex.s. c 11: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1983], except sections 5 and 6 of this act shall take effect January 1, 1984." [1983 1st ex.s. c 11 § 8.] For codification of 1983 1st ex.s. c 11, see Codification Tables, Volume 0.

Applicability—1980 c 185: See note following RCW 84.36.379.

Applicability—1979 ex.s. c 214: "The exemption created by sections 1 through 4 of this act shall be effective starting with property taxes levied in calendar year 1979 for collection in calendar year 1980. The former exemption created by the law amended shall continue to be effective with respect to property taxes levied in calendar year 1978 for collection in calendar year 1979." [1979 ex.s. c 214 § 10.] For codification of 1979 ex.s. c 214, see Codification Tables, Volume 0.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Severability—1974 ex.s. c 182: "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 182 § 8.]

84.36.383 Residences—Definitions. As used in RCW 84.36.381 through 84.36.389, except where the context clearly indicates a different meaning:

(1) The term "residence" shall mean a single family dwelling unit whether such unit be separate or part of a multiunit dwelling, including the land on which such dwelling stands not to exceed one acre. The term shall also include a share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides. The term shall also include a single family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality thereof including an Indian tribe or in the state of Washington, and notwithstanding the provisions of RCW 84.04.080 and 84.04.090, such a residence shall be deemed real property.

(2) The term "real property" shall also include a mobile home which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe, connections with sewer, water, or other utilities: PROVIDED, That a mobile home located on land leased by the owner of the mobile home shall be subject, for tax billing, payment, and

collection purposes, only to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(3) "Department" shall mean the state department of revenue.

(4) "Combined disposable income" means the disposable income of the person claiming the exemption, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the residence for the assessment year, less amounts paid by the person claiming the exemption or his or her spouse during the assessment year for:

(a) Drugs supplied by prescription of a medical practitioner authorized by the laws of this state or another jurisdiction to issue prescriptions; and

(b) The treatment or care of either person received in the home or in a nursing home.

(5) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purpose of this section, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(a) Capital gains, other than nonrecognized gain on the sale of a principal residence under section 1034 of the federal internal revenue code, or gain excluded from income under section 121 of the federal internal revenue code to the extent it is reinvested in a new principal residence;

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments;

(f) Veterans benefits other than attendant-care and medical-aid payments;

(g) Federal social security act and railroad retirement benefits;

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

(6) "Cotenant" means a person who resides with the person claiming the exemption and who has an ownership interest in the residence. [1995 1st sp.s. c 8 § 2; 1994 sp.s. c 8 § 2; 1991 c 213 § 4; 1991 c 219 § 1; 1989 c 379 § 6; 1987 c 155 § 2; 1985 c 395 § 3; 1983 1st ex.s. c 11 § 4; 1980 c 185 § 5; 1979 ex.s. c 214 § 2; 1975 1st ex.s. c 291 § 15; 1974 ex.s. c 182 § 2.]

Effective date of 1994 sp.s. 8—Applicability—1995 1st sp.s. c 8: See note following RCW 84.36.381.

Application—Severability—Effective date—1995 1st sp.s. c 8: See notes following RCW 84.36.381.

Applicability—1991 c 219: "This act is effective for taxes levied for collection in 1992 and thereafter." [1991 c 219 § 2.]

Applicability—1991 c 213: See note following RCW 84.38.020.

Severability—Effective date—1989 c 379: See notes following RCW 84.36.040.

Intent—Applicability—Effective dates—1983 1st ex.s. c 11: See notes following RCW 84.36.381.

Applicability—1980 c 185: See note following RCW 84.36.379.

Applicability—1979 ex.s. c 214: See note following RCW 84.36.381.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

84.36.805 Conditions for obtaining exemptions by nonprofit organizations, associations or corporations. In order to be exempt pursuant to RCW 84.36.030, 84.36.550, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.047, 84.36.050, 84.36.060, 84.36.350, and 84.36.480, the nonprofit organizations, associations or corporations shall satisfy the following conditions:

(1) The property is used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4) and 84.36.037, the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted;

(2) The property is irrevocably dedicated to the purpose for which exemption has been granted, and on the liquidation, dissolution, or abandonment by said organization, association, or corporation, said property will not inure directly or indirectly to the benefit of any shareholder or individual, except a nonprofit organization, association, or corporation which too would be entitled to property tax exemption: PROVIDED, That the property need not be irrevocably dedicated if it is leased or rented to those qualified for exemption pursuant to RCW 84.36.035, 84.36.040, 84.36.041, or 84.36.043 or those qualified for exemption as an association engaged in the production or performance of musical, dance, artistic, dramatic, or literary works pursuant to RCW 84.36.060, but only if under the terms of the lease or rental agreement the nonprofit organization, association, or corporation receives the benefit of the exemption;

(3) The facilities and services are available to all regardless of race, color, national origin or ancestry;

(4) The organization, association, or corporation is duly licensed or certified where such licensing or certification is required by law or regulation;

(5) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller shall not qualify for exempt status;

(6) The director of the department of revenue shall have access to its books in order to determine whether such organization, association, or corporation is exempt from taxes within the intent of RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.047, 84.36.050, 84.36.060, 84.36.350, and 84.36.480. [1995 2nd sp.s. c 9 § 2; 1993 c 79 § 3. Prior: 1990 c 283 §§ 3 and 7; 1989 c 379 § 4; 1987 c 468 § 1; 1984 c 220 § 7; 1981 c 141 § 4; 1973 2nd ex.s. c 40 § 7.]

Applicability—1995 2nd sp.s. c 9 § 1 and 2: See note following RCW 84.36.035. -

Effective date—1995 2nd sp.s. c 9: See note following RCW 84.36.035.

Applicability—1993 c 79: See note following RCW 84.36.550.

Construction—1990 c 283: See note following RCW 84.36.030.

Severability—Effective date—1989 c 379: See notes following RCW 84.36.040.

Applicability—1987 c 468: "This act shall be effective for taxes levied for collection in 1988 and thereafter." [1987 c 468 § 3.]

Applicability, construction—1981 c 141: See note following RCW 84.36.060.

Chapter 84.38

DEFERRAL OF SPECIAL ASSESSMENTS AND/OR PROPERTY TAXES

Sections

84.38.020 Definitions.

84.38.030 Conditions and qualifications for claiming deferral.

84.38.020 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) "Claimant" means a person who either elects or is required under RCW 84.64.050 to defer payment of the special assessments and/or real property taxes accrued on the claimant's residence by filing a declaration to defer as provided by this chapter.

When two or more individuals of a household file or seek to file a declaration to defer, they may determine between them as to who the claimant shall be.

(2) "Department" means the state department of revenue.

(3) "Equity value" means the amount by which the fair market value of a residence as determined from the records of the county assessor exceeds the total amount of any liens or other obligations against the property.

(4) "Real property taxes" means ad valorem property taxes levied on a residence in this state in the preceding calendar year.

(5) "Residence" has the meaning given in RCW 84.36.383, except that a residence includes any additional property up to a total of five acres that comprises the residential parcel if this larger parcel size is required under land use regulations.

(6) "Special assessment" means the charge or obligation imposed by a city, town, county, or other municipal corporation upon property specially benefited by a local improvement, including assessments under chapters 35.44, 36.88, 36.94, 53.08, 54.16, 56.20, 57.16, 86.09, and 87.03 RCW and any other relevant chapter. [1995 c 329 § 1; 1991 c 213 § 1; 1984 c 220 § 20; 1979 ex.s. c 214 § 5; 1975 1st ex.s. c 291 § 27.]

Applicability—1991 c 213: "Sections 1 and 2 of this act shall be effective for taxes levied for collection in 1991 and thereafter. Sections 3 and 4 of this act shall be effective for taxes levied for collection in 1992 and thereafter." [1991 c 213 § 6.]

84.38.030 Conditions and qualifications for claiming deferral. A claimant may defer payment of special assessments and/or real property taxes on up to eighty percent of the amount of the claimant's equity value in the claimant's residence if the following conditions are met:

(1) The claimant must meet all requirements for an exemption for the residence under RCW 84.36.381, other

than the age and income limits under RCW 84.36.381 and the parcel size limit under RCW 84.36.383.

(2) The claimant must be sixty years of age or older on December 31st of the year in which the deferral claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability: PROVIDED, That any surviving spouse of a person who was receiving a deferral at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section.

(3) The claimant must have a combined disposable income, as defined in RCW 84.36.383, of thirty-four thousand dollars or less.

(4) The claimant must have owned, at the time of filing, the residence on which the special assessment and/or real property taxes have been imposed. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life, or a revocable trust does not satisfy the ownership requirement.

(5) The claimant must have and keep in force fire and casualty insurance in sufficient amount to protect the interest of the state in the claimant's equity value: PROVIDED, That if the claimant fails to keep fire and casualty insurance in force to the extent of the state's interest in the claimant's equity value, the amount deferred shall not exceed one hundred percent of the claimant's equity value in the land or lot only.

(6) In the case of special assessment deferral, the claimant must have opted for payment of such special assessments on the installment method if such method was available. [1995 c 329 § 2; 1991 c 213 § 2; 1988 c 222 § 11; 1984 c 220 § 21; 1979 ex.s. c 214 § 6; 1975 1st ex.s. c 291 § 28.]

Applicability—1991 c 213: See note following RCW 84.38.020.

Chapter 84.40

LISTING OF PROPERTY

Sections

- 84.40.080 Listing omitted property or improvements.
- 84.40.178 Exempt residential property—Maintenance of assessed valuation—Notice of change.
- 84.40.185 Individuals, corporations, limited liability companies, associations, partnerships, trusts, or estates required to list personalty.

84.40.080 Listing omitted property or improvements. An assessor shall enter on the assessment roll in any year any property shown to have been omitted from the assessment roll of any preceding year, at the value for the preceding year, or if not then valued, at such value as the assessor shall determine for the preceding year, and such value shall be stated separately from the value of any other year. Where improvements have not been valued and assessed as a part of the real estate upon which the same may be located, as evidenced by the assessment rolls, they may be separately valued and assessed as omitted property under this section. No such assessment shall be made in any

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case where a bona fide purchaser, encumbrancer, or contract buyer has acquired any interest in said property prior to the time such improvements are assessed. When such an omitted assessment is made, the taxes levied thereon may be paid within one year of the due date of the taxes for the year in which the assessment is made without penalty or interest. In the assessment of personal property, the assessor shall assess the omitted value not reported by the taxpayer as evidenced by an inspection of either the property or the books and records of said taxpayer by the assessor. [1995 c 134 § 14. Prior: 1994 c 301 § 37; 1994 c 124 § 21; 1973 2nd ex.s. c 8 § 1; 1961 c 15 § 84.40.080; prior: 1951 1st ex.s. c 8 § 1; 1925 ex.s. c 130 § 59; 1897 c 71 § 48; RRS § 11142.]

84.40.178 Exempt residential property—Maintenance of assessed valuation—Notice of change.

The assessor shall maintain an assessed valuation in accordance with the approved revaluation cycle for a residence owned by a person qualifying for exemption under RCW 84.36.381 in addition to the valuation required under RCW 84.36.381(6). Upon a change in the true and fair value of the residence, the assessor shall notify the person qualifying for exemption under RCW 84.36.381 of the new true and fair value and that the new true and fair value will be used to compute property taxes if the property fails to qualify for exemption under RCW 84.36.381. [1995 1st sp.s. c 8 § 3.]

Application—Severability—Effective date—1995 1st sp.s. c 8: See notes following RCW 84.36.381.

84.40.185 Individuals, corporations, limited liability companies, associations, partnerships, trusts, or estates required to list personalty.

Every individual, corporation, limited liability company, association, partnership, trust, or estate shall list all personal property in his or its ownership, possession, or control which is subject to taxation pursuant to the provisions of this title. Such listing shall be made and delivered in accordance with the provisions of this chapter. [1995 c 318 § 5; 1967 ex.s. c 149 § 41.]

Effective date—1995 c 318: See note following RCW 82.04.030.

Effective date—1967 ex.s. c 149: See note following RCW 82.04.050.

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

Chapter 84.48

EQUALIZATION OF ASSESSMENTS

Sections

- 84.48.050 Abstract of rolls to state auditor—State action if assessor does not transmit, when.
- 84.48.080 Equalization of assessments—Taxes for state purposes—Procedure—Levy and apportionment—Hypothetical levy for establishing consolidated levy—Rules—Record.

84.48.050 Abstract of rolls to state auditor—State action if assessor does not transmit, when. The county assessor shall, on or before the fifteenth day of January in each year, make out and transmit to the state auditor, in such form as may be prescribed, a complete abstract of the tax rolls of the county, showing the number of acres that have

been assessed and the total value of the real property, including the structures on the real property; the total value of all taxable personal property in the county; the aggregate amount of all taxable property in the county; the total amount as equalized and the total amount of taxes levied in the county for state, county, city and other taxing district purposes, for that year. Should the assessor of any county fail to transmit to the department of revenue the abstract provided for in RCW 84.48.010, and if, by reason of such failure to transmit such abstract, any county shall fail to collect and pay to the state its due proportion of the state tax for any year, the department of revenue shall ascertain what amount of state tax said county has failed to collect, and certify the same to the state auditor, who shall charge the amount to the proper county and notify the auditor of said county of the amount of said charge; said sum shall be due and payable immediately by warrant in favor of the state on the current expense fund of said county. [1995 c 134 § 15. Prior: 1994 c 301 § 42; 1994 c 124 § 31; 1961 c 15 § 84.48.050; prior: 1925 ex.s. c 130 § 69; RRS § 11221; prior: 1890 p 557 § 74. Formerly RCW 84.48.050 and 84.48.070.]

84.48.080 Equalization of assessments—Taxes for state purposes—Procedure—Levy and apportionment—Hypothetical levy for establishing consolidated levy—Rules—Record. (1) Annually during the months of September and October, the department of revenue shall examine and compare the returns of the assessment of the property in the several counties of the state, and the assessment of the property of railroad and other companies assessed by the department, and proceed to equalize the same, so that each county in the state shall pay its due and just proportion of the taxes for state purposes for such assessment year, according to the ratio the valuation of the property in each county bears to the total valuation of all property in the state.

First. The department shall classify all property, real and personal, and shall raise and lower the valuation of any class of property in any county to a value that shall be equal, so far as possible, to the true and fair value of such class as of January 1st of the current year for the purpose of ascertaining the just amount of tax due from each county for state purposes. In equalizing personal property as of January 1st of the current year, the department shall use the assessment level of the preceding year. Such classification may be on the basis of types of property, geographical areas, or both. For purposes of this section, for each county that has not provided the department with an assessment return by December 1st, the department shall proceed, using facts and information and in a manner it deems appropriate, to estimate the value of each class of property in the county.

Second. The department shall keep a full record of its proceedings and the same shall be published annually by the department.

(2) The department shall levy the state taxes authorized by law. The amount levied in any one year for general state purposes shall not exceed the lawful dollar rate on the dollar of the assessed value of the property of the entire state, which assessed value shall be one hundred percent of the true and fair value of such property in money. The department shall apportion the amount of tax for state purposes

levied by the department, among the several counties, in proportion to the valuation of the taxable property of the county for the year as equalized by the department: PROVIDED, That for purposes of this apportionment, the department shall recompute the previous year's levy and the apportionment thereof to correct for changes and errors in taxable values reported to the department after October 1 of the preceding year and shall adjust the apportioned amount of the current year's state levy for each county by the difference between the apportioned amounts established by the original and revised levy computations for the previous year. For purposes of this section, changes in taxable values mean a final adjustment made by a county board of equalization, the state board of tax appeals, or a court of competent jurisdiction and shall include additions of omitted property, other additions or deletions from the assessment or tax rolls, any assessment return provided by a county to the department subsequent to December 1st, or a change in the indicated ratio of a county. Errors in taxable values mean errors corrected by a final reviewing body.

In addition to computing a levy under this subsection that is reduced under RCW 84.55.012, the department shall compute a hypothetical levy without regard to the reduction under RCW 84.55.012. This hypothetical levy shall also be apportioned among the several counties in proportion to the valuation of the taxable property of the county for the year, as equalized by the department, in the same manner as the actual levy and shall be used by the county assessors for the purpose of recomputing and establishing a consolidated levy under RCW 84.52.010.

(3) The department shall have authority to adopt rules and regulations to enforce obedience to its orders in all matters in relation to the returns of county assessments, the equalization of values, and the apportionment of the state levy by the department.

(4) After the completion of the duties prescribed in this section, the director of the department shall certify the record of the proceedings of the department under this section, the tax levies made for state purposes and the apportionment thereof among the counties, and the certification shall be available for public inspection. [1995 2nd sp.s. c 13 § 3; 1994 c 301 § 43; 1990 c 283 § 1; 1988 c 222 § 24; 1982 1st ex.s. c 28 § 1; 1979 ex.s. c 86 § 3; 1973 1st ex.s. c 195 § 99; 1971 ex.s. c 288 § 9; 1961 c 15 § 84.48.080. Prior: 1949 c 66 § 1; 1939 c 206 § 36; 1925 ex.s. c 130 § 70; Rem. Supp. 1949 § 11222; prior: 1917 c 55 § 1; 1915 c 7 § 1; 1907 c 215 § 1; 1899 c 141 § 4; 1897 c 71 § 60; 1893 c 124 § 61; 1890 p 557 § 75. Formerly RCW 84.48.080, 84.48.090, and 84.48.100.]

Intent—1995 2nd sp.s. c 13: See note following RCW 84.55.012.

Severability—1982 1st ex.s. c 28: "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 1st ex.s. c 28 § 3.]

Severability—1979 ex.s. c 86: See note following RCW 13.24.040.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

Chapter 84.52
LEVY OF TAXES

Sections

- 84.52.010 Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations—Use of hypothetical levy.
- 84.52.043 Limitations upon regular property tax levies.
- 84.52.0531 Levies by school districts—Maximum dollar amount for maintenance and operation support—Restrictions—Maximum levy percentage—Levy reduction funds—Rules.
- 84.52.069 Six-year regular tax levies for emergency medical care and services.
- 84.52.105 Affordable housing levies authorized—Declaration of emergency and plan required.
- 84.52.120 Metropolitan park districts—Protection of levy from prorationing—Ballot proposition.

84.52.010 Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations—Use of hypothetical levy. Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy shall take precedence over all other levies and shall not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under RCW 84.52.069, 84.34.230, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, and 84.52.105, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies shall be reduced as follows: (a) The portion of the levy by a metropolitan park district that is protected under RCW 84.52.120 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; (b) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty

cents per thousand dollars of assessed value, shall be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; and (c) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or eliminated.

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 shall be reduced on a pro rata basis or eliminated; and

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, library districts, metropolitan park districts under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, shall be reduced on a pro rata basis or eliminated.

In determining whether the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.050, exceeds the limitations provided in that section, the assessor shall use the hypothetical state levy, as apportioned to the county under RCW 84.48.080, that was computed under RCW 84.48.080 without regard to the reduction under RCW 84.55.012. [1995 2nd sp.s. c 13 § 4; 1995 c 99 § 2; 1994 c 124 § 36; 1993 c 337 § 4; 1990 c 234 § 4; 1988 c 274 § 7; 1987 c 255 § 1; 1973 1st ex.s. c 195 § 101; 1973 1st ex.s. c 195 § 146; 1971 ex.s. c 243 § 6; 1970 ex.s. c 92 § 4; 1961 c 15 § 84.52.010. Prior: 1947 c 270 § 1; 1925 ex.s. c 130 § 74; Rem. Supp. 1947 § 11235; prior: 1920 ex.s. c 3 § 1; 1897 c 71 § 62; 1893 c 124 § 63.]

Intent—1995 2nd sp.s. c 13: See note following RCW 84.55.012.

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—1988 c 274: "The legislature finds that, due to statutory and constitutional limitations, the interdependence of the regular property

tax levies of the state, counties, county road districts, cities and towns, and junior taxing districts can cause significant reductions in the otherwise authorized levies of those taxing districts, resulting in serious disruptions to essential services provided by those taxing districts. The purpose of this act is to avoid unnecessary reductions in regular property tax revenue without exceeding existing statutory and constitutional tax limitations on cumulative regular property tax levy rates. The legislature declares that it is a purpose of the state, counties, county road districts, cities and towns, public hospital districts, library districts, fire protection districts, metropolitan park districts, and other taxing districts to participate in the methods provided by this act by which revenue levels supporting the services provided by all taxing districts might be maintained." [1988 c 274 § 1.]

Severability—1988 c 274: "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 274 § 13.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—1971 ex.s. c 243: See RCW 84.34.920.

Intent—1970 ex.s. c 92: "It is the intent of this 1970 amendatory act to prevent a potential doubling of property taxes that might otherwise result from the enforcement of the constitutionally required fifty percent assessment ratio as of January 1, 1970, and to adjust property tax millage rates for subsequent years to levels which will conform to the requirements of any constitutional amendment imposing a one percent limitation on property taxes. It is the further intent of this 1970 amendatory act that the statutory authority of any taxing district to impose excess levies shall not be impaired by reason of the reduction in millage rates for regular property tax levies. This 1970 amendatory act shall be construed to effectuate the legislative intent expressed in this section." [1970 ex.s. c 92 § 1.]

Effective date—Application—1970 ex.s. c 92: "This act shall take effect July 1, 1970 but shall not affect property taxes levied in 1969 or prior years." [1970 ex.s. c 92 § 11.]

84.52.043 Limitations upon regular property tax levies. Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named shall be as follows:

(1) Levies of the senior taxing districts shall be as follows: (a) The levy by the state shall not exceed three dollars and sixty cents per thousand dollars of assessed value adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; (b) the levy by any county shall not exceed one dollar and eighty cents per thousand dollars of assessed value; (c) the levy by any road district shall not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and (d) the levy by any city or town shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value. However any county is hereby authorized to increase its levy from one dollar and eighty cents to a rate not to exceed two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes if the total levies for both the county and any road district within the county do not exceed four dollars and five cents per thousand dollars of assessed value, and no other taxing district has its levy reduced as a result of the increased county levy.

(2) The aggregate levies of junior taxing districts and senior taxing districts, other than the state, shall not exceed five dollars and ninety cents per thousand dollars of assessed valuation. The term "junior taxing districts" includes all taxing districts other than the state, counties, road districts, cities, towns, port districts, and public utility districts. The

limitations provided in this subsection shall not apply to: (a) Levies at the rates provided by existing law by or for any port or public utility district; (b) excess property tax levies authorized in Article VII, section 2 of the state Constitution; (c) levies for acquiring conservation futures as authorized under RCW 84.34.230; (d) levies for emergency medical care or emergency medical services imposed under RCW 84.52.069; (e) levies to finance affordable housing for very low-income housing imposed under RCW 84.52.105; and (f) the portions of levies by metropolitan park districts that are protected under RCW 84.52.120. [1995 c 99 § 3; 1993 c 337 § 3; 1990 c 234 § 1; 1989 c 378 § 36; 1988 c 274 § 5; 1973 1st ex.s. c 195 § 134.]

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

Effective date—1973 2nd ex.s. c 4: "Sections 4 through 6 of this 1973 amendatory act shall be effective on and after January 1, 1974." [1973 2nd ex.s. c 4 § 6.] Sections 4 and 5 consist of the 1973 2nd ex.s. c 4 amendments to RCW 70.12.010 and 73.08.080, and section 6 is the section quoted.

Emergency—1973 2nd ex.s. c 4: "Except as otherwise in this 1973 amendatory act provided, this 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1973 2nd ex.s. c 4 § 7.]

Construction—1973 1st ex.s. c 195: "Sections 135 through 152 of this 1973 amendatory act shall apply to tax levies made in 1973 for collection in 1974, and sections 1 through 134 shall apply to tax levies made in 1974 and each year thereafter for collection in 1975 and each year thereafter." [1973 1st ex.s. c 195 § 155.]

Severability—1973 1st ex.s. c 195: "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 195 § 153.]

Effective dates and termination dates—1973 1st ex.s. c 195 (as amended by 1973 2nd ex.s. c 4): "This 1973 amendatory act, chapter 195, Laws of 1973, is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That section 9 shall take effect January 1, 1975, and section 133(3) shall take effect on January 31, 1974: PROVIDED, FURTHER, That section 137 shall not be effective until July 1, 1973, at which time section 136 shall be void and of no effect: PROVIDED, FURTHER, That section 138 shall not be effective until January 1, 1974, at which time section 137 shall be void and of no effect: PROVIDED, FURTHER, That section 139 shall not be effective until July 1, 1974 at which time section 138 shall be void and of no effect, and section 139 shall be null and void and of no further effect on and after January 1, 1975: PROVIDED, FURTHER, That sections 1 through 8, sections 10 through 132, section 133(1), (2), (4), and (5), and section 134 shall not take effect until January 1, 1974, at which time sections 135, 136, and sections 140 through 151 shall be void and of no effect: PROVIDED, FURTHER, That section 152 shall be void and of no effect on and after January 1, 1975." [1973 2nd ex.s. c 4 § 3; 1973 1st ex.s. c 195 § 154.]

84.52.0531 Levies by school districts—Maximum dollar amount for maintenance and operation support—Restrictions—Maximum levy percentage—Levy reduction funds—Rules. The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1992, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1991.

(2) For the purpose of this section, the basic education allocation shall be determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350: PROVIDED, That when determining the basic education allocation under subsection (4) of this section, nonresident full time equivalent pupils who are participating in a program provided for in chapter 28A.545 RCW or in any other program pursuant to an interdistrict agreement shall be included in the enrollment of the resident district and excluded from the enrollment of the serving district.

(3) For excess levies for collection in calendar year 1993 and thereafter, the maximum dollar amount shall be the sum of (a) and (b) of this subsection minus (c) of this subsection:

(a) The district's levy base as defined in subsection (4) of this section multiplied by the district's maximum levy percentage as defined in subsection (5) of this section;

(b) In the case of nonhigh school districts only, an amount equal to the total estimated amount due by the nonhigh school district to high school districts pursuant to chapter 28A.545 RCW for the school year during which collection of the levy is to commence, less the increase in the nonhigh school district's basic education allocation as computed pursuant to subsection (1) of this section due to the inclusion of pupils participating in a program provided for in chapter 28A.545 RCW in such computation;

(c) The maximum amount of state matching funds under RCW 28A.500.010 for which the district is eligible in that tax collection year.

(4) For excess levies for collection in calendar year 1993 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Handicapped education;

(iii) Education of highly capable students;

(iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;

(v) Food services; and

(vi) State-wide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(5) For excess levies for collection in calendar year 1993 and thereafter, a district's maximum levy percentage shall be determined as follows:

(a) Multiply the district's maximum levy percentage for the prior year by the district's levy base as determined in subsection (4) of this section;

(b) Reduce the amount in (a) of this subsection by the total estimated amount of any levy reduction funds as defined in subsection (6) of this section which are to be allocated to the district for the current school year;

(c) Divide the amount in (b) of this subsection by the district's levy base to compute a new percentage;

(d) The percentage in (c) of this subsection or twenty percent, whichever is greater, shall be the district's maximum levy percentage for levies collected in that calendar year; and

(e) For levies to be collected in calendar years 1994 through 1997, the maximum levy rate shall be the district's maximum levy percentage for 1993 plus four percent reduced by any levy reduction funds. For levies collected in 1998, the prior year shall mean 1993.

(6) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsection (4) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

(7) For the purposes of this section, "prior school year" shall mean the most recent school year completed prior to the year in which the levies are to be collected.

(8) For the purposes of this section, "current school year" shall mean the year immediately following the prior school year.

(9) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(10) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section. [1995 1st sp.s. c 11 § 1; 1994 c 116 § 2; 1993 c 465 § 1; 1992 c 49 § 1; 1990 c 33 § 601; 1989 c 141 § 1; 1988 c 252 § 1; 1987 1st ex.s. c 2 § 101; 1987 c 185 § 40; 1985 c 374 § 1. Prior: 1981 c 264 § 10; 1981 c 168 § 1; 1979 ex.s. c 172 § 1; 1977 ex.s. c 325 § 4.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Effective date—1989 c 141: "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 141 § 2.]

Intent—1987 1st ex.s. c 2: "The legislature intends to establish the limitation on school district maintenance and operations levies at twenty percent, with ten percent to be equalized on a state-wide basis. The legislature further intends to establish a modern school financing system for compensation of school staff and provide a class size reduction in grades kindergarten through three. The legislature intends to give the highest funding priority to strengthening support for existing school programs.

The legislature finds that providing for the adoption of a state-wide salary allocation schedule for certificated instructional staff will encourage recruitment and retention of able individuals to the teaching profession, and

limit the administrative burden associated with implementing state teacher salary policies." [1987 1st ex.s. c 2 § 1.]

Severability—1987 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." [1987 1st ex.s. c 2 § 213.]

Effective date—1987 1st ex.s. c 2: "This act shall take effect September 1, 1987." [1987 1st ex.s. c 2 § 214.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Severability—1985 c 374: "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 374 § 3.]

Effective date—1981 c 264: "Section 10 of this amendatory act shall become effective for maintenance and operation excess tax levies now or hereafter authorized pursuant to RCW 84.52.053, as now or hereafter amended, for collection in 1982 and thereafter." [1981 c 264 § 11.]

Severability—1981 c 264: See note following RCW 28A.545.030.

Effective date—1979 ex.s. c 172: "This amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on September 1, 1979." [1979 ex.s. c 172 § 3.]

Severability—1979 ex.s. c 172: "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 ex.s. c 172 § 2.]

Severability—Effective date—1977 ex.s. c 325: See notes following RCW 84.52.052.

Payments to high school districts for educating nonhigh school district students: Chapter 28A.545 RCW.

Purposes: RCW 28A.545.030.

Rules to effect purposes and implement provisions: RCW 28A.545.110.

Superintendent's annual determination of estimated amount due—Process: RCW 28A.545.070.

84.52.069 Six-year regular tax levies for emergency medical care and services. (1) As used in this section, "taxing district" means a county, emergency medical service district, city or town, public hospital district, urban emergency medical service district, or fire protection district.

(2) A taxing district may impose additional regular property tax levies in an amount equal to fifty cents or less per thousand dollars of the assessed value of property in the taxing district in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percent of the total number of voters voting in such taxing district at the last preceding general election when the number of registered voters voting on the proposition does not exceed forty percent of the total number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters thereof voting on the proposition when the number of registered voters voting on the proposition exceeds forty percent of the total number of voters voting in such taxing district in the last preceding general election. Ballot propositions shall conform with RCW 29.30.111.

(3) Any tax imposed under this section shall be used only for the provision of emergency medical care or emergency medical services, including related personnel costs,

training for such personnel, and related equipment, supplies, vehicles and structures needed for the provision of emergency medical care or emergency medical services.

(4) If a county levies a tax under this section, no taxing district within the county may levy a tax under this section. No other taxing district may levy a tax under this section if another taxing district has levied a tax under this section within its boundaries: PROVIDED, That if a county levies less than fifty cents per thousand dollars of the assessed value of property, then any other taxing district may levy a tax under this section equal to the difference between the rate of the levy by the county and fifty cents: PROVIDED FURTHER, That if a taxing district within a county levies this tax, and the voters of the county subsequently approve a levying of this tax, then the amount of the taxing district levy within the county shall be reduced, when the combined levies exceed fifty cents. Whenever a tax is levied county-wide, the service shall, insofar as is feasible, be provided throughout the county: PROVIDED FURTHER, That no county-wide levy proposal may be placed on the ballot without the approval of the legislative authority of each city exceeding fifty thousand population within the county: AND PROVIDED FURTHER, That this section and RCW 36.32.480 shall not prohibit any city or town from levying an annual excess levy to fund emergency medical services: AND PROVIDED, FURTHER, That if a county proposes to impose tax levies under this section, no other ballot proposition authorizing tax levies under this section by another taxing district in the county may be placed before the voters at the same election at which the county ballot proposition is placed: AND PROVIDED FURTHER, That any taxing district emergency medical service levy that is authorized subsequent to a county emergency medical service levy, shall expire concurrently with the county emergency medical service levy.

(5) The limitations in RCW 84.52.043 shall not apply to the tax levy authorized in this section.

(6) The limitation in RCW 84.55.010 shall not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section. [1995 c 318 § 9; 1994 c 79 § 2; 1993 c 337 § 5; 1991 c 175 § 1; 1985 c 348 § 1; 1984 c 131 § 5; 1979 ex.s. c 200 § 1.]

Effective date—1995 c 318: See note following RCW 82.04.030.

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—1984 c 131 §§ 3-9: See note following RCW 29.30.111.

Severability—1979 ex.s. c 200: "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 200 § 3.]

84.52.105 Affordable housing levies authorized—Declaration of emergency and plan required. (1) A county, city, or town may impose additional regular property tax levies of up to fifty cents per thousand dollars of assessed value of property in each year for up to ten consecutive years to finance affordable housing for very low-income households when specifically authorized to do so by a majority of the voters of the taxing district voting on a ballot proposition authorizing the levies. If both a county, and a city or town within the county, impose levies authorized under this section, the levies of the last jurisdiction to

receive voter approval for the levies shall be reduced or eliminated so that the combined rates of these levies may not exceed fifty cents per thousand dollars of assessed valuation in any area within the county. A ballot proposition authorizing a levy under this section must conform with RCW 84.52.054.

(2) The additional property tax levies may not be imposed until:

(a) The governing body of the county, city, or town declares the existence of an emergency with respect to the availability of housing that is affordable to very low-income households in the taxing district; and

(b) The governing body of the county, city, or town adopts an affordable housing financing plan to serve as the plan for expenditure of funds raised by a levy authorized under this section, and the governing body determines that the affordable housing financing plan is consistent with either the locally adopted or state-adopted comprehensive housing affordability strategy, required under the Cranston-Gonzalez national affordable housing act (42 U.S.C. Sec. 12701, et seq.), as amended.

(3) For purposes of this section, the term "very low-income household" means a single person, family, or unrelated persons living together whose income is at or below fifty percent of the median income, as determined by the United States department of housing and urban development, with adjustments for household size, for the county where the taxing district is located.

(4) The limitations in RCW 84.52.043 shall not apply to the tax levy authorized in this section. [1995 c 318 § 10; 1993 c 337 § 2.]

Effective date—1995 c 318: See note following RCW 82.04.030.

Finding—1993 c 337: "The legislature finds that:

(1) Many very low-income residents of the state of Washington are unable to afford housing that is decent, safe, and appropriate to their living needs;

(2) Recent federal housing legislation conditions funding for affordable housing on the availability of local matching funds;

(3) Current statutory debt limitations may impair the ability of counties, cities, and towns to meet federal matching requirements and, as a consequence, may impair the ability of such counties, cities, and towns to develop appropriate and effective strategies to increase the availability of safe, decent, and appropriate housing that is affordable to very low-income households; and

(4) It is in the public interest to encourage counties, cities, and towns to develop locally based affordable housing financing plans designed to expand the availability of housing that is decent, safe, affordable, and appropriate to the living needs of very low-income households of the counties, cities, and towns." [1993 c 337 § 1.]

84.52.120 Metropolitan park districts—Protection of levy from prorationing—Ballot proposition. A metropolitan park district with a population of one hundred fifty thousand or more may submit a ballot proposition to voters of the district authorizing the protection of the district's tax levy from prorationing under RCW 84.52.010(2) by imposing all or any portion of the district's twenty-five cent per thousand dollars of assessed valuation tax levy outside of the five dollar and ninety cent per thousand dollar of assessed valuation limitation established under RCW 84.52.043(2), if those taxes otherwise would be prorated under RCW 84.52.010(2)(c), for taxes imposed in any year on or before the first day of January six years after the ballot proposition

is approved. A simple majority vote of voters voting on the proposition is required for approval. [1995 c 99 § 1.]

Chapter 84.55

LIMITATIONS UPON REGULAR PROPERTY TAXES

Sections

84.55.012 Reduction of property tax levy—Setting amount of future levies.

84.55.120 Public hearing—Taxing district's revenue sources.

84.55.012 Reduction of property tax levy—Setting amount of future levies. (1) The state property tax levy for collection in 1996 shall be reduced by 4.7187 percent of the levy amount that would otherwise be allowed under this chapter without regard to this section or any other tax reduction legislation enacted in 1995.

(2) The tax reduction provided in this section is in addition to any other tax reduction legislation that may be enacted by the legislature.

(3) State levies for collection after 1996 shall be set at the amount that would be allowed otherwise under this chapter if the state levy for collection in 1996 had been set without the reduction under subsection (1) of this section. [1995 2nd sp.s. c 13 § 2.]

Intent—1995 2nd sp.s. c 13: "With property valuations continuing to increase, property taxes have been steadily increasing. At the same time, personal incomes have not continued to rise at the same rate. Property taxes are becoming increasingly more difficult to pay. Many residential property owners complain about the overall level of taxes and about the continuing increase in tax from year to year. Taxpayers want property tax relief. The legislature intends to establish an on-going program of state property tax reductions the amount of which is to be determined by the legislature on a yearly basis based on the level of general fund tax revenues." [1995 2nd sp.s. c 13 § 1.]

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

If the taxing district is otherwise required to hold a public hearing on its proposed regular tax levy, a single public hearing may be held on this matter. [1995 c 251 § 1.]

Chapter 84.56

COLLECTION OF TAXES

Sections

84.56.022 Tax statement to show voter-approved levies.

84.56.022 Tax statement to show voter-approved levies. Each tax statement shall show the amount of voter-approved: (1) Regular levies except those authorized in RCW 84.55.050; and (2) excess levies. Such amounts may be shown either as a dollar amount or as a percentage of the total amount of taxes. [1995 c 180 § 1; 1994 c 301 § 48.]

Title 86

FLOOD CONTROL

Chapters

- 86.16 Flood plain management.**
86.26 State participation in flood control maintenance.

Chapter 86.16

FLOOD PLAIN MANAGEMENT

(Formerly: Flood control zones by state)

Sections

- 86.16.025 Authority of department.
 86.16.035 Department of ecology—Control of dams and obstructions.
 86.16.081 Enforcement of chapter—Civil penalty—Review by pollution control hearings board or local legislative authority.

86.16.025 Authority of department. Subject to RCW 43.21A.068, with respect to such features as may affect flood conditions, the department shall have authority to examine, approve or reject designs and plans for any structure or works, public or private, to be erected or built or to be reconstructed or modified upon the banks or in or over the channel or over and across the floodway of any stream or body of water in this state. [1995 c 8 § 4; 1989 c 64 § 2; 1987 c 109 § 50; 1939 c 85 § 1; 1935 c 159 § 6; RRS § 9663A-6. Formerly RCW 86.16.020, part.]

Findings—1995 c 8: See note following RCW 43.21A.064.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.035 Department of ecology—Control of dams and obstructions. Subject to RCW 43.21A.068, the department of ecology shall have supervision and control over all dams and obstructions in streams, and may make reasonable regulations with respect thereto concerning the flow of water which he deems necessary for the protection to life and property below such works from flood waters. [1995 c 8 § 5. Prior: 1987 c 523 § 9; 1987 c 109 § 53; 1935 c 159 § 8; RRS § 9663A-8. Formerly RCW 86.16.030, part.]

Findings—1995 c 8: See note following RCW 43.21A.064.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.081 Enforcement of chapter—Civil penalty—Review by pollution control hearings board or local legislative authority. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, the attorney general or the attorney for the local government shall bring

such injunctive, declaratory, or other actions as are necessary to ensure compliance with this chapter.

(2) Any person who fails to comply with this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each violation or each day of noncompliance shall constitute a separate violation.

(3) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(4) Any penalty imposed pursuant to this section by the department shall be subject to review by the pollution control hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the pollution control hearings board. [1995 c 403 § 634; 1987 c 523 § 8.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Chapter 86.26

STATE PARTICIPATION IN FLOOD CONTROL MAINTENANCE

Sections

- 86.26.007 Flood control assistance account—Use.

86.26.007 Flood control assistance account—Use. The flood control assistance account is hereby established in the state treasury. At the beginning of the 1997-99 fiscal biennium and each biennium thereafter the state treasurer shall transfer from the general fund to the flood control assistance account an amount of money which, when combined with money remaining in the account from the previous biennium, will equal four million dollars. Moneys in the flood control assistance account may be spent only after appropriation for purposes specified under this chapter. To the extent that moneys in the flood control assistance account are not appropriated during the 1995-97 fiscal biennium for flood control assistance, the legislature may direct their transfer to the state general fund. [1995 2nd sp.s. c 18 § 916; 1993 sp.s. c 24 § 928; 1991 sp.s. c 13 § 24; 1986 c 46 § 1; 1985 c 57 § 88; 1984 c 212 § 1.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.165.070.

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.

Title 88
NAVIGATION AND HARBOR
IMPROVEMENTS

Chapters

- 88.12** Regulation of recreational vessels.
88.16 Pilotage act.
88.44 Oil spill first response.
88.46 Vessel oil spill prevention and response.

Chapter 88.12**REGULATION OF RECREATIONAL VESSELS**

(Formerly: Regulation of motor boats)

Sections

- 88.12.275** Vessels carrying passengers for hire on whitewater rivers—
 Registration of persons—List of registered persons—
 Notice of registrants' insurance termination—State im-
 mune from civil actions arising from registration.

88.12.275 Vessels carrying passengers for hire on whitewater rivers—Registration of persons—List of registered persons—Notice of registrants' insurance termination—State immune from civil actions arising from registration. (1) Any person carrying passengers for hire on whitewater river sections in this state may register with the department of licensing. Each registration application shall be submitted annually on a form provided by the department of licensing and shall include the following information:

(a) The name, residence address, and residence telephone number, and the business name, address, and telephone number of the registrant;

(b) Proof that the registrant has liability insurance for a minimum of three hundred thousand dollars per claim for occurrences by the registrant and the registrant's employees that result in bodily injury or property damage; and

(c) Certification that the registrant will maintain the insurance for a period of not less than one year from the date of registration.

(2) The department of licensing shall charge a fee for each application, to be set in accordance with RCW 43.24.086.

(3) Any person advertising or representing themselves as having registered under this section who is not currently registered is guilty of a gross misdemeanor.

(4) The department of licensing shall submit annually a list of registered persons and companies to the department of community, trade, and economic development, tourism promotion division.

(5) If an insurance company cancels or refuses to renew insurance for a registrant during the period of registration, the insurance company shall notify the department of licensing in writing of the termination of coverage and its effective date not less than thirty days before the effective date of termination.

(a) Upon receipt of an insurance company termination notice, the department of licensing shall send written notice to the registrant that on the effective date of termination the department of licensing will suspend the registration unless

proof of insurance as required by this section is filed with the department of licensing before the effective date of the termination.

(b) If an insurance company fails to give notice of coverage termination, this failure shall not have the effect of continuing the coverage.

(c) The department of licensing may suspend or revoke registration under this section if the registrant fails to maintain in full force and effect the insurance required by this section.

(6) The state of Washington shall be immune from any civil action arising from a registration under this section. [1995 c 399 § 216; 1986 c 217 § 11. Formerly RCW 88.12.320, 91.14.090.]

Chapter 88.16**PILOTAGE ACT****Sections**

- 88.16.070** Vessels exempted and included under chapter—Fee—
 Penalty.
88.16.090 Pilots' licenses—Qualifications—Duration—Annual fee—
 Written and oral examinations—Physical examina-
 tions—Familiarization trips—Penalty—Reporting re-
 quirements.
88.16.150 General penalty—Civil penalty—Jurisdiction—Disposition
 of fines—Failure to inform of special directions, gross
 misdemeanor.

88.16.070 Vessels exempted and included under chapter—Fee—Penalty. All United States and Canadian vessels engaged exclusively in the coasting trade on the west coast of the continental United States (including Alaska) and/or British Columbia shall be exempt from the provisions of this chapter unless a pilot licensed under this chapter be actually employed, in which case the pilotage rates provided for in this chapter shall apply. However, the board shall, upon the written petition of any interested party, and upon notice and opportunity for hearing, grant an exemption from the provisions of this chapter to any vessel that the board finds is a small passenger vessel or yacht which is not more than five hundred gross tons (international), does not exceed two hundred feet in length, and is operated exclusively in the waters of the Puget Sound pilotage district and lower British Columbia. Such an exemption shall not be detrimental to the public interest in regard to safe operation preventing loss of human lives, loss of property, and protecting the marine environment of the state of Washington. Such petition shall set out the general description of the vessel, the contemplated use of same, the proposed area of operation, and the name and address of the vessel's owner. The board shall annually, or at any other time when in the public interest, review any exemptions granted to this specified class of small vessels to insure that each exempted vessel remains in compliance with the original exemption. The board shall have the authority to revoke such exemption where there is not continued compliance with the requirements for exemption. The board shall maintain a file which shall include all petitions for exemption, a roster of vessels granted exemption, and the board's written decisions which shall set forth the findings for grants of exemption. Each applicant for exemption or annual renewal shall pay a fee, payable to the

pilotage account. Fees for initial applications and for renewals shall be established by rule, and shall not exceed one thousand five hundred dollars. The board shall report annually to the legislature on such exemptions. Every vessel not so exempt, shall while navigating the Puget Sound and Grays Harbor and Willapa Bay pilotage districts, employ a pilot licensed under the provisions of this chapter and shall be liable for and pay pilotage rates in accordance with the pilotage rates herein established or which may hereafter be established under the provisions of this chapter: PROVIDED, That any vessel inbound to or outbound from Canadian ports is exempt from the provisions of this section, if said vessel actually employs a pilot licensed by the Pacific pilotage authority (the pilot licensing authority for the western district of Canada), and if it is communicating with the vessel traffic system and has appropriate navigational charts, and if said vessel uses only those waters east of the international boundary line which are west of a line which begins at the southwestern edge of Point Roberts then to Alden Point (Patos Island), then to Skipjack Island light, then to Turn Point (Stuart Island), then to Kellet Bluff (Henry Island), then to Lime Kiln (San Juan Island) then to the intersection of one hundred twenty-three degrees seven minutes west longitude and forty-eight degrees twenty-five minutes north latitude then to the international boundary. The board shall correspond with the Pacific pilotage authority from time to time to ensure the provisions of this section are enforced. If any exempted vessel does not comply with these provisions it shall be deemed to be in violation of this section and subject to the penalties provided in RCW 88.16.150 as now or hereafter amended and liable to pilotage fees as determined by the board. The board shall investigate any accident on the waters covered by this chapter involving a Canadian pilot and shall include the results in its annual report. [1995 c 174 § 1; 1987 c 194 § 2; 1977 ex.s. c 337 § 6; 1971 ex.s. c 297 § 3; 1967 c 15 § 3; 1935 c 18 § 4; RRS § 9871-4.]

Intent—1987 c 194: "The legislature intends to provide a limited exemption from the provisions of this chapter for a specified class of small vessels registered as passenger vessels or yachts. It is not the intent of the legislature that such an exemption shall be a precedent for future exemptions of other classes of vessels from the provisions of this chapter." [1987 c 194 § 1.]

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.090 Pilots' licenses—Qualifications—Duration—Annual fee—Written and oral examinations—Physical examinations—Familiarization trips—Penalty—Reporting requirements. (1) A person may pilot any vessel subject to the provisions of this chapter on waters covered by this chapter only if appointed and licensed to pilot such vessels on said waters under and pursuant to the provisions of this chapter.

(2) A person is eligible to be appointed a pilot if the person is a citizen of the United States, over the age of twenty-five years and under the age of seventy years, a resident of the state of Washington at the time of appointment and only if the pilot applicant holds as a minimum, a United States government license as a master of ocean or near coastal steam or motor vessels of not more than one thousand six hundred gross tons or as a master of inland steam or motor vessels of not more than one thousand six

hundred gross tons, such license to have been held by the applicant for a period of at least two years prior to taking the Washington state pilotage examination and a first class United States endorsement without restrictions on that license to pilot in the pilotage districts for which the pilot applicant desires to be licensed, and if the pilot applicant meets such other qualifications as may be required by the board. A person applying for a license under this section shall not have been convicted of an offense involving drugs or the personal consumption of alcohol in the twelve months prior to the date of application. This restriction does not apply to license renewals under this section.

(3) Pilots shall be licensed hereunder for a term of five years from and after the date of the issuance of their respective state licenses. Such licenses shall thereafter be renewed as of course, unless the board shall withhold same for good cause. Each pilot shall pay to the state treasurer an annual license fee as follows: For the period beginning July 1, 1995, through June 30, 1999, the fee shall be two thousand five hundred dollars; and for the period beginning July 1, 1999, the fee shall be three thousand dollars. The fees shall be deposited in the state treasury to the credit of the pilotage account. The board may assess partially active or inactive pilots a reduced fee.

(4) Pilot applicants shall be required to pass a written and oral examination administered and graded by the board which shall test such applicants on this chapter, the rules of the board, local harbor ordinances, and such other matters as may be required to compliment the United States examinations and qualifications. The board shall hold examinations at such times as will, in the judgment of the board, ensure the maintenance of an efficient and competent pilotage service. An examination shall be scheduled for the Puget Sound pilotage district if there are three or fewer successful candidates from the previous examination who are waiting to become pilots in that district.

(5) The board shall develop an examination and grading sheet for each pilotage district, for the testing and grading of pilot applicants. The examinations shall be administered to pilot applicants and shall be updated as required to reflect changes in law, rules, policies, or procedures. The board may appoint a special independent examination committee or may contract with a firm knowledgeable and experienced in the development of professional tests for development of said examinations. Active licensed state pilots may be consulted for the general development of examinations but shall have no knowledge of the specific questions. The pilot members of the board may participate in the grading of examinations. If the board does appoint a special examination development committee it is authorized to pay the members of said committee the same compensation and travel expenses as received by members of the board. When grading examinations the board shall carefully follow the grading sheet prepared for that examination. The board shall develop a "sample examination" which would tend to indicate to an applicant the general types of questions on pilot examinations, but such sample questions shall not appear on any actual examinations. Any person who willfully gives advance knowledge of information contained on a pilot examination is guilty of a gross misdemeanor.

(6) All pilots and applicants are subject to an annual physical examination by a physician chosen by the board. The physician shall examine the applicant's heart, blood pressure, circulatory system, lungs and respiratory system, eyesight, hearing, and such other items as may be prescribed by the board. After consultation with a physician and the United States coast guard, the board shall establish minimum health standards to ensure that pilots licensed by the state are able to perform their duties. Within ninety days of the date of each annual physical examination, and after review of the physician's report, the board shall make a determination of whether the pilot or candidate is fully able to carry out the duties of a pilot under this chapter. The board may in its discretion check with the appropriate authority for any convictions of offenses involving drugs or the personal consumption of alcohol in the prior twelve months.

(7) The board shall prescribe, pursuant to chapter 34.05 RCW, a number of familiarization trips, between a minimum number of twenty-five and a maximum of one hundred, which pilot applicants must make in the pilotage district for which they desire to be licensed. Familiarization trips any particular applicant must make are to be based upon the applicant's vessel handling experience.

(8) The board may require vessel simulator training for a pilot applicant and shall require vessel simulator training for a pilot subject to RCW 88.16.105. The board shall also require vessel simulator training in the first year of active duty for a new pilot and at least once every five years for all active pilots.

(9) The board shall prescribe, pursuant to chapter 34.05 RCW, such reporting requirements and review procedures as may be necessary to assure the accuracy and validity of license and service claims, and records of familiarization trips of pilot candidates. Willful misrepresentation of such required information by a pilot candidate shall result in disqualification of the candidate.

(10) The board shall adopt rules to establish time periods and procedures for additional training trips and retesting as necessary for pilots who at the time of their licensing are unable to become active pilots. [1995 c 175 § 1; 1991 c 200 § 1002. Prior: 1990 c 116 § 27; 1990 c 112 § 1; 1987 c 264 § 2; 1986 c 122 § 1; 1981 c 303 § 1; 1979 ex.s. c 207 § 3; 1977 ex.s. c 337 § 7; 1967 c 15 § 5; 1935 c 18 § 8; RRS § 9871-8; prior: 1907 c 147 § 1; 1888 p 176 § 8.]

Effective date—1995 c 175: "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, 1995." [1995 c 175 § 2.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.150 General penalty—Civil penalty—Jurisdiction—Disposition of fines—Failure to inform of special directions, gross misdemeanor. (1) In all cases where no other penalty is prescribed in this chapter, any violation of this chapter or of any rule or regulation of the board shall be punished as a gross misdemeanor, and all violations may be prosecuted in any court of competent

jurisdiction in any county where the offense or any part thereof was committed. In any case where the offense was committed upon a ship, boat or vessel, and there is doubt as to the proper county, the same may be prosecuted in any county through any part of which the ship, boat or vessel passed, during the trip upon which the offense was committed. All fines collected for any violation of this chapter or any rule or regulation of the board shall within thirty days be paid by the official collecting the same to the state treasurer and shall be credited to the pilotage account: **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.

(2) Notwithstanding any other penalty imposed by this section, any person who shall violate the provisions of this chapter, shall be liable to a maximum civil penalty of ten thousand dollars for each violation. The board may request the attorney general or the prosecuting attorney of the county in which any violation of this chapter occurs to bring an action for imposing the civil penalties provided for in this subsection.

Moneys collected from civil penalties shall be deposited in the pilotage account.

(3) Any master of a vessel who shall knowingly fail to inform the pilot dispatched to said vessel or any agent, owner, or operator, who shall knowingly fail to inform the pilot dispatcher, or any dispatcher who shall knowingly fail to inform the pilot actually dispatched to said vessel of any special directions mandated by the coast guard captain of the port under authority of the Ports and Waterways Safety Act of 1972, as amended, for the handling of such vessel shall be guilty of a gross misdemeanor. [1995 c 174 § 2. Prior: 1987 c 485 § 5; 1987 c 202 § 247; 1977 ex.s. c 337 § 8; 1969 ex.s. c 199 § 41; 1967 c 15 § 7; 1935 c 18 § 10; RRS § 9871-10; prior: 1888 p 179 § 27.]

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

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

Chapter 88.44

OIL SPILL FIRST RESPONSE

Sections

88.44.155 Repealed.

88.44.215 Repealed.

88.44.155 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

88.44.215 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 88.46

VESSEL OIL SPILL PREVENTION AND RESPONSE

Sections

88.46.060 Contingency plans.

88.46.062 Nonprofit corporation providing contingency plan—
Findings—Termination of maritime commission.

- 88.46.063 Nonprofit corporation providing contingency plan—Transfer of functions and assets from maritime commission.
- 88.46.100 Notification of accidents and near miss incidents.
- 88.46.920 Repealed. (Effective January 1, 1996.)
- 88.46.921 Office of marine safety abolished. (Effective January 1, 1996, until June 30, 1997.)
- 88.46.922 Transfer of property and appropriations. (Effective January 1, 1996, until June 30, 1997.)
- 88.46.923 Repealed. (Effective January 1, 1996.)
- 88.46.925 Prior acts valid. (Effective January 1, 1996, until June 30, 1997.)
- 88.46.927 Collective bargaining agreements not altered. (Effective January 1, 1996, until June 30, 1997.)

88.46.060 Contingency plans. (1) Each covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the covered vessel into the waters of the state and for the protection of fisheries and wildlife, natural resources, and public and private property from such spills. The office shall by rule adopt and periodically revise standards for the preparation of contingency plans. The office shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any vessel which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the office, removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, fish and wildlife, and natural resources, and the office of archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. If the office has adopted rules for contingency plans prior to July 1, 1992, the description of archaeologically sensitive areas shall only be required when the office revises the rules for contingency plans after July 1, 1992. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

(h) State the means of protecting and mitigating effects on the environment, including fish, marine mammals, and other wildlife, and ensure that implementation of the plan does not pose unacceptable risks to the public or the environment;

(i) Establish guidelines for the use of equipment by the crew of a vessel to minimize vessel damage, stop or reduce any spilling from the vessel, and, only when appropriate and only when vessel safety is assured, contain and clean up the spilled oil;

(j) Provide arrangements for the repositioning of spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(k) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(l) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(m) Until a spill prevention plan has been submitted pursuant to RCW 88.46.040, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a vessel, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(n) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; and

(o) If the department of ecology has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.

(2)(a) The owner or operator of a tank vessel of three thousand gross tons or more shall submit a contingency plan to the office within six months after the office adopts rules establishing standards for contingency plans under subsection (1) of this section.

(b) Contingency plans for all other covered vessels shall be submitted to the office within eighteen months after the office has adopted rules under subsection (1) of this section. The office may adopt a schedule for submission of plans within the eighteen-month period.

(3)(a) The owner or operator of a tank vessel or of the facilities at which the vessel will be unloading its cargo, or a Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member, shall submit the contingency plan for the tank vessel. Subject to conditions imposed by the office, the owner or operator of a facility may submit a single contingency plan for tank vessels of a particular class that will be unloading cargo at the facility.

(b) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the cargo vessel or passenger vessel, by the agent for the vessel resident in this state, or by a Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the owner or operator is a member. Subject to conditions imposed by the office, the owner, operator, or agent may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(c) A person who has contracted with a covered vessel to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may

submit the plan for any covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the office, the person may submit a single plan for more than one covered vessel.

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the office may be accepted by the office as a contingency plan under this section. The office shall assure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(5) In reviewing the contingency plans required by this section, the office shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(6) The office shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the office shall provide to the person submitting the plan a statement indicating that the plan has been approved, the vessels covered by the plan, and other information the office determines should be included.

(8) An owner or operator of a covered vessel shall notify the office in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the office. The office may require the owner or operator to update a contingency plan as a result of these changes.

(9) The office by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the office at least once every five years.

(10) Approval of a contingency plan by the office does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed

under this chapter or other state law. [1995 c 148 § 3; 1992 c 73 § 20; 1991 c 200 § 419.]

Effective date—1995 c 148 §§ 1-3: "Sections 1 through 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 27, 1995]." [1995 c 148 § 6.]

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

88.46.062 Nonprofit corporation providing contingency plan—Findings—Termination of maritime commission. (1) The legislature finds that there is a need to continue to provide oil spill response and contingency plan coverage for vessels that do not have their own contingency plans that transit the waters of this state. A nonprofit corporation shall be established for the sole purpose of providing oil spill response and contingency plan coverage in compliance with RCW 88.46.060.

(2) The maritime commission may conduct activities and make expenditures necessary for the transition of services presently provided by the commission and its contractors to the nonprofit corporation established pursuant to this section.

(3) Once the nonprofit corporation is established and the transfers under RCW 88.46.063 are completed, the maritime commission may cease operation. [1995 c 148 § 1.]

Effective date—1995 c 148 §§ 1-3: See note following RCW 88.46.060.

88.46.063 Nonprofit corporation providing contingency plan—Transfer of functions and assets from maritime commission. All reports, documents, surveys, books, records, files, papers, written materials, tangible property, and assets, including contracts and assessment moneys held by the maritime commission shall be transferred to the nonprofit corporation created under RCW 88.46.062. Funds transferred under this section shall be used for the sole purpose of providing oil spill response and contingency plan coverage and related activities in compliance with RCW 88.46.060. No funds may be transferred under this section until all liabilities of the maritime commission have been provided for or satisfied. All liabilities not provided for or satisfied by the maritime commission before cessation of its operations shall be transferred to the nonprofit corporation at the time the maritime commission's assets are transferred to the corporation. [1995 c 148 § 2.]

Effective date—1995 c 148 §§ 1-3: See note following RCW 88.46.060.

88.46.100 Notification of accidents and near miss incidents. (1) In order to assist the state in identifying areas of the navigable waters of the state needing special attention, the owner or operator of a covered vessel shall notify the coast guard within one hour:

(a) Of the disability of the covered vessel if the disabled vessel is within twelve miles of the shore of the state; and

(b) Of a collision or a near miss incident within twelve miles of the shore of the state.

(2) The state military department and the office shall request the coast guard to notify the state military department as soon as possible after the coast guard receives notice of a disabled covered vessel or of a collision or near miss

incident within twelve miles of the shore of the state. The office shall negotiate an agreement with the coast guard governing procedures for coast guard notification to the state regarding disabled covered vessels and collisions and near misses incidents.

(3) The office shall prepare a summary of the information collected under this section and provide the summary to the regional marine safety committees, the coast guard, and others in order to identify problems with the marine transportation system.

(4) For the purposes of this section:

(a) A tank vessel or cargo vessel is considered disabled if any of the following occur:

(i) Any accidental or intentional grounding;

(ii) The total or partial failure of the main propulsion or primary steering or any component or control system that causes a reduction in the maneuvering capabilities of the vessel;

(iii) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including but not limited to, fire, flooding, or collision with another vessel;

(iv) Any other occurrence that creates the serious possibility of an oil spill or an occurrence that may result in such a spill.

(b) A barge is considered disabled if any of the following occur:

(i) The towing mechanism becomes disabled;

(ii) The towboat towing the barge becomes disabled through occurrences defined in (a) of this subsection.

(c) A near miss incident is an incident that requires the pilot or master of a covered vessel to take evasive actions or make significant course corrections in order to avoid a collision with another ship or to avoid a grounding as required by the international rules of the road.

(5) Failure of any person to make a report under this section shall not be used as the basis for the imposition of any fine or penalty. [1995 c 391 § 9; 1991 c 200 § 423.]

Effective date—1995 c 391: See note following RCW 38.52.005.

88.46.920 Repealed. (Effective January 1, 1996.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

88.46.921 Office of marine safety abolished. (Effective January 1, 1996, until June 30, 1997.)

Effective date—1991 c 200 §§ 430-436: "Sections 430 through 436, chapter 200, Laws of 1991 shall take effect January 1, 1996." [1995 2nd sp.s. c 14 § 521; 1991 c 200 § 1120.]

Reviser's note: 1995 2nd sp.s. c 14 § 521, which amended the above effective date note for 1991 c 200 §§ 430-436, expires June 30, 1997, pursuant to 1995 2nd sp.s. c 14 § 536.

Expiration date—1995 2nd sp.s. c 14 §§ 511-523 and 528-533: See note following RCW 43.105.017.

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

88.46.922 Transfer of property and appropriations. (Effective January 1, 1996, until June 30, 1997.) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the office of marine safety shall be delivered to the custody of the department of

ecology. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the office of marine safety shall be made available to the department of ecology. All funds, credits, or other assets held by the office of marine safety shall be assigned to the department of ecology.

Any appropriations made to the office of marine safety shall, on January 1, 1996, be transferred and credited to the department of ecology.

Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned. [1995 2nd sp.s. c 14 § 518; 1991 c 200 § 431.]

Expiration date—1995 2nd sp.s. c 14 §§ 511-523 and 528-533: See note following RCW 43.105.017.

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Effective date—1991 c 200 §§ 430-436: See note following RCW 88.46.921.

88.46.923 Repealed. (Effective January 1, 1996.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

88.46.925 Prior acts valid. (Effective January 1, 1996, until June 30, 1997.) The transfer of the powers, duties, and functions of the office of marine safety shall not affect the validity of any act performed prior to January 1, 1996. [1995 2nd sp.s. c 14 § 519; 1991 c 200 § 434.]

Expiration date—1995 2nd sp.s. c 14 §§ 511-523 and 528-533: See note following RCW 43.105.017.

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Effective date—1991 c 200 §§ 430-436: See note following RCW 88.46.921.

88.46.927 Collective bargaining agreements not altered. (Effective January 1, 1996, until June 30, 1997.)

Effective date—1993 c 281 § 67: "Section 67, chapter 281, Laws of 1993 shall take effect January 1, 1996." [1995 2nd sp.s. c 14 § 522; 1993 c 281 § 73.]

Reviser's note: 1995 2nd sp.s. c 14 § 522, which amended the above effective date note for 1993 c 281 § 67, expires June 30, 1997, pursuant to 1995 2nd sp.s. c 14 § 536.

Expiration date—1995 2nd sp.s. c 14 §§ 511-523 and 528-533: See note following RCW 43.105.017.

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Title 89

RECLAMATION, SOIL CONSERVATION AND LAND SETTLEMENT

Chapters

89.08 Conservation districts.

Chapter 89.08

CONSERVATION DISTRICTS

Sections

- 89.08.450 Watershed restoration projects—Intent.
 89.08.460 Watershed restoration projects—Definitions.
 89.08.470 Watershed restoration projects—Consolidated permit application process.
 89.08.480 Watershed restoration projects—Designated recipients of project applications—Notice to commission.
 89.08.490 Watershed restoration projects—Acceptance of applications—Permit decisions.
 89.08.500 Watershed restoration projects—Appointment of project facilitator by permit assistance center—Coordinated process for permit decisions.
 89.08.510 Watershed restoration projects—General permits—Cooperative permitting agreements.

89.08.450 Watershed restoration projects—Intent.

The legislature declares that it is the goal of the state of Washington to preserve and restore the natural resources of the state and, in particular, fish and wildlife and their habitat. It is further the policy of the state insofar as possible to utilize the volunteer organizations who have demonstrated their commitment to these goals.

To this end, it is the intent of the legislature to minimize the expense and delays caused by unnecessary bureaucratic process in securing permits for projects that preserve or restore native fish and wildlife habitat. [1995 c 378 § 1.]

89.08.460 Watershed restoration projects—Definitions. Unless the context clearly requires otherwise, the definitions in this section shall apply throughout RCW 89.08.450 through 89.08.510.

(1) "Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district, that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed, and for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the state environmental policy act. If the implementation measures or actions would have a probable significant, adverse environmental impact, a detailed statement under RCW 43.21C.031 must be prepared on the plan.

(2) "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

(a) A project that involves less than ten miles of streamreach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed, or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

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(b) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(c) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure other than a bridge or culvert or instream habitat enhancement structure associated with the project is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream. [1995 c 378 § 2.]

89.08.470 Watershed restoration projects—Consolidated permit application process. By January 1, 1996, the Washington conservation commission shall develop, in consultation with other state agencies, tribes, and local governments, a consolidated application process for permits for a watershed restoration project developed by an agency or sponsored by an agency on behalf of a volunteer organization. The consolidated process shall include a single permit application form for use by all responsible state and local agencies. The commission shall encourage use of the consolidated permit application process by any federal agency responsible for issuance of related permits. The permit application forms to be consolidated shall include, at a minimum, applications for: (1) Approvals related to water quality standards under chapter 90.48 RCW; (2) hydraulic project approvals under chapter 75.20 RCW; and (3) section 401 water quality certifications under 33 U.S.C. Sec. 1341 and chapter 90.48 RCW. [1995 c 378 § 3.]

89.08.480 Watershed restoration projects—Designated recipients of project applications—Notice to commission. Each agency of the state and unit of local government that claims jurisdiction or the right to require permits, other approvals, or fees as a condition of allowing a watershed restoration project to proceed shall designate an office or official as a designated recipient of project applications and shall inform the conservation commission of the designation. [1995 c 378 § 4.]

89.08.490 Watershed restoration projects—Acceptance of applications—Permit decisions. All agencies of the state and local governments shall accept the single application developed under RCW 89.08.470. Unless the procedures under RCW 89.08.500 are invoked, the application shall be processed without charge and permit decisions shall be issued within forty-five days of receipt of a complete application. [1995 c 378 § 5.]

89.08.500 Watershed restoration projects—Appointment of project facilitator by permit assistance center—Coordinated process for permit decisions. The applicant or any state agency, tribe, or local government with permit processing responsibility may request that the permit assistance center created by chapter 347, Laws of 1995 appoint a project facilitator to develop in consultation with the applicant and permit agencies a coordinated process for permit decisions on the application. The process may

incorporate procedures for coordinating state permits under chapter 347, Laws of 1995. The center shall adopt a target of completing permit decisions within forty-five days of receipt of a complete application.

If *House Bill No. 1724 is not enacted by June 30, 1995, this section shall be null and void. [1995 c 378 § 6.]

*Reviser's note: House Bill No. 1724 [1995 c 347] was enacted.

89.08.510 Watershed restoration projects—General permits—Cooperative permitting agreements. State agencies, tribes, and local governments responsible for permits or other approvals of watershed restoration projects as defined in RCW 89.08.460 may develop general permits or permits by rule to address some or all projects required by an approved watershed restoration plan, or for types of watershed restoration projects. Nothing in chapter 378, Laws of 1995 precludes local governments, state agencies, and tribes from working out other cooperative permitting agreements outside the procedures of chapter 378, Laws of 1995. [1995 c 378 § 7.]

Title 90

WATER RIGHTS—ENVIRONMENT

Chapters

90.03	Water code.
90.46	Reclaimed water use.
90.48	Water pollution control.
90.56	Oil and hazardous substance spill prevention and response.
90.58	Shoreline management act of 1971.
90.60	Environmental permit assistance.
90.61	Land use study commission.
90.62	Environmental coordination procedures act.
90.70	Puget sound water quality authority.
90.76	Underground storage tanks.

Chapter 90.03 WATER CODE

Sections

90.03.180	Determination of water rights—Statement by defendants—Filing fee.
90.03.350	Construction or modification of storage dam—Plans and specifications—Additional dam safety inspection requirements for metals mining and milling operations.
90.03.600	Civil penalties.

90.03.180 Determination of water rights—Statement by defendants—Filing fee. At the time of filing the statement as provided in RCW 90.03.140, each defendant shall pay to the clerk of the superior court a fee as set under RCW 36.18.020. [1995 c 292 § 21; 1982 c 15 § 2; 1979 ex.s. c 216 § 3; 1929 c 122 § 3; 1919 c 71 § 2; 1917 c 117 § 21; RRS § 7371. Formerly RCW 90.12.080, part.]

Effective date—Severability—1979 ex.s. c 216: See notes following RCW 90.03.245.

90.03.350 Construction or modification of storage dam—Plans and specifications—Additional dam safety inspection requirements for metals mining and milling operations. Except as provided in RCW 43.21A.068, any person, corporation or association intending to construct or modify any dam or controlling works for the storage of ten acre feet or more of water, shall before beginning said construction or modification, submit plans and specifications of the same to the department for examination and approval as to its safety. Such plans and specifications shall be submitted in duplicate, one copy of which shall be retained as a public record, by the department, and the other returned with its approval or rejection endorsed thereon. No such dam or controlling works shall be constructed or modified until the same or any modification thereof shall have been approved as to its safety by the department. Any such dam or controlling works constructed or modified in any manner other than in accordance with plans and specifications approved by the department or which shall not be maintained in accordance with the order of the department shall be presumed to be a public nuisance and may be abated in the manner provided by law, and it shall be the duty of the attorney general or prosecuting attorney of the county wherein such dam or controlling works, or the major portion thereof, is situated to institute abatement proceedings against the owner or owners of such dam or controlling works, whenever he or she is requested to do so by the department.

A metals mining and milling operation regulated under chapter 232, Laws of 1994 is subject to additional dam safety inspection requirements due to the special hazards associated with failure of a tailings pond impoundment. The department shall inspect these impoundments at least quarterly during the project's operation and at least annually thereafter for the postclosure monitoring period in order to ensure the safety of the dam or controlling works. The department shall conduct additional inspections as needed during the construction phase of the mining operation in order to ensure the safe construction of the tailings impoundment. [1995 c 8 § 6; 1994 c 232 § 20; 1987 c 109 § 91; 1955 c 362 § 1; 1939 c 107 § 1; 1917 c 117 § 36; RRS § 7388. Formerly RCW 90.28.060.] [1954 SLC-RO-18.]

Findings—1995 c 8: See note following RCW 43.21A.064.

Severability—1994 c 232: See RCW 78.56.900.

Effective date—1994 c 232 §§ 6-8 and 18-22: See RCW 78.56.902.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Height of dams on tributaries of Columbia river: RCW 75.20.110.

90.03.600 Civil penalties. Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, the power is granted to the department of ecology to levy civil penalties of up to one hundred dollars per day for violation of any of the provisions of this chapter and chapters 43.83B, 90.22, and 90.44 RCW, and rules, permits, and similar documents and regulatory orders of the department of ecology adopted or issued pursuant to such chapters. The procedures of RCW 90.48.144 shall be applicable to all phases of the levying of a penalty as well as review and appeal of the same. [1995 c 403 § 635; 1987 c 109 § 157; 1977 ex.s. c 1 § 8. Formerly RCW 43.83B.335.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Chapter 90.46

RECLAIMED WATER USE

Sections

- 90.46.005 Findings—Coordination of efforts—Development of facilities encouraged.
- 90.46.010 Definitions.
- 90.46.042 Standards, procedures, and guidelines for direct recharge.
- 90.46.044 Standards, procedures, and guidelines for discharge to wetlands.
- 90.46.050 Advisory committee—Development of standards, procedures, and guidelines.
- 90.46.072 Conflict resolution—Reclaimed water projects and chapter 372-32 WAC.
- 90.46.080 Use of reclaimed water for surface spreading—Establishment of discharge limit for contaminants.
- 90.46.090 Use of reclaimed water for discharge into created wetland.
- 90.46.100 Discharge of reclaimed water for streamflow augmentation.

90.46.005 Findings—Coordination of efforts—Development of facilities encouraged. The legislature finds that by encouraging the use of reclaimed water while assuring the health and safety of all Washington citizens and the protection of its environment, the state of Washington will continue to use water in the best interests of present and future generations.

To facilitate the use of reclaimed water as soon as is practicable, the legislature encourages the cooperative efforts of the public and private sectors and the use of pilot projects to effectuate the goals of this chapter. The legislature further directs the department of health and the department of ecology to coordinate efforts towards developing an efficient and streamlined process for creating and implementing processes for the use of reclaimed water.

It is hereby declared that the people of the state of Washington have a primary interest in the development of facilities to provide reclaimed water to replace potable water in nonpotable applications, to supplement existing surface and ground water supplies, and to assist in meeting the future water requirements of the state.

The legislature further finds and declares that the utilization of reclaimed water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife habitat creation and enhancement purposes, including wetland enhancement, will contribute to the peace, health, safety, and welfare of the people of the state of Washington. To the extent reclaimed water is appropriate for beneficial uses, it should be so used to preserve potable water for drinking purposes. Use of reclaimed water constitutes the development of new basic water supplies needed for future generations.

The legislature further finds and declares that the use of reclaimed water is not inconsistent with the policy of antidegradation of state waters announced in other state statutes, including the water pollution control act, chapter 90.48 RCW and the water resources act, chapter 90.54 RCW.

The legislature finds that other states, including California, Florida, and Arizona, have successfully used reclaimed water to supplement existing water supplies without threatening existing resources or public health.

It is the intent of the legislature that the department of ecology and the department of health undertake the necessary steps to encourage the development of water reclamation facilities so that reclaimed water may be made available to help meet the growing water requirements of the state.

The legislature further finds and declares that reclaimed water facilities are water pollution control facilities as defined in chapter 70.146 RCW and are eligible for financial assistance as provided in chapter 70.146 RCW. [1995 c 342 § 1; 1992 c 204 § 1.]

Construction—1995 c 342: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1995 c 342 § 10.]

Effective date—1995 c 342: "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 immediately [May 11, 1995]." [1995 c 342 § 11.]

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

(1) "Greywater" means wastewater having the consistency and strength of residential domestic type wastewater. Greywater includes wastewater from sinks, showers, and laundry fixtures, but does not include toilet or urinal waters.

(2) "Land application" means application of treated effluent for purposes of irrigation or landscape enhancement for residential, business, and governmental purposes.

(3) "Person" means any state, individual, public or private corporation, political subdivision, governmental subdivision, governmental agency, municipality, copartnership, association, firm, trust estate, or any other legal entity whatever.

(4) "Reclaimed water" means effluent derived in any part from sewage from a wastewater treatment system that has been adequately and reliably treated, so that as a result of that treatment, it is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is no longer considered wastewater.

(5) "Sewage" means water-carried human wastes, including kitchen, bath, and laundry waste from residences, buildings, industrial and commercial establishments, or other places, together with such ground water infiltration, surface waters, or industrial wastewater as may be present.

(6) "User" means any person who uses reclaimed water.

(7) "Wastewater" means water and wastes discharged from homes, businesses, and industry to the sewer system.

(8) "Direct beneficial use" means the use of reclaimed water, that has been transported from the point of production to the point of use without an intervening discharge to the waters of the state, for a beneficial purpose.

(9) "Direct recharge" means the controlled subsurface addition of water directly to the ground water basin that results in the replenishment of ground water.

(10) "Ground water recharge criteria" means the contaminant criteria found in the drinking water quality standards adopted by the state board of health pursuant to

chapter 43.20 RCW and the department of health pursuant to chapter 70.119A RCW.

(11) "Planned ground water recharge project" means any reclaimed water project designed for the purpose of recharging ground water, via direct recharge or surface spreading.

(12) "Reclamation criteria" means the criteria set forth in the water reclamation and reuse interim standards and subsequent revisions adopted by the department of ecology and the department of health.

(13) "Streamflow augmentation" means the discharge of reclaimed water to rivers and streams of the state or other surface water bodies, but not wetlands.

(14) "Surface spreading" means the controlled application of water to the ground surface for the purpose of replenishing ground water.

(15) "Wetland or wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(16) "Created wetlands" means a wetland intentionally created from a nonwetland site to produce or replace natural habitat. [1995 c 342 § 2; 1992 c 204 § 2.]

Construction—Effective date—1995 c 342: See notes following RCW 90.46.005.

90.46.042 Standards, procedures, and guidelines for direct recharge. The department of ecology shall, in consultation with the department of health, adopt a single set of standards, procedures, and guidelines, on or before December 31, 1996, for direct recharge using reclaimed water. The standards shall address both water quality considerations and avoidance of property damage from excessive recharge. [1995 c 342 § 6.]

Construction—Effective date—1995 c 342: See notes following RCW 90.46.005.

90.46.044 Standards, procedures, and guidelines for discharge to wetlands. The department of ecology shall, in consultation with the department of health, adopt a single set of standards, procedures, and guidelines, on or before June 30, 1996, for discharge of reclaimed water to wetlands. [1995 c 342 § 7.]

Construction—Effective date—1995 c 342: See notes following RCW 90.46.005.

90.46.050 Advisory committee—Development of standards, procedures, and guidelines. The department of health shall, before July 1, 1995, form an advisory committee, in coordination with the department of ecology and the department of agriculture, which will provide technical assistance in the development of standards, procedures, and guidelines required by this chapter. Such committee shall be composed of individuals from the public water and wastewater utilities, landscaping enhancement industry, commercial and industrial application community, and any other persons deemed technically helpful by the department of health. [1995 c 342 § 9; 1992 c 204 § 6.]

Construction—Effective date—1995 c 342: See notes following RCW 90.46.005.

90.46.072 Conflict resolution—Reclaimed water projects and chapter 372-32 WAC. On or before December 31, 1995, the department of ecology and department of health shall, in consultation with local interested parties, jointly review and, if required, propose amendments to chapter 372-32 WAC to resolve conflicts between the development of reclaimed water projects in the Puget Sound region and chapter 372-32 RCW [WAC]. [1995 c 342 § 8.]

Construction—Effective date—1995 c 342: See notes following RCW 90.46.005.

90.46.080 Use of reclaimed water for surface spreading—Establishment of discharge limit for contaminants. (1) Reclaimed water may be beneficially used for surface spreading provided the reclaimed water meets the ground water recharge criteria as measured in ground water beneath or down gradient of the recharge project site, and has been incorporated into a sewer or water comprehensive plan, as applicable, adopted by the applicable local government and approved by the department of health or department of ecology as applicable.

(2) If the state ground water recharge criteria as defined by RCW 90.46.010 do not contain a standard for a constituent or contaminant, the department of ecology shall establish a discharge limit consistent with the goals of this chapter. [1995 c 342 § 3.]

Construction—Effective date—1995 c 342: See notes following RCW 90.46.005.

90.46.090 Use of reclaimed water for discharge into created wetland. (1) Reclaimed water may be beneficially used for discharge into created wetlands provided the reclaimed water meets the class A reclaimed water standard as defined in the reclamation criteria, and the discharge is incorporated into a sewer or water comprehensive plan, as applicable, adopted by the applicable local government and approved by the department of health or department of ecology as applicable.

(2) Reclaimed water that does not meet the class A reclaimed water standard may be beneficially used for discharge into created wetlands where the department of ecology has specifically authorized such use at such lower standard in conjunction with a pilot project designated pursuant to this chapter, the purpose of which is to test and implement the use of created wetlands for advanced treatment. [1995 c 342 § 4.]

Construction—Effective date—1995 c 342: See notes following RCW 90.46.005.

90.46.100 Discharge of reclaimed water for streamflow augmentation. Reclaimed water intended for beneficial reuse may be discharged for streamflow augmentation provided the reclaimed water meets the requirements of the federal water pollution control act, chapter 90.48 RCW, and is incorporated into a sewer or water comprehensive plan, as applicable, adopted by the applicable local government and approved by the department of health or department of ecology as applicable. [1995 c 342 § 5.]

Construction—Effective date—1995 c 342: See notes following RCW 90.46.005.

Chapter 90.48

WATER POLLUTION CONTROL

Sections

90.48.020	Definitions.
90.48.144	Violations—Civil penalty—Procedure.
90.48.430	Watershed restoration projects—Approval process—Waiver of public review.
90.48.445	Aquatic noxious weed control—Water quality permits—Definition.

90.48.020 Definitions. Whenever the word "person" is used in this chapter, it shall be construed to include any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual or any other entity whatsoever.

Wherever the words "waters of the state" shall be used in this chapter, they shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.

Whenever the word "pollution" is used in this chapter, it shall be construed to mean such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Wherever the word "department" is used in this chapter it shall mean the department of ecology.

Whenever the word "director" is used in this chapter it shall mean the director of ecology.

Whenever the words "aquatic noxious weed" are used in this chapter, they have the meaning prescribed under RCW 17.26.020. [1995 c 255 § 7; 1987 c 109 § 122; 1967 c 13 § 1; 1945 c 216 § 2; Rem. Supp. 1945 § 10964b.]

Severability—Effective date—1995 c 255: See RCW 17.26.900 and 17.26.901.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.144 Violations—Civil penalty—Procedure. Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, every person who:

(1) Violates the terms or conditions of a waste discharge permit issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

(2) Conducts a commercial or industrial operation or other point source discharge operation without a waste discharge permit as required by RCW 90.48.160 or 90.48.260 through 90.48.262, or

(3) Violates the provisions of RCW 90.48.080, or other sections of this chapter or chapter 90.56 RCW or rules or orders adopted or issued pursuant to either of those chapters,

shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the violation's impact on public health and/or the environment in addition to other relevant factors. The penalty herein provided for shall be imposed pursuant to the procedures set forth in RCW 43.21B.300. [1995 c 403 § 636; 1992 c 73 § 27; 1987 c 109 § 17; 1985 c 316 § 2; 1973 c 155 § 9; 1970 ex.s. c 88 § 13; 1967 ex.s. c 139 § 14.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1967 ex.s. c 139: See RCW 82.34.900.

90.48.430 Watershed restoration projects—Approval process—Waiver of public review. A permit, certification, or other approval required by the department for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. Public review of proposed watershed restoration projects may be shortened or waived by the department. [1995 c 378 § 15.]

90.48.445 Aquatic noxious weed control—Water quality permits—Definition. (1) The director shall issue or approve water quality permits for use by federal, state, or local governmental agencies and licensed applicators for the purpose of using, for aquatic noxious weed control, herbicides and surfactants registered under state or federal pesticide control laws. The issuance of the permits shall be subject only to compliance with: Federal and state pesticide label requirements, the requirements of the federal insecticide, fungicide, and rodenticide act, the Washington pesticide control act, the Washington pesticide application act, and the state environmental policy act; and applicable requirements established in an option or options recommended for controlling the noxious weed by a final environmental impact statement published under chapter 43.21C RCW by the department prior to May 5, 1995, by the department of agriculture, or by the department of agriculture jointly with other state agencies. This section may not be construed as requiring the preparation of a new environmental impact statement to replace a final environmental impact statement published before May 5, 1995.

(2) The director of ecology may not utilize this permit authority to otherwise condition or burden weed control efforts. The director's authority to issue water quality modification permits for activities other than the application

of surfactants and approved herbicides, to control aquatic noxious weeds, is unaffected by this section.

(3) As used in this section, "aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080. [1995 c 255 § 3.]

Severability—Effective date—1995 c 255: See RCW 17.26.900 and 17.26.901.

Chapter 90.56

OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION AND RESPONSE

Sections

- 90.56.280 Duty to notify coast guard and division of emergency management of discharge.
 90.56.450 Repealed.
 90.56.510 Oil spill administration account.
 90.56.515 Oil spill administration account—Oil spill response account—Restrictions. (*Effective January 1, 1996, until June 30, 1997.*)

90.56.280 Duty to notify coast guard and division of emergency management of discharge. It shall be the duty of any person discharging oil or hazardous substances or otherwise causing, permitting, or allowing the same to enter the waters of the state, unless the discharge or entry was expressly authorized by the department prior thereto or authorized by operation of law under RCW 90.48.200, to immediately notify the coast guard and the division of emergency management. The notice to the division of emergency management within the department of community, trade, and economic development shall be made to the division's twenty-four hour state-wide toll-free number established for reporting emergencies. [1995 c 399 § 218; 1990 c 116 § 24; 1987 c 109 § 152; 1969 ex.s. c 133 § 9. Formerly RCW 90.48.360.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.56.450 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

90.56.510 Oil spill administration account. (1) The oil spill administration account is created in the state treasury. All receipts from RCW 82.23B.020(2) shall be deposited in the account. Moneys from the account may be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW. On July 1 of each odd-numbered year, if receipts deposited in the account from the tax imposed by RCW 82.23B.020(2) for the previous fiscal biennium exceed the amount appropriated from the account for the previous fiscal biennium, the state treasurer shall transfer the amount of receipts exceeding the appropriation to the oil spill response account. If, on the first day of any calendar month, the balance of the oil spill response account is greater than twenty-five million dollars and the balance of the oil spill administration account exceeds the unexpended appropriation for the current biennium, then the tax under RCW 82.23B.020(2) shall be suspended on the first day of the next calendar month until

the beginning of the following biennium, provided that the tax shall not be suspended during the last six months of the biennium. If the tax imposed under RCW 82.23B.020(2) is suspended during two consecutive biennia, the department shall by November 1st after the end of the second biennium, recommend to the appropriate standing committees an adjustment in the tax rate. For the biennium ending June 30, 1997, the state treasurer may transfer up to \$1,718,000 from the oil spill response account to the oil spill administration account to support appropriations made from the oil spill administration account in the omnibus and transportation appropriations acts adopted not later than June 30, 1997.

(2) Expenditures from the oil spill administration account shall be used exclusively for the administrative costs related to the purposes of this chapter, and chapters 90.48, 88.40, and 88.46 RCW. Starting with the 1995-1997 biennium, the legislature shall give activities of state agencies related to prevention of oil spills priority in funding from the oil spill administration account. Costs of administration include the costs of:

(a) Routine responses not covered under RCW 90.56.500;

(b) Management and staff development activities;

(c) Development of rules and policies and the state-wide plan provided for in RCW 90.56.060;

(d) Facility and vessel plan review and approval, drills, inspections, investigations, enforcement, and litigation;

(e) Interagency coordination and public outreach and education;

(f) Collection and administration of the tax provided for in chapter 82.23B RCW; and

(g) Appropriate travel, goods and services, contracts, and equipment. [1995 2nd sp.s. c 14 § 525; 1994 sp.s. c 6 § 903; 1993 c 162 § 2; 1992 c 73 § 41; 1991 c 200 § 806.]

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—Effective date—1994 sp.s. c 6: See notes following RCW 28A.310.020.

Severability—Effective date—1993 c 162: See notes following RCW 88.46.170.

Effective dates—1992 c 73: See RCW 82.23B.902.

90.56.515 Oil spill administration account—Oil spill response account—Restrictions. (*Effective January 1, 1996, until June 30, 1997.*) No moneys may be spent by the department from the oil spill administration account, as established in RCW 90.56.510, nor the oil spill response account, as established in RCW 90.56.500, for any purpose other than carrying out the purposes, programs, and services of oil spill prevention and response consistent with *RCW 43.21A.705 through 43.21A.720 and chapter 88.46 RCW. [1995 2nd sp.s. c 14 § 520.]

***Reviser's note:** 1995 2nd sp.s. c 14 § 523 recodified RCW 43.211.005, 43.211.010, 43.211.030, and 43.211.040, all as amended as RCW 43.21A.705, 43.21A.710, 43.21A.715, and 43.21A.720, respectively. 1995 2nd sp.s. c 14 § 523, the recodification section, expires June 30, 1997, pursuant to 1995 2nd sp.s. c 14 § 536, at which time the recodified numbers will revert to their original RCW numbers, without amendment.

Expiration date—1995 2nd sp.s. c 14 §§ 511-523, 528-533: See note following RCW 43.105.017.

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Chapter 90.58

SHORELINE MANAGEMENT ACT OF 1971

Sections

- 90.58.020 Legislative findings—State policy enunciated—Use preference.
- 90.58.030 Definitions and concepts.
- 90.58.050 Program as cooperative between local government and state—Responsibilities differentiated.
- 90.58.060 Review and adoption of guidelines—Public hearings, notice of—Amendments.
- 90.58.080 Timetable for local governments to develop or amend master programs.
- 90.58.090 Approval of master program or segments or amendments thereof, when—Procedure—Departmental alternatives when shorelines of state-wide significance—Later adoption of master program supersedes departmental program.
- 90.58.100 Programs as constituting use regulations—Duties when preparing programs and amendments thereto—Program contents.
- 90.58.120 Adoption of rules, programs, etc., subject to RCW 34.05.310 through 34.05.395—Public hearings, notice of—Public inspection after approval or adoption.
- 90.58.140 Development permits—Grounds for granting—Administration by local government, conditions—Applications—Notices—Rescission—Approval when permit for variance or conditional use.
- 90.58.145 Repealed.
- 90.58.147 Substantial development permit—Exemption for projects to improve fish or wildlife habitat or fish passage.
- 90.58.180 Appeals from granting, denying, or rescinding permits—Board to act—Local government appeals to board—Grounds for declaring rule, regulation, or guideline invalid—Appeals to court.
- 90.58.190 Appeal of department's decision to adopt or amend a master program.
- 90.58.210 Court actions to insure against conflicting uses and to enforce—Civil penalty—Review.
- 90.58.380 Adoption of wetland manual.
- 90.58.515 Watershed restoration projects—Exemption.
- 90.58.560 Oil or natural gas exploration—Violations of RCW 90.58.550—Penalty—Appeal.

90.58.020 Legislative findings—State policy enunciated—Use preference. The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefor, a clear and urgent demand for a planned, rational, and concerted effort,

jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of state-wide significance. The department, in adopting guidelines for shorelines of state-wide significance, and local government, in developing master programs for shorelines of state-wide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the state-wide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. [1995 c 347 § 301; 1992 c 105 § 1; 1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

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

- (1) Administration:
 - (a) "Department" means the department of ecology;
 - (b) "Director" means the director of the department of ecology;
 - (c) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;
 - (d) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated;
 - (e) "Hearing board" means the shoreline hearings board established by this chapter.
- (2) Geographical:
 - (a) "Extreme low tide" means the lowest line on the land reached by a receding tide;
 - (b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;
 - (c) "Shorelines of the state" are the total of all "shorelines" and "shorelines of state-wide significance" within the state;
 - (d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of state-wide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;
 - (e) "Shorelines of state-wide significance" means the following shorelines of the state:
 - (i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

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

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

(E) Padilla Bay—from March Point to William Point;

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

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

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

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

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

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

(f) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology. Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom;

(g) "Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;

(h) "Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites,

including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(3) Procedural terms:

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

(b) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020;

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

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

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state; except that the following shall not be considered substantial developments for the purpose of this chapter:

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

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences, the cost of which does not exceed two thousand five hundred dollars;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(A) The activity does not interfere with the normal public use of the surface waters;

(B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(E) The activity is not subject to the permit requirements of RCW 90.58.550;

(xii) The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW. [1995 c 382 § 10; 1995 c 255 § 5; 1995 c 237 § 1; 1987 c 474 § 1; 1986 c 292 § 1; 1982 1st ex.s. c 13 § 2; 1980 c 2 § 3; 1979 ex.s. c 84 § 3; 1975 1st ex.s. c 182 § 1; 1973 1st ex.s. c 203 § 1; 1971 ex.s. c 286 § 3.]

Reviser's note: This section was amended by 1995 c 237 § 1, 1995 c 255 § 5, and by 1995 c 382 § 10, each 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).

Severability—Effective date—1995 c 255: See RCW 17.26.900 and 17.26.901.

Severability—1986 c 292: "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 292 § 5.]

Intent—1980 c 2; 1979 ex.s. c 84: "The legislature finds that high tides and hurricane force winds on February 13, 1979, caused conditions resulting in the catastrophic destruction of the Hood Canal bridge on state route 104, a state highway on the federal-aid system; and, as a consequence, the state of Washington has sustained a sudden and complete failure of a major segment of highway system with a disastrous impact on transportation services between the counties of Washington's Olympic peninsula and the remainder of the state. The governor has by proclamation found that these conditions constitute an emergency. To minimize the economic loss and hardship to residents of the Puget Sound and Olympic peninsula regions, it is the intent of this act to authorize the department of transportation to undertake immediately all necessary actions to restore interim transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas and to design and reconstruct a permanent bridge at the site of the original Hood Canal bridge. The department of transportation is directed to proceed with such actions in an environmentally responsible manner that would meet the substantive objectives of the state environmental policy act and the shorelines management act, and shall consult with the department of ecology in the planning process. The exemptions from the state environmental policy act and the shorelines management act contained in RCW 43.21C.032 and 90.58.030 are intended to approve and ratify the timely actions of the department of transportation taken and to be taken to restore interim transportation services and to reconstruct a permanent Hood Canal bridge without procedural delays." [1980 c 2 § 1; 1979 ex.s. c 84 § 1.] The reference to "this act" refers to 1979 ex.s. c 84 which consists of this section, the amendment to RCW 90.58.030 by 1979 ex.s. c 84, and to new sections RCW 43.21C.032 and 90.58.145.

90.58.050 Program as cooperative between local government and state—Responsibilities differentiated. This chapter establishes a cooperative program of shoreline management between local government and the state. Local government shall have the primary responsibility for initiating the planning required by this chapter and administering the regulatory program consistent with the policy and provisions of this chapter. The department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and on insuring compliance with the policy and provisions of this chapter. [1995 c 347 § 303; 1971 ex.s. c 286 § 5.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

90.58.060 Review and adoption of guidelines—Public hearings, notice of—Amendments. (1) The department shall periodically review and adopt guidelines consistent with RCW 90.58.020, containing the elements specified in RCW 90.58.100 for:

- (a) Development of master programs for regulation of the uses of shorelines; and
- (b) Development of master programs for regulation of the uses of shorelines of state-wide significance.

(2) Before adopting or amending guidelines under this section, the department shall provide an opportunity for public review and comment as follows:

(a) The department shall mail copies of the proposal to all cities, counties, and federally recognized Indian tribes, and to any other person who has requested a copy, and shall publish the proposed guidelines in the Washington state register. Comments shall be submitted in writing to the

department within sixty days from the date the proposal has been published in the register.

(b) The department shall hold at least four public hearings on the proposal in different locations throughout the state to provide a reasonable opportunity for residents in all parts of the state to present statements and views on the proposed guidelines. Notice of the hearings shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in each county of the state. If an amendment to the guidelines addresses an issue limited to one geographic area, the number and location of hearings may be adjusted consistent with the intent of this subsection to assure all parties a reasonable opportunity to comment on the proposed amendment. The department shall accept written comments on the proposal during the sixty-day public comment period and for seven days after the final public hearing.

(c) At the conclusion of the public comment period, the department shall review the comments received and modify the proposal consistent with the provisions of this chapter. The proposal shall then be published for adoption pursuant to the provisions of chapter 34.05 RCW.

(3) The department may propose amendments to the guidelines not more than once each year. At least once every five years the department shall conduct a review of the guidelines pursuant to the procedures outlined in subsection (2) of this section. [1995 c 347 § 304; 1971 ex.s. c 286 § 6.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

90.58.080 Timetable for local governments to develop or amend master programs. Local governments shall develop or amend, within twenty-four months after the adoption of guidelines as provided in RCW 90.58.060, a master program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines adopted by the department. [1995 c 347 § 305; 1974 ex.s. c 61 § 1; 1971 ex.s. c 286 § 8.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

90.58.090 Approval of master program or segments or amendments thereof, when—Procedure—Departmental alternatives when shorelines of state-wide significance—Later adoption of master program supersedes departmental program. (1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department. Within the time period provided in RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

(2) Upon receipt of a proposed master program or amendment, the department shall:

(a) Provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of proposed master programs or amendments general-

ly or for a specific area, subject matter, or issue. The comment period shall be at least thirty days, unless the department determines that the level of complexity or controversy involved supports a shorter period;

(b) In the department's discretion, conduct a public hearing during the thirty-day comment period in the jurisdiction proposing the master program or amendment;

(c) Within fifteen days after the close of public comment, request the local government to review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues;

(d) Within thirty days after receipt of the local government response pursuant to (c) of this subsection, make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines, provide a response to the issues identified in (c) of this subsection, and either approve the proposal as submitted, recommend specific changes necessary to make the proposal approvable, or deny approval of the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government, all interested persons, parties, groups, and agencies of record on the proposal;

(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the written findings and conclusions to the local government, the local government may:

(i) Agree to the proposed changes. The receipt by the department of the written notice of agreement constitutes final action by the department approving the amendment; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide written notice to all recipients of the written findings and conclusions. If the department determines the proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.

(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(4) The department shall approve those segments of the master program relating to shorelines of state-wide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the state-wide interest. If the department does not approve a segment of a local government master program relating to a shoreline of state-wide significance, the department may develop and by rule adopt an alternative to the local government's proposal.

(5) In the event a local government has not complied with the requirements of RCW 90.58.070 it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this

chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines.

(6) A master program or amendment to a master program takes effect when and in such form as approved or adopted by the department. The department shall maintain a record of each master program, the action taken on any proposal for adoption or amendment of the master program, and any appeal of the department's action. The department's approved document of record constitutes the official master program. [1995 c 347 § 306; 1971 ex.s. c 286 § 9.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

90.58.100 Programs as constituting use regulations—Duties when preparing programs and amendments thereto—Program contents. (1) The master programs provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on

shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;

(h) An element that gives consideration to the state-wide interest in the prevention and minimization of flood damages; and

(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter.

(3) The master programs shall include such map or maps, descriptive text, diagrams and charts, or other descriptive material as are necessary to provide for ease of understanding.

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.

(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140(3).

(6) Each master program shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment. [1995 c 347 § 307; 1992 c 105 § 2; 1991 c 322 § 32; 1971 ex.s. c 286 § 10.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

90.58.120 Adoption of rules, programs, etc., subject to RCW 34.05.310 through 34.05.395—Public hearings, notice of—Public inspection after approval or adoption.

All rules, regulations, designations, and guidelines, issued by the department, and master programs and amendments adopted by the department pursuant to RCW 90.58.070(2) or 90.58.090(4) shall be adopted or approved in accordance with the provisions of RCW 34.05.310 through 34.05.395 insofar as such provisions are not inconsistent with the provisions of this chapter. In addition:

(1) Prior to the adoption by the department of a master program, or portion thereof pursuant to RCW 90.58.070(2) or 90.58.090(4), at least one public hearing shall be held in each county affected by a program or portion thereof for the purpose of obtaining the views and comments of the public. Notice of each such hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the county in which the hearing is to be held.

(2) All guidelines, regulations, designations, or master programs adopted or approved under this chapter shall be available for public inspection at the office of the department or the appropriate county and city. The terms "adopt" and "approve" for purposes of this section, shall include modifications and rescission of guidelines. [1995 c 347 § 308; 1989 c 175 § 182; 1975 1st ex.s. c 182 § 2; 1971 ex.s. c 286 § 12.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

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

90.58.140 Development permits—Grounds for granting—Administration by local government, conditions—Applications—Notices—Rescission—Approval when permit for variance or conditional use. (1) A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

(2) A substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

A permit shall be granted:

(a) From June 1, 1971, until such time as an applicable master program has become effective, only when the development proposed is consistent with: (i) The policy of RCW 90.58.020; and (ii) after their adoption, the guidelines and rules of the department; and (iii) so far as can be ascertained, the master program being developed for the area;

(b) After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and this chapter.

(3) The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established shall be performed exclusively by the local government.

(4) Except as otherwise specifically provided in subsection (11) of this section, the local government shall require notification of the public of all applications for permits

governed by any permit system established pursuant to subsection (3) of this section by ensuring that notice of the application is given by at least one of the following methods:

(a) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed;

(b) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed; or

(c) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public.

The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the comments or requests for decisions to the local government within thirty days of the last date the notice is to be published pursuant to this subsection. The local government shall forward, in a timely manner following the issuance of a decision, a copy of the decision to each person who submits a request for the decision.

If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

(5) The system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of filing as defined in subsection (6) of this section except as follows:

(a) In the case of any permit issued to the state of Washington, department of transportation, for the construction and modification of SR 90 (I-90) on or adjacent to Lake Washington, the construction may begin after thirty days from the date of filing, and the permits are valid until December 31, 1995;

(b) Construction may be commenced no sooner than thirty days after the date of the appeal of the board's decision is filed if a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within twenty-one days of the date of filing, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to chapter 34.05 RCW. The appellant may request, within ten days of the filing of the appeal with the court, a hearing before the court to determine whether construction pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board should not commence. If, at the conclusion of the hearing, the court finds that construction pursuant to such a permit would involve a significant, irreversible damaging of the environment, the court shall prohibit the permittee from commencing the construction pursuant to the approved or revised

permit until all review proceedings are final. Construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit, and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated. In such a hearing before the court, the burden of proving whether the construction may involve significant irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate is on the appellant;

(c) If the permit is for a substantial development meeting the requirements of subsection (11) of this section, construction pursuant to that permit may not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section.

If a permittee begins construction pursuant to subsections (a), (b), or (c) of this subsection, the construction is begun at the permittee's own risk. If, as a result of judicial review, the courts order the removal of any portion of the construction or the restoration of any portion of the environment involved or require the alteration of any portion of a substantial development constructed pursuant to a permit, the permittee is barred from recovering damages or costs involved in adhering to such requirements from the local government that granted the permit, the hearings board, or any appellant or intervener.

(6) Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general. With regard to a permit other than a permit governed by subsection (10) of this section, "date of filing" as used herein means the date of actual receipt by the department. With regard to a permit for a variance or a conditional use, "date of filing" means the date a decision of the department rendered on the permit pursuant to subsection (10) of this section is transmitted by the department to the local government. The department shall notify in writing the local government and the applicant of the date of filing.

(7) Applicants for permits under this section have the burden of proving that a proposed substantial development is consistent with the criteria that must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.180 (1) and (2), the person requesting the review has the burden of proof.

(8) Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board

within fifteen days of the termination of the thirty-day notice to the local government.

(9) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under this section.

(10) Any permit for a variance or a conditional use by local government under approved master programs must be submitted to the department for its approval or disapproval.

(11)(a) An application for a substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single family residence and its appurtenant structures from shoreline erosion shall be subject to the following procedures:

(i) The public comment period under subsection (4) of this section shall be twenty days. The notice provided under subsection (4) of this section shall state the manner in which the public may obtain a copy of the local government decision on the application no later than two days following its issuance;

(ii) The local government shall issue its decision to grant or deny the permit within twenty-one days of the last day of the comment period specified in (i) of this subsection; and

(iii) If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within thirty days.

(b) For purposes of this section, a limited utility extension means the extension of a utility service that:

(i) Is categorically exempt under chapter 43.21C RCW for one or more of the following: Natural gas, electricity, telephone, water, or sewer;

(ii) Will serve an existing use in compliance with this chapter; and

(iii) Will not extend more than twenty-five hundred linear feet within the shorelines of the state. [1995 c 347 § 309; 1992 c 105 § 3; 1990 c 201 § 2; 1988 c 22 § 1; 1984 c 7 § 386; 1977 ex.s. c 358 § 1; 1975-'76 2nd ex.s. c 51 § 1; 1975 1st ex.s. c 182 § 3; 1973 2nd ex.s. c 19 § 1; 1971 ex.s. c 286 § 14.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Finding—Intent—1990 c 201: "The legislature finds that delays in substantial development permit review for the extension of vital utility services to existing and lawful uses within the shorelines of the state have caused hardship upon existing residents without serving any of the purposes and policies of the shoreline management act. It is the intent of this act to provide a more expeditious permit review process for that limited category of utility extension activities only, while fully preserving safeguards of public review and appeal rights regarding permit applications and decisions." [1990 c 201 § 1.] "This act" consists of the 1990 c 201 amendments to RCW 90.58.140.

Severability—1984 c 7: See note following RCW 47.01.141.

90.58.145 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

90.58.147 Substantial development permit—Exemption for projects to improve fish or wildlife habitat or fish passage. A public or private project that is designed to improve fish or wildlife habitat or fish passage shall be exempt from the substantial development permit requirements of this chapter when all of the following apply:

(1) The project has been approved by the department of fish and wildlife;

(2) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 75.20 RCW; and

(3) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent. [1995 c 333 § 1.]

90.58.180 Appeals from granting, denying, or rescinding permits—Board to act—Local government appeals to board—Grounds for declaring rule, regulation, or guideline invalid—Appeals to court. (1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of filing as defined in RCW 90.58.140(6).

Within seven days of the filing of any petition for review with the board as provided in this section pertaining to a final decision of a local government, the petitioner shall serve copies of the petition on the department and the office of the attorney general. The department and the attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the petition for review filed pursuant to this section. The shorelines hearings board shall schedule review proceedings on the petition for review without regard as to whether the period for the department or the attorney general to intervene has or has not expired.

(2) The department or the attorney general may obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the shorelines hearings board and the appropriate local government within twenty-one days from the date the final decision was filed as provided in RCW 90.58.140(6).

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. Judicial review of such proceedings of the shorelines hearings board is governed by chapter 34.05 RCW. The board shall issue its decision on the appeal authorized under subsections (1) and (2) of this section within one hundred eighty days after the date the petition is filed with the board or a petition to intervene is filed by the department or the attorney general, whichever is later. The time period may be extended by the board for a period of thirty days upon a showing of good cause or may be waived by the parties.

(4) Any person may appeal any rules, regulations, or guidelines adopted or approved by the department within thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

(5) The board shall find the rule, regulation, or guideline to be valid and enter a final decision to that effect unless it determines that the rule, regulation, or guideline:

(a) Is clearly erroneous in light of the policy of this chapter; or

(b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or

(c) Is arbitrary and capricious; or

(d) Was developed without fully considering and evaluating all material submitted to the department during public review and comment; or

(e) Was not adopted in accordance with required procedures.

(6) If the board makes a determination under subsection (5) (a) through (e) of this section, it shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government and any other interested party, a new rule, regulation, or guideline consistent with the board's decision.

(7) A decision of the board on the validity of a rule, regulation, or guideline shall be subject to review in superior court, if authorized pursuant to chapter 34.05 RCW. A petition for review of the decision of the shorelines hearings board on a rule, regulation, or guideline shall be filed within thirty days after the date of final decision by the shorelines hearings board. [1995 c 347 § 310; 1994 c 253 § 3; 1989 c 175 § 183; 1986 c 292 § 2; 1975-'76 2nd ex.s. c 51 § 2; 1975 1st ex.s. c 182 § 4; 1973 1st ex.s. c 203 § 2; 1971 ex.s. c 286 § 18.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

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

Severability—1986 c 292: See note following RCW 90.58.030.

Appeal under this chapter also subject of appeal under state environmental policy act: RCW 43.21C.075.

90.58.190 Appeal of department's decision to adopt or amend a master program. (1) The appeal of the department's decision to adopt a master program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(4) is governed by RCW 34.05.510 through 34.05.598.

(2)(a) The department's decision to approve, reject, or modify a proposed master program or amendment adopted by a local government planning under RCW 36.70A.040 shall be appealed to the growth management hearings board with jurisdiction over the local government. The appeal shall be initiated by filing a petition as provided in RCW 36.70A.250 through 36.70A.320.

(b) If the appeal to the growth management hearings board concerns shorelines, the growth management hearings board shall review the proposed master program or amendment for compliance with the requirements of this chapter and chapter 36.70A RCW, the policy of RCW 90.58.020 and the applicable guidelines, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under chapter 90.58 RCW.

(c) If the appeal to the growth management hearings board concerns a shoreline of state-wide significance, the board shall uphold the decision by the department unless the

board, by clear and convincing evidence, determines that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) The appellant has the burden of proof in all appeals to the growth management hearings board under this subsection.

(e) Any party aggrieved by a final decision of a growth management hearings board under this subsection may appeal the decision to superior court as provided in RCW 36.70A.300.

(3)(a) The department's decision to approve, reject, or modify a proposed master program or master program amendment by a local government not planning under RCW 36.70A.040 shall be appealed to the shorelines hearings board by filing a petition within thirty days of the date of the department's written notice to the local government of the department's decision to approve, reject, or modify a proposed master program or master program amendment as provided in RCW 90.58.090(2).

(b) In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program amendment and, after full consideration of the presentations of the local government and the department, shall determine the validity of the local government's master program or amendment in light of the policy of RCW 90.58.020 and the applicable guidelines.

(c) In an appeal relating to shorelines of state-wide significance, the shorelines hearings board shall uphold the decision by the department unless the board determines, by clear and convincing evidence that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.

(d) Review by the shorelines hearings board shall be considered an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act. The aggrieved local government shall have the burden of proof in all such reviews.

(e) Whenever possible, the review by the shorelines hearings board shall be heard within the county where the land subject to the proposed master program or master program amendment is primarily located. The department and any local government aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in chapter 34.05 RCW.

(4) A master program amendment shall become effective after the approval of the department or after the decision of the shorelines hearings board to uphold the master program or master program amendment, provided that the board may remand the master program or master program adjustment to the local government or the department for modification prior to the final adoption of the master program or master program amendment. [1995 c 347 § 311; 1989 c 175 § 184; 1986 c 292 § 3; 1971 ex.s. c 286 § 19.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

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

Severability—1986 c 292: See note following RCW 90.58.030.

90.58.210 Court actions to insure against conflicting uses and to enforce—Civil penalty—Review. (1) Except as provided in RCW 43.05.060 through 43.05.080 and

43.05.150, the attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state in conflict with the provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter.

(2) Any person who shall fail to conform to the terms of a permit issued under this chapter or who shall undertake development on the shorelines of the state without first obtaining any permit required under this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.

(3) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(4) Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the department for remission or mitigation of such penalty. Upon receipt of the application, the department or local government may remit or mitigate the penalty upon whatever terms the department or local government in its discretion deems proper. Any penalty imposed pursuant to this section by the department shall be subject to review by the shorelines hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the shorelines hearings board. [1995 c 403 § 637; 1986 c 292 § 4; 1971 ex.s. c 286 § 21.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Severability—1986 c 292: See note following RCW 90.58.030.

90.58.380 Adoption of wetland manual. The department by rule shall adopt a manual for the delineation of wetlands under this chapter that implements and is consistent with the 1987 manual in use on January 1, 1995, by the United States army corps of engineers and the United States environmental protection agency. If the corps of engineers and the environmental protection agency adopt changes to or a different manual, the department shall consider those changes and may adopt rules implementing those changes. [1995 c 382 § 11.]

90.58.515 Watershed restoration projects—Exemption. Watershed restoration projects as defined in RCW 89.08.460 are exempt from the requirement to obtain a substantial development permit. Local government shall review the projects for consistency with the locally adopted shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five

days of receiving a complete consolidated application form from the applicant. No fee may be charged for accepting and processing applications for watershed restoration projects as used in this section. [1995 c 378 § 16.]

90.58.560 Oil or natural gas exploration—Violations of RCW 90.58.550—Penalty—Appeal. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, a person who violates RCW 90.58.550, or any rule adopted thereunder, is subject to a penalty in an amount of up to five thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty provided for in this section.

(2) The penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the director or the director's representative describing such violation with reasonable particularity. The director or the director's representative may, upon written application therefor received within fifteen days after notice imposing any penalty is received by the person incurring the penalty, and when deemed to carry out the purposes of this chapter, remit or mitigate any penalty provided for in this section upon such terms as he or she deems proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he or she may deem proper.

(3) Any person incurring any penalty under this section may appeal the penalty to the hearings board as provided for in chapter 43.21B RCW. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the director or the director's representative setting forth the disposition of the application. Any penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred under this section is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil

action except as otherwise in this chapter provided. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund. [1995 c 403 § 638; 1983 c 138 § 2.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Chapter 90.60

ENVIRONMENTAL PERMIT ASSISTANCE

Sections

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90.60.900	Finding—Severability—Part headings and table of contents not law—1995 c 347.

Reviser's note—Sunset Act application: The permit assistance center is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.387. RCW 90.60.010 through 90.60.150 and 90.60.800 are scheduled for future repeal under RCW 43.131.388.

90.60.010 Findings and declaration. The legislature hereby finds and declares:

(1) Washington's environmental protection programs have established strict standards to reduce pollution and protect the public health and safety and the environment. The single-purpose programs instituted to achieve these standards have been successful in many respects, and have produced significant gains in protecting Washington's environment in the face of substantial population growth.

(2) Continued progress to achieve the environmental standards in the face of continued population growth will require greater coordination between the single-purpose environmental programs and more efficient operation of these programs overall. Pollution must be prevented and controlled and not simply transferred to another media or another place. This goal can only be achieved by maintaining the current environmental protection standards and by greater integration of the existing programs.

(3) As the number of environmental laws and regulations have grown in Washington, so have the number of permits required of business and government. This regulatory burden has significantly added to the cost and time needed to obtain essential permits in Washington. The increasing number of individual permits and permit authorities has generated the continuing potential for conflict,

overlap, and duplication between the various state, local, and federal permits.

(4) The purpose of this chapter is to institute new, efficient procedures that will assist businesses and public agencies in complying with the environmental quality laws in an expedited fashion, without reducing protection of public health and safety and the environment.

(5) Those procedures need to provide a permit process that promotes effective dialogue and ensures ease in the transfer and clarification of technical information, while preventing duplication. It is necessary that the procedures establish a process for preliminary and ongoing meetings between the applicant, the coordinating permit agency, and the participating permit agencies, but do not preclude the applicant or participating permit agencies from individually coordinating with each other.

(6) It is necessary, to the maximum extent practicable, that the procedures established in this chapter ensure that the coordinated permit agency process and applicable permit requirements and criteria are integrated and run concurrently, rather than consecutively.

(7) It is necessary to provide a reliable and consolidated source of information concerning federal, state, and local environmental and land use laws and procedures that apply to any given proposal.

(8) It is the intent of this chapter to provide an optional process by which a project proponent may obtain active coordination of all applicable regulatory and land-use permitting procedures. This process is not to replace individual laws, or diminish the substantive decision-making role of individual jurisdictions. Rather it is to provide predictability, administrative consolidation, and, where possible, consolidation of appeal processes.

(9) It is also the intent of this chapter to provide consolidated, effective, and easier opportunities for members of the public to receive information and present their views about proposed projects. [1995 c 347 § 601.]

Sunset Act application: See note following chapter digest.

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

(1) "Center" means the permit assistance center established in the commission [department] by RCW 90.60.030.

(2) "Coordinating permit agency" means the permit agency that has the greatest overall jurisdiction over a project.

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

(4) "Participating permit agency" means a permit agency, other than the coordinating permit agency, that is responsible for the issuance of a permit for a project.

(5) "Permit" means any license, certificate, registration, permit, or other form of authorization required by a permit agency to engage in a particular activity.

(6) "Permit agency" means:

(a) The department of ecology, an air pollution control authority, the department of natural resources, the department of fish and wildlife, and the department of health; and

(b) Any other state or federal agency or county, city, or town that participates at the request of the permit applicant

and upon the agency's agreement to be subject to this chapter.

(7) "Project" means an activity, the conduct of which requires permits from one or more permit agencies. [1995 c 347 § 602.]

Sunset Act application: See note following chapter digest.

90.60.030 Permit assistance center—Duties. The permit assistance center is established within the department. The center shall:

(1) Publish and keep current one or more handbooks containing lists and explanations of all permit laws. The center shall coordinate with the business assistance center in providing and maintaining this information to applicants and others. To the extent possible, the handbook shall include relevant federal and tribal laws. A state agency or local government shall provide a reasonable number of copies of application forms, statutes, ordinances, rules, handbooks, and other informational material requested by the center and shall otherwise fully cooperate with the center. The center shall seek the cooperation of relevant federal agencies and tribal governments;

(2) Establish, and make known, a point of contact for distribution of the handbook and advice to the public as to its interpretation in any given case;

(3) Work closely and cooperatively with the business license center and the business assistance center in providing efficient and nonduplicative service to the public;

(4) Seek the assignment of employees from the permit agencies listed under RCW 90.60.020(6)(a) to serve on a rotating basis in staffing the center; and

(5) Provide an annual report to the legislature on potential conflicts and perceived inconsistencies among existing statutes. The first report shall be submitted to the appropriate standing committees of the house of representatives and senate by December 1, 1996. [1995 c 347 § 603.]

Sunset Act application: See note following chapter digest.

90.60.040 Designation of coordinating permit agency—Process. (1) Not later than January 1, 1996, the center shall establish by rule an administrative process for the designation of a coordinating permit agency for a project.

(2) The administrative process shall consist of the establishment of guidelines for designating the coordinating permit agency for a project. If a permit agency is the lead agency for purposes of chapter 43.21C RCW, that permit agency shall be the coordinating permit agency. In other cases, the guidelines shall require that at least the following factors be considered in determining which permit agency has the greatest overall jurisdiction over the project:

(a) The types of facilities or activities that make up the project;

(b) The types of public health and safety and environmental concerns that should be considered in issuing permits for the project;

(c) The environmental medium that may be affected by the project, the extent of those potential effects, and the environmental protection measures that may be taken to prevent the occurrence of, or to mitigate, those potential effects;

(d) The regulatory activity that is of greatest importance in preventing or mitigating the effects that the project may have on public health and safety or the environment; and

(e) The statutory and regulatory requirements that apply to the project and the complexity of those requirements. [1995 c 347 § 604.]

Sunset Act application: See note following chapter digest.

90.60.050 Project facilitator. Upon the request of a project applicant, the center shall appoint a project facilitator to assist the applicant in determining which regulatory requirements, processes, and permits may be required for development and operation of the proposed project. The project facilitator shall provide the information to the applicant and explain the options available to the applicant in obtaining the required permits. If the applicant requests, the center shall designate a coordinating permit agency as provided in RCW 90.60.060. [1995 c 347 § 605.]

Sunset Act application: See note following chapter digest.

90.60.060 Coordinating permit agency—Designation—Duties. (1) A permit applicant who requests the designation of a coordinating permit agency shall provide the center with a description of the project, a preliminary list of the permits that the project may require, the identity of any public agency that has been designated the lead agency for the project pursuant to chapter 43.21C RCW, and the identity of the participating permit agencies. The center may request any information from the permit applicant that is necessary to make the designation under this section, and may convene a scoping meeting of the likely coordinating permit agency and participating permit agencies in order to make that designation.

(2) The coordinating permit agency shall serve as the main point of contact for the permit applicant with regard to the coordinated permit process for the project and shall manage the procedural aspects of that processing consistent with existing laws governing the coordinating permit agency and participating permit agencies, and with the procedures agreed to by those agencies in accordance with RCW 90.60.070. In carrying out these responsibilities, the coordinating permit agency shall ensure that the permit applicant has all the information needed to apply for all the component permits that are incorporated in the coordinated permit process for the project, coordinate the review of those permits by the respective participating permit agencies, ensure that timely permit decisions are made by the participating permit agencies, and assist in resolving any conflict or inconsistency among the permit requirements and conditions that are to be imposed by the participating permit agencies with regard to the project. The coordinating permit agency shall keep in contact with the applicant as well as other permit agencies in order to assure that the process is progressing as scheduled. The coordinating permit agency shall also make contact, at least once, with any local jurisdiction that is responsible for issuing a permit for the project if the local jurisdiction has not agreed to be a participating permit agency as provided in RCW 90.60.020(6).

(3) This chapter shall not be construed to limit or abridge the powers and duties granted to a participating

permit agency under the law that authorizes or requires the agency to issue a permit for a project. Each participating permit agency shall retain its authority to make all decisions on all nonprocedural matters with regard to the respective component permit that is within its scope of its responsibility, including, but not limited to, the determination of permit application completeness, permit approval or approval with conditions, or permit denial. The coordinating permit agency may not substitute its judgment for that of a participating permit agency on any such nonprocedural matters. [1995 c 347 § 606.]

Sunset Act application: See note following chapter digest.

90.60.070 Coordinating permit agency—Meeting with permit applicant and participating permit agencies.

(1) Within twenty-one days of the date that the coordinating permit agency is designated, it shall convene a meeting with the permit applicant for the project and the participating permit agencies. The meeting agenda shall include at least all of the following matters:

(a) A determination of the permits that are required for the project;

(b) A review of the permit application forms and other application requirements of the agencies that are participating in the coordinated permit process;

(c)(i) A determination of the timelines that will be used by the coordinating permit agency and each participating permit agency to make permit decisions, including the time periods required to determine if the permit applications are complete, to review the application or applications, and to process the component permits. In the development of this timeline, full attention shall be given to achieving the maximum efficiencies possible through concurrent studies, consolidated applications, hearings, and comment periods. Except as provided in (c)(ii) of this subsection, the timelines established under this subsection, with the assent of the coordinating permit agency and each participating permit agency, shall commit the coordinating permit agency and each participating permit agency to act on the component permit within time periods that are different than those required by other applicable provisions of law.

(ii) An accelerated time period for the consideration of a permit application may not be set if that accelerated time period would be inconsistent with, or in conflict with, any time period or series of time periods set by statute for that consideration, or with any statute, rule, or regulation, or adopted state policy, standard, or guideline that requires any of the following:

(A) Other agencies, interested persons, federally recognized Indian tribes, or the public to be given adequate notice of the application;

(B) Other agencies to be given a role in, or be allowed to participate in, the decision to approve or disapprove the application; or

(C) Interested persons or the public to be provided the opportunity to challenge, comment on, or otherwise voice their concerns regarding the application;

(d) The scheduling of any public hearings that are required to issue permits for the project and a determination of the feasibility of coordinating or consolidating any of those required public hearings; and

(e) A discussion of fee arrangements for the coordinated permit process, including an estimate of the costs allowed under RCW 90.60.100 and the billing schedule.

(2) Each agency shall send at least one representative qualified to make decisions concerning the applicability and timelines associated with all permits administered by that jurisdiction. At the request of the applicant, the coordinating permit agency shall notify any relevant federal agency or federally recognized tribe of the date of the meeting and invite that agency's participation in the process.

(3) If a permit agency or the applicant foresees, at any time, that it will be unable to meet its obligations under the agreement, it shall notify the coordinating permit agency of the problem. The coordinating permit agency shall notify the participating permit agencies and the applicant and, upon agreement of all parties, adjust the schedule, or, if necessary, schedule another work plan meeting.

(4) The coordinating permit agency may request any information from the applicant that is necessary to comply with its obligations under this section, consistent with the timelines set pursuant to this section.

(5) A summary of the decisions made under this section shall be made available for public review upon the filing of the coordinated permit process application or permit applications. [1995 c 347 § 607.]

Sunset Act application: See note following chapter digest.

90.60.080 Withdrawal from coordinated permit process. (1) The permit applicant may withdraw from the coordinated permit process by submitting to the coordinating permit agency a written request that the process be terminated. Upon receipt of the request, the coordinating permit agency shall notify the center and each participating permit agency that a coordinated permit process is no longer applicable to the project.

(2) The permit applicant may submit a written request to the coordinating permit agency that the permit applicant wishes a participating permit agency to withdraw from participation on the basis of a reasonable belief that the issuance of the coordinated permit process would be accelerated if the participating permit agency withdraws. In that event, the participating permit agency shall withdraw from participation if the coordinating permit agency approves the request. [1995 c 347 § 608.]

Sunset Act application: See note following chapter digest.

90.60.090 Coordinating permit agency to oversee participating permit agencies. The coordinating permit agency shall ensure that the participating permit agencies make all the permit decisions that are necessary for the incorporation of the permits into the coordinated permit process and act on the component permits within the time periods established pursuant to RCW 90.60.070. [1995 c 347 § 609.]

Sunset Act application: See note following chapter digest.

90.60.100 Recovery of costs by coordinating permit agency. (1) The coordinating permit agency may enter into a written agreement with the applicant to recover from the applicant the reasonable costs incurred by the coordinating

permit agency in carrying out the requirements of this chapter.

(2) The coordinating permit agency may recover only the costs of performing those coordinated permit services and shall be negotiated with the permit applicant in the meeting required pursuant to RCW 90.60.070. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. [1995 c 347 § 610.]

Sunset Act application: See note following chapter digest.

90.60.110 Review of agency action—Petition. A petition by the permit applicant for review of an agency action in issuing, denying, or amending a permit, or any portion of a coordinating permit agency permit, shall be submitted by the permit applicant to the coordinating permit agency or the participating permit agency having jurisdiction over that permit and shall be processed in accordance with the procedures of that permit agency. Within thirty days of receiving the petition, the coordinating permit agency shall notify the other environmental agencies participating in the original coordinated permit process. [1995 c 347 § 611.]

Sunset Act application: See note following chapter digest.

90.60.120 Amendments or modifications—Procedure. If an applicant petitions for a significant amendment or modification to a coordinated permit process application or any of its component permit applications, the coordinating permit agency shall reconvene a meeting of the participating permit agencies, conducted in accordance with RCW 90.60.070. [1995 c 347 § 612.]

Sunset Act application: See note following chapter digest.

90.60.130 Failure to provide information—Effect. If an applicant fails to provide information required for the processing of the component permit applications for a coordinated permit process or for the designation of a coordinating permit agency, the time requirements of this chapter shall be held in abeyance until such time as the information is provided. [1995 c 347 § 613.]

Sunset Act application: See note following chapter digest.

90.60.140 Appeals. (1) The center, by rule, shall establish an expedited appeals process by which a petitioner or applicant may appeal any failure by a permit agency to take timely action on the issuance or denial of a permit in accordance with the time limits established under this chapter.

(2) If the center finds that the time limits under appeal have been violated without good cause, it shall establish a date certain by which the permit agency shall act on the permit application with adequate provision for the requirements of RCW 90.60.070(1)(c)(ii) (A) through (C), and provide for the full reimbursement of any filing or permit processing fees paid by the applicant to the permit agency for the permit application under appeal. [1995 c 347 § 614.]

Sunset Act application: See note following chapter digest.

90.60.150 Jurisdiction of the energy facility site evaluation council not affected. Nothing in this chapter

affects the jurisdiction of the energy facility site evaluation council as provided in chapter 80.50 RCW. [1995 c 347 § 615.]

Sunset Act application: See note following chapter digest.

90.60.800 Report to legislature. By December 1, 1997, the center shall submit a report to the appropriate committees of both houses of the legislature detailing the following information:

(1) The number of instances in which a coordinating permit agency has been requested and used, and the disposition of those cases;

(2) The amount of time elapsed between an initial request by a permit applicant for a coordinated permit process and the ultimate approval or disapproval of the permits included in the process; and

(3) The number of instances in which the expedited appeals process was requested, and the disposition of those cases. [1995 c 347 § 616.]

Sunset Act application: See note following chapter digest.

90.60.900 Finding—Severability—Part headings and table of contents not law—1995 c 347. See notes following RCW 36.70A.470.

Chapter 90.61

LAND USE STUDY COMMISSION

Sections

90.61.010	Commission established. (<i>Expires June 30, 1998.</i>)
90.61.020	Commission membership. (<i>Expires June 30, 1998.</i>)
90.61.030	Time limits—Reports. (<i>Expires June 30, 1998.</i>)
90.61.040	Duties. (<i>Expires June 30, 1998.</i>)
90.61.050	Travel reimbursement. (<i>Expires June 30, 1998.</i>)
90.61.900	Expiration date—1995 c 347 §§ 801-805.
90.61.901	Effective date—1995 c 347 §§ 801-806.
90.61.902	Finding—Severability—Part headings and table of contents not law—1995 c 347.

90.61.010 Commission established. (*Expires June 30, 1998.*) The land use study commission is hereby established. The commission's goal shall be the integration and consolidation of the state's land use and environmental laws into a single, manageable statute. In fulfilling its responsibilities, the commission shall evaluate the effectiveness of the growth management act, the state environmental policy act, the shoreline management act, and other state land use, planning, environmental, and permitting statutes in achieving their stated goals. [1995 c 347 § 801.]

90.61.020 Commission membership. (*Expires June 30, 1998.*) The commission shall consist of not more than fourteen members. Eleven members of the commission shall be appointed by the governor. Membership shall reflect the interests of business, agriculture, labor, the environment, neighborhood groups, other citizens, the legislature, cities, counties, and federally recognized Indian tribes. Members shall have substantial experience in matters relating to land use and environmental planning and regulation, and shall have the ability to work toward cooperative solutions among diverse interests. The director of the department of commu-

nity, trade, and economic development, or the director's designee, shall be a member and shall serve as chair of the commission. The director of the department of ecology, or the director's designee, and the secretary of the department of transportation, or the secretary's designee, shall also be members of the commission. Staff for the commission shall be provided by the department of community, trade, and economic development, with additional staff to be provided by other state agencies and the legislature, as may be required. State agencies shall provide the commission with information and assistance as needed. [1995 c 347 § 802.]

90.61.030 Time limits—Reports. (*Expires June 30, 1998.*) The commission shall convene commencing June 1, 1995, and shall complete its work by June 30, 1998. The commission shall submit a report to the governor and the legislature stating its findings, conclusions, and recommendations not later than November 1 of each year. The commission shall submit its final report to the governor and the legislature not later than November 1, 1997. [1995 c 347 § 803.]

90.61.040 Duties. (*Expires June 30, 1998.*) The commission shall:

(1) Consider the effectiveness of state and local government efforts to consolidate and integrate the growth management act, the state environmental policy act, the shoreline management act, and other land use, planning, environmental, and permitting laws.

(2) Identify the revisions and modifications needed in state land use, planning, and environmental law and practice to adequately plan for growth and achieve economically and environmentally sustainable development, to adequately assess environmental impacts of comprehensive plans, development regulations, and growth, and to reduce the time and cost of obtaining project permits.

(3) Draft a consolidated land use procedure, following these guidelines:

(a) Conduct land use planning through the comprehensive planning process under chapter 36.70A RCW rather than through review of individual projects;

(b) Involve diverse sectors of the public in the planning process. Early and informal environmental analysis should be incorporated into planning and decision making;

(c) Recognize that different questions need to be answered and different levels of detail applied at each planning phase, from the initial development of plan concepts or plan elements to implementation programs;

(d) Integrate and combine to the fullest extent possible the processes, analysis, and documents currently required under chapters 36.70A and 43.21C RCW, so that subsequent plan decisions and subsequent implementation will incorporate measures to promote the environmental, economic, and other goals and to mitigate undesirable or unintended adverse impacts on a community's quality of life;

(e) Focus environmental review and the level of detail needed for different stages of plan and project decisions on the environmental considerations most relevant to that stage of the process;

(f) Avoid duplicating review that has occurred for plan decisions when specific projects are proposed;

(g) Use environmental review on projects to: (i) Review and document consistency with comprehensive plans and development regulations; (ii) provide prompt and coordinated review by agencies, tribes, and the public on compliance with applicable environmental laws and plans, including mitigation for site specific project impacts that have not been considered and addressed at the plan or development regulation level; and (iii) ensure accountability by local government to applicants and the public for requiring and implementing mitigation measures;

(h) Maintain or improve the quality of environmental analysis both for plan and for project decisions, while integrating these analyses with improved state and local planning and permitting processes;

(i) Examine existing land use and environmental permits for necessity and utility. To the extent possible, existing permits should be combined into fewer permits, assuring that the values and principles intended to be protected by those permits remain protected; and

(j) Consolidate local government appeal processes to allow a single appeal of permits at local government levels, a single state level administrative appeal, and a final judicial appeal.

(4) Monitor instances state-wide of the vesting of project permit applications during the period that an appeal is pending before a growth management hearings board, as authorized under RCW 36.70A.300. The commission shall also review the extent to which such vesting results in the approval of projects that are inconsistent with a comprehensive plan or development regulation provision ultimately found to be in compliance with a board's order or remand. The commission shall analyze the impact of such approvals on ensuring the attainment of the goals and policies of chapter 36.70A RCW, and make recommendations to the governor and the legislature on statutory changes to address any adverse impacts from the provisions of RCW 36.70A.300. The commission shall provide an initial report on its findings and recommendations by November 1, 1995, and submit its further findings and recommendations subsequently in the reports required under RCW 90.61.030.

(5) Monitor local government consolidated permit procedures and the effectiveness of the timelines established by RCW 36.70B.090. The commission shall include in its report submitted to the governor and the legislature on November 1, 1997, its recommendation about what timelines, if any, should be imposed on the local government consolidated permit process required by chapter 36.70B RCW.

(6) Evaluate funding mechanisms that will enable local governments to pay for and recover the costs of conducting integrated planning and environmental analysis. The commission shall include its conclusions in its first report to the legislature on November 1, 1995, and include any recommended statutory changes.

(7) Study, in cooperation with the state board for registration of professional engineers and the state building code council, ways in which state agencies and local governments could authorize professionals with appropriate qualifications to certify a project's compliance with certain state and local land use and environmental requirements. The commission shall report to the legislature on measures necessary to implement such a system of professional certification.

These guidelines are intended to guide the work of the commission, without limiting its charge to integrate and consolidate Washington's land use and environmental laws into a single, manageable statutory framework. [1995 c 347 § 804.]

90.61.050 Travel reimbursement. (*Expires June 30, 1998.*) Members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [1995 c 347 § 805.]

90.61.900 Expiration date—1995 c 347 §§ 801-805. Sections 801 through 805 of this act shall expire June 30, 1998. [1995 c 347 § 806.]

90.61.901 Effective date—1995 c 347 §§ 801-806. Sections 801 through 806 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, 1995. [1995 c 347 § 904.]

90.61.902 Finding—Severability—Part headings and table of contents not law—1995 c 347. See notes following RCW 36.70A.470.

Chapter 90.62

ENVIRONMENTAL COORDINATION PROCEDURES ACT

Sections

90.62.010 through 90.62.130 Repealed.
90.62.900 through 90.62.908 Repealed.

90.62.010 through 90.62.130 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

90.62.900 through 90.62.908 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 90.70

PUGET SOUND WATER QUALITY AUTHORITY

Sections

90.70.065 Puget Sound ambient monitoring program.

90.70.065 Puget Sound ambient monitoring program. (1) In addition to other powers and duties specified in this chapter, the authority shall ensure implementation and coordination of the Puget Sound ambient monitoring program established in the plan under RCW 90.70.060(12). The program shall:

(a) Develop a baseline and examine differences among areas of Puget Sound, for environmental conditions, natural resources, and contaminants in seafood, against which future changes can be measured;

(b) Take measurements relating to specific program elements identified in the plan;

(c) Measure the progress of the ambient monitoring programs implemented under the plan;

(d) Provide a permanent record of significant natural and human-caused changes in key environmental indicators in Puget Sound; and

(e) Help support research on Puget Sound.

(2) Each state agency with responsibilities for implementing the Puget Sound ambient monitoring program, as specified in the plan, shall participate in the program. [1995 c 269 § 3501; 1994 c 264 § 98; 1990 c 115 § 9.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Chapter 90.76

UNDERGROUND STORAGE TANKS

Sections

90.76.080 Penalties.

90.76.080 Penalties. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, a person who fails to notify the department pursuant to tank notification requirements or who submits false information is subject to a civil penalty not to exceed five thousand dollars per violation.

(2) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, a person who violates this chapter is subject to a civil penalty not to exceed five thousand dollars for each tank per day of violation. [1995 c 403 § 639; 1989 c 346 § 9.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

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LONG-TERM CARE

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